FOREWORD

This volume contains the Acts of the Second Regular Session and First Extraordinary Session of the 66th Legislature.

Second Regular Session, 1984

The Second Regular Session of the 66th Legislature convened on January 11, 1984. The constitutional expiration date of the session was midnight, March 10, 1984. However, the session was extended by Proclamation of the Governor for consideration of the annual Budget Bill up to and including March 14, 1984. The Legislature passed the Budget on March 14, 1984, and adjourned sine die on that date.

Bills totaling 1,827 were introduced in the two houses during the session (1,082 House and 745 Senate). The Legislature passed 190 bills, 116 House and 74 Senate. The Governor approved 186 bills and vetoed 3 (S. B. 28, H. B. 1008 and H. B. 1256).

One bill (S. B. 431, establishing the West Virginia Thoroughbred Development Fund) was amended and repassed by the Legislature and subsequently approved by the Governor, making a net total of 187 bills enacted into law.

There were 70 concurrent resolutions introduced during the session, 37 House and 33 Senate, of which four House and four Senate were adopted. A total of 54 joint resolutions were introduced proposing amendments to the Constitution of the State, 37 House and 17 Senate, of which four were adopted (H. J. R. 21, H. J. R. 32, S. J. R. 1 and S. J. R. 4). The House had 23 House resolutions and the Senate had 27 Senate resolutions, of which 15 House and 25 Senate were adopted.

The Senate failed to pass 62 House bills passed by the House and 92 Senate bills failed passage by the House. Five bills died in conference, three House and two Senate.

First Extraordinary Session, 1984

The First Extraordinary Session of 1984 of the Sixty-sixth Legislature convened on May 19, 1984, and adjourned sine die on that date.

The Proclamation and amended Proclamation of the Governor convening the session contained three items of business for consideration.
There were four House bill and six Senate bills introduced. The Legislature passed all six Senate bills, of which two were vetoed by the Governor leaving a net of four bills enacted into law.

There was one Senate concurrent resolution offered and adopted. There were two House resolutions introduced, of which both were adopted. Four Senate resolutions were introduced and adopted.

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

DONALD L. KOPP, Clerk
House of Delegates
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187. Creating the Raleigh County Recreation Authority | 1109 |

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**Concurrent**

- **Number**
- **30. Requiring the Board of Regents to direct Marshall University to conduct a study of salary inequities among faculty members** | 1112 |

### Joint

- **Number**
- **21. Equitable Taxation of Property and Exemption of Intangible Property Amendment** | 1113 |
- **Number**
- **32. Qualified Veterans Housing Bond Amendment** | 1115 |

## SENATE

**Concurrent**

1. Creating a special joint interim commission to conduct a comprehensive study of the financial integrity of the Unemployment Compensation Trust Fund administered by the West Virginia Department of Employment Security | 1117 |

9. Expressing the sentiment of the Legislature relating to the compensation of state employees on the basis of compatibility of value of work and creating a Pay Equity Task Force | 1119 |
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ERRATA

Page 187, Chapter 27, S. B. 85, line 114, strike out the second word “of” and insert “or”.

Page 546, Chapter 77, S. B. 672, lines 24 and 25, strike out the words “of this chapter”.

Chapter 136, S. B. 245, page 794, §101, line 1; §102, lines 1, 3, 10; §103, line 1 two times, lines 3, 5; page 795, §104, line 1; §106, line 1; §101, line 1; page 796, §101, lines 8, 10; page 798, §205, line 18; §206, line 9; §208, line 1, word “article” in each of said lines should be “chapter”. Page 799, §301, line 10, second word “article” should be “chapter”. Page 799, §301, line 28; page 800, §102, line 4; and page 809, §101, lines 8, 10, 33, word “article” in each of said lines should be “chapter”.

Page 947, Chapter 159, H. B. 1405, lines 8 and 9, strike out the words “equal to the duration of the proposed time-sharing”. 
MEMBERS OF THE HOUSE OF DELEGATES

REGULAR SESSION, 1984

OFFICERS

Speaker—Clyde M. See, Jr., Moorefield
Speaker Pro Tem—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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1 Appointed a member of the House of Delegates January 5, 1984, to fill the vacancy created by the resignation of the Honorable Morris L. Meadows.
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<td>Thomas W. Steptoe, Jr. (D)</td>
<td>Charles Town</td>
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</table>

2 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.

3 Appointed a member of the House of Delegates September 19, 1983, to fill the vacancy created by the resignation of the Honorable Ronald R. Brown.

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

REGULAR SESSION, 1984

OFFICERS
President—Warren R. McGraw, Pineville
President Pro Temp—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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<th>District</th>
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<td>John G. Chernenko (D)</td>
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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. Stogers, 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
STANDING COMMITTEES OF THE SENATE

Regular Session, 1984

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, Harmon and White.

Confirmations

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

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, Harmon and White.

Finance

Nelson (Chairman), Loehr (Vice Chairman), Burdette, Chernenko, Colombo, Cook, Craig, Holmes, Kaufman, Lucht, Parker, Spears, Tomblin, Tonkovich, Whitacre, Williams, Wright and Harmon.
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, Chace, 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, Whitacre and Jones.

Public Institutions
Davis (Chairman), Ash (Vice Chairman), Chace, Holliday, Holmes, Spears, Stacy, Tomblin, Whitacre, Wright and Harman.
SENATE COMMITTEES

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
Regular Session, 1984

Agriculture and Natural Resources

Neal (Chairman of Agriculture), Burke (Vice Chairman), Ballouz
(Chairman of Natural Resources), Steptoe (Vice Chairman), Artrip,
Bailey, I. Damron, Doyle, Ferrell, Hutchinson, Jordan, Koury,
Leary, Manchin, 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, C. Damron, Farley, Flanigan, Hamilton,
Hartman, Love, Miller, Murenksky, Roop, Schifano, Smith, Toney,
F. Underwood, Williams, Faircloth, McKinley and Shanholtz.

Constitutional Revision

Wehrle (Chairman), Dalton (Vice Chairman), Brown, Casey,
Chambers, Cipriani, C. Damron, Farley, Feinberg, Flanigan, Fullen,
Hamilton, Hatcher, Humphreys, Johnson, Knight, Koury, Love,
MacCorkle, E. Martin, J. Martin, Neal, Harman, Otte and Rogers.

Education

Sattes (Chairman), Hartman (Vice Chairman), Ashcraft, Bailey,
Brown, Givens, Hagedorn, Johnson, Kidd, Koury, Lewis, McCallister,
McCormick, Miller, Minard, Mullett, Murphy, Sergent, Spencer,
Theiling, Toler, Yanni, Conley, Rogers and Shanholtz.

Finance

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

Wiedebusch (Chairman), Knight (Vice Chairman), Ashcraft, Ballouz, Crabtree, Decker, Doyle, Ferrell, Flanigan, Hamilton, Holt, Kelly, Leary, Love, Manchin, McCormick, Minard, Roop, Stewart, Theiling, F. Underwood, L. Underwood, Harman, McKinley and Otte.

Health and Welfare

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

Industry and Labor

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

Interstate Cooperation

Whitlow (Chairman), C. Damron, Gilliam, Neal, Otte and Rogers.

Judiciary

Albright (Chairman), I. Damron, (Vice Chairman), Bird, Casey, Chambers, Cipriani, Crookshanks, Davis, Feinberg, Fullen, Gilliam, Hatcher, Humphreys, MacCorkle, J. Martin, Moore, Schifano, Sluss, Steptoe, Whitlow, Williams, Wooton, Carmichael, Shaffer and Springston.

Political Subdivisions

J. Martin, (Chairman), Murenksy (Vice Chairman), Bailey, Casey, Childers, Cipriani, Decker, Doyle, Humphreys, Hutchinson, Kelly, Kidd, MacCorkle, E. Martin, McCormick, Miller, Minard, Seacrist, Theiling, Toler, L. Underwood, Wooton, Carmichael, Harman and McKinley.
HOUSE OF DELEGATES COMMITTEES

Roads and Transportation

Yanni (Chairman), Simpkins (Vice Chairman), Ashcraft, Bledsoe, Burke, Crabtree, Dalton, Decker, Feinberg, Ferrell, Hagedorn, Holt, Johnson, Jordan, Lewis, Mullett, Roop, Seacrist, Sergent, Spencer, F. Underwood, L. Underwood, Conley, McKinley and Shanholtz.

Rules

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

JOINT COMMITTEES

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 chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-f, relating to the performing of abortion upon unemancipated minors generally and requiring parental notification prior to performing any such abortion; certain legislative findings and a statement of legislative intent with respect thereto; providing for the definition of certain terms used; requiring parental notification prior to performing abortion upon unemancipated minor in certain cases; the manner of and the time which such notification is to be given; providing for the waiver of such notification in certain cases; waiver of notification when any such minor objects to notification and certain procedures relating to such waiver; petition to the circuit court for such waiver; the contents of such petition; the duties of the attorney general and of the clerk of the circuit court with respect thereto; requiring that such petition and the proceedings held thereon and all records relating thereto are to be confidential; providing for the appointment of an attorney to represent the minors in certain cases; the payment of such attorney and limitation upon such payment; requiring that the hearing upon such petition be held without delay and for the speedy rendering and entry of judgment upon such petition; requiring a waiver to be issued by the court upon certain findings; establishing review procedures by the supreme court of ap-
peals or by any justice thereof; the effect of any court-ordered waiver of such notification; filing fees not required in any such court proceedings; providing that notification requirements are not required in certain cases of emergency; requiring that certain reports with respect to abortions performed upon unemancipated minors are to be filed with the department of health and the contents of such reports; clarifying that no physician or other person may be required to perform or assist in any abortion; providing criminal penalties for the violation of said article and for exceptions thereto in certain cases; and the severability of the provisions of said article.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2F. PARENTAL NOTIFICATION OF ABORTIONS PERFORMED ON UNEMANCIPATED MINORS.

§16-2F-1. Legislative findings and intent.

§16-2F-2. Definitions.

§16-2F-3. Parental notification required for abortions performed on unemancipated minors; waiver; notice to minor of right of petition to circuit court; minor to be referred for counseling.

§16-2F-4. Waiver of notification; petition to circuit court; contents of petition; duties of attorney general and circuit clerk; confidentiality of proceedings; appointment of counsel and limitation of compensation; findings required to be made by court; petition to supreme court; waiver of certain fees.

§16-2F-5. Emergency exception from notification requirements.

§16-2F-6. Reporting requirements for physician.

§16-2F-7. Article not to be construed to require abortion.

§16-2F-8. Penalties.


§16-2F-1. Legislative findings and intent.

1 The Legislature finds that immature minors often lack the ability to make fully informed choices that take into account both immediate and long-range consequences of their actions; that the medical, emotional and psychological consequences of abortion are serious and of indeterminate duration, particularly when the patient is immature; that in its current abortion policy, as expressed in *Bellotti v. Baird*, 443 U.S. 622...
ABORTION

(1979) and H. L. v. Matheson, 450 U.S. 398 (1981), the United States Supreme Court clearly relies on physicians' commitment to consider all factors, physical and otherwise, before performing abortions on minors; that parents ordinarily possess information essential to a physician's exercise of his best medical judgment concerning their child; and that parents who are aware that their minor daughter has had an abortion may better ensure that the minor receives adequate medical attention after her abortion. The Legislature further finds that parental consultation regarding abortion is usually desirable and in the best interest of the minor.

The Legislature further finds in accordance with the U.S. Supreme Court's decision in Bellotti v. Baird, 443 U.S. 622 (1979), and H. L. v. Matheson, 450 U.S. 398 (1981), that there exists important and compelling state interests (i) in protecting minors against their own immaturity, (ii) in fostering the family structure and preserving it as a viable social unit, and (iii) in protecting the rights of parents to rear their own children in their own household.

It is, therefore, the intent of the Legislature to further these interests by enacting this parental notice provision.

§16-2F-2. Definitions.

For purposes of this article, unless the context in which used clearly requires otherwise:

(1) "Minor" means any person under the age of eighteen years who has not graduated from high school.

(2) "Unemancipated minor" means any minor who is neither married nor who has been emancipated pursuant to applicable federal law or as provided by section twenty-seven, article seven, chapter forty-nine of this code.

(3) "Actual notice" means the giving of notice directly, in person or by telephone.

(4) "Constructive notice" means the giving of notice by certified mail to the last known address of the parents or legal guardian, return receipt requested.
(5) "Abortion" means the use of any instrument, medicine, drug or any other substance or device with intent to terminate the pregnancy of a female known to be pregnant and with intent to cause the expulsion of a fetus other than by live birth: Provided, That nothing in this article shall be construed so as to prevent the prescription, sale or transfer of intrauterine contraceptive devices or other contraceptive devices or other generally medically accepted contraceptive devices, instruments, medicines or drugs for a female who is not known to be pregnant and for whom such contraceptive devices, instruments, medicines or drugs were prescribed by a physician solely for contraceptive purposes and not for the purpose of inducing or causing the termination of a known pregnancy.

§16-2F-3. Parental notification required for abortions performed on unemancipated minors; waiver; notice to minor of right of petition to circuit court; minor to be referred for counseling.

(a) No physician may perform an abortion upon an unemancipated minor unless such physician has given or caused to be given at least twenty-four hours actual notice to one of the parents or to the legal guardian of the pregnant minor of his intention to perform the abortion, or, if the parent or guardian cannot be found and notified after a reasonable effort so to do, without first having given at least forty-eight hours constructive notice computed from the time of mailing to the parent or to the legal guardian of the minor: Provided, That prior to giving the notification required by this section, the physician shall advise the unemancipated minor of the right of petition to the circuit court for waiver of notification: Provided, however, That any such notification may be waived by a duly acknowledged writing signed by a parent or the guardian of the minor.

(b) Upon notification being given to any parent or to the legal guardian of such pregnant minor, the physician shall refer such pregnant minor to a counselor or caseworker of any church or school or of the department of human services or of any other comparable agency for the purpose of arranging or accompanying such pregnant minor in consultation with
her parents. Such counselor shall thereafter be authorized to
monitor the circumstances and the continued relationship of
and between such minor and her parents.

(c) Parental notification required by subsection (a) of this
section may be waived by a physician, other than the physician
who is to perform the abortion, if such other physician finds
that the minor is mature enough to make the abortion decision
independently or that notification would not be in the minor's
best interest: Provided, That such other physician shall not be
associated professionally or financially with the physician pro-
posing to perform the abortion.

§16-2F-4. Waiver of notification; petition to circuit court; con-
tents of petition; duties of attorney general and cir-
cuit clerk; confidentiality of proceedings; appointment
of counsel and limitation of compensation; findings
required to be made by court; petition to supreme
court; waiver of certain fees.

(a) A minor who objects to such notice being given to
her parent or legal guardian may petition for a waiver of
such notice to the circuit court of the county in which the
minor resides or in which the abortion is to be performed,
or to the judge of either of such courts. Such minor may so
petition and proceed in her own right or, at her option, by
a next friend.

(b) Such petition need not be made in any specific form
and shall be sufficient if it fairly sets forth the facts and
circumstances of the matter, but shall contain the following
information:

(i) The age of the petitioner and her educational level;
(ii) The county and state in which she resides; and
(iii) A brief statement of petitioner's reason or reasons for
the desired waiver of notification of the parent or guardian
of such minor petitioner.

No such petition shall be dismissed nor shall any hearing
thereon be refused because of any defect in the form of the
petition.
(c) Upon the effective date of this article or as soon thereafter as may be, the attorney general shall prepare suggested form petitions and accompanying instructions and shall make the same available to the several clerks of the circuit courts. Such clerks shall see that a sufficient number of such suggested form petitions and instructions are available in the clerk's office for the use of any person desiring to use the same for the purposes of this section.

(d) All proceedings held pursuant to this article shall be confidential and the court shall conduct all such proceedings in camera. The court shall inform the minor petitioner of her right to be represented by counsel and that if she is without the requisite funds to retain the services of an attorney, that the court will appoint an attorney to represent her interest in the matter. If the minor petitioner desires the services of an attorney, an attorney shall be appointed to represent such minor petitioner, if she advises the court under oath or affidavit that she is financially unable to retain counsel. Any attorney appointed to represent such minor petitioner shall be appointed and paid for his services pursuant to the provisions of article twenty-one, chapter twenty-nine of this code: Provided, That the pay to any such attorney pursuant to such appointment shall not exceed the sum of one hundred dollars.

(e) The court shall conduct a hearing upon the petition without delay, but in no event shall the delay exceed the next succeeding judicial day, and the court shall render its decision immediately upon its submission and, in any event, an order reflecting the findings of fact and conclusions of law reached by the court and its judgment shall be endorsed by the judge thereof not later than twenty-four hours following such submission and shall be forthwith entered of record by the clerk of the court. All testimony, documents and other evidence presented to the court, as well as the petition and any orders entered thereon and all records of whatsoever nature and kind relating to the matter shall be sealed by the clerk and shall not be open to any person except upon order of the court and, then, only upon good cause being shown therefor. A separate order book for the purposes of this article shall be
maintained by such clerk and shall likewise be sealed and
not open to inspection by any person save upon order of the
court for good cause shown.

(f) Notice as required by section three of this article shall
be ordered waived by the court if the court finds either:

(1) That the minor petitioner is mature and well informed
sufficiently to make the decision to proceed with the abortion
independently and without the notification or involvement
of her parent or legal guardian, or

(2) That notification to the person or persons to whom
such notification would otherwise be required would not be
in the best interest of the minor petitioner.

(g) If or when the circuit court, or the judge thereof,
shall refuse to order the waiver of the notification required
by section three of this article, a copy of the petition and
all orders entered in the matter and all other documents
and papers submitted to the circuit court, may be presented
to the supreme court of appeals, or to any justice thereof
if such court then be in vacation, and such court or justice
if deemed proper, may thereupon order the waiver of notifica­
tion otherwise required by section three of this article. The
supreme court of appeals or justice thereof shall hear and
decide the matter without delay and shall enter such orders
as such court or justice may deem appropriate.

(h) If either the circuit court or the supreme court of
appeals, or any judge or justice thereof if either of such
courts be then in vacation, shall order a waiver of the notifica­
tion required by section three of this article, any physician
to whom a certified copy of said order shall be presented may
proceed to perform the abortion to the same extent as if
such physician were in compliance with the provisions of said
section three and, notwithstanding the fact that no notification
is given to either the parent or legal guardian of any such
unemancipated minor, any such physician shall not be subject
to the penalty provisions which may be prescribed by this
article for such failure of notification.

(i) No filing fees may be required of any minor who
avails herself of any of the procedures provided by this section.
§16-2F-5. Emergency exception from notification requirements.

The notification requirements of section three of this article do not apply where there is an emergency need for an abortion to be performed if the continuation of the pregnancy constitutes an immediate threat and grave risk to the life or health of the pregnant minor and the attending physician so certifies in writing setting forth the nature of such threat or risk and the consequences which may be attendant to the continuation of the pregnancy. Such writing shall be maintained with the other medical records relating to such minor which are maintained by the physician and the facility at which such abortion is performed.

§16-2F-6. Reporting requirements for physician.

Any physician performing an abortion upon an unemancipated minor shall provide the department of health a written report of the procedure within thirty days after having performed the abortion. The department of health shall provide reporting forms for this purpose to all physicians and health facilities required to be licensed pursuant to article five-b of this chapter. The following information, in addition to any other information which may be required by the department of health, regarding the minor receiving the abortion shall be included in such reporting form:

(1) Age;
(2) Educational level;
(3) Previous pregnancies;
(4) Previous live births;
(5) Previous abortions;
(6) Complications, if any, of the abortion being reported;
(7) Reason for waiver of notification of the minor’s parent or guardian, if such notice was waived; and
(8) The city and county in which the abortion was performed.

Any such report shall not contain the name, address or
other information by which the minor receiving the abortion may be identified.

§16-2F-7. Article not to be construed to require abortion.
1 Nothing in this article, nor in any order issued pursuant thereto, shall require that a physician perform an abortion or that any person be required to assist in the performance of an abortion if such physician or person, for any reason, medical or otherwise, does not wish to perform or assist in such abortion.

§16-2F-8. Penalties.
1 Any person who knowingly performs an abortion upon an unemancipated minor in violation of this article or who knowingly fails to conform to any requirement of this article shall 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 not more than thirty days, or both fined and imprisoned.

1 The provisions of subsection (cc), section ten, article two, chapter two of this code shall apply to the provisions of this article to the same extent as if said subsection were set forth in extenso herein.

CHAPTER 2
(Com. Sub. for S. B. 63—By Senator Whitacre)

[Passed February 8, 1984: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article four, 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 thirty-one-a, relating to the resolution of boundary disputes; providing a method of such resolution through the services of land surveyors or professional engineers; corrective deeds with respect thereto; and clarifying that
method of resolution is not exclusive remedy with respect to such disputes.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. EJECTMENT.

§55-4-31a. Resolution of boundary disputes; corrective deeds; petition for ascertainment and designation of boundary line or lines of real estate.

Where a survey has been made to establish the boundary to a parcel of land and there is a dispute between two or more owners of the land so surveyed as to the location of the boundary as located by such surveyor, the surveyor may make or cause to be made a review of the appropriate deeds of the parcels of land involved to determine the correct property description and location of the line.

If there is not sufficient evidence at the site of the parcels involved to ascertain the true location of the boundary line, the parties to the dispute may secure the judgment and knowledge of another licensed land surveyor or surveyors or registered professional engineer or engineers as to the true location. If an agreement is reached between all of the owners of the land involved in the dispute, then a straw deed or deed of correction shall be made, with the signatures of all parties affixed thereto.

If after the intervention of the additional surveyor or surveyors, engineer or engineers, there still exists a dispute as to the location of the boundary line, then any party may bring an action pursuant to section thirty-one of this article in the circuit court of the county where the land is located to ascertain the true location of the boundary line: Provided, That in any such action no party to such action shall be permitted to introduce into evidence any agreement with respect to the boundary dispute be-
tween two or more parties to the action if such agreement is not embodied in a corrective or straw deed executed by the parties.

Nothing in this section shall prevent or be deemed a condition precedent to the institution of an action under section thirty-one of this article.

CHAPTER 3

(Com. Sub. for H. B. 1220—By Delegate Albright and Delegate Feinberg)

[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact article four, 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 three, chapter forty-nine of said code, all relating to adoption procedures generally; defining terms; setting forth who may adopt; providing procedure for consent; when consent required; establishing that consent to adopt or relinquishment of parental rights authorizes person to consent to medical treatment of child; providing procedure for consent by infant; when consent or relinquishment may be revoked; exceptions; requirements of consent or relinquishment form; limiting fees to services rendered and requiring court approval of same; delivery of child for adoption; filing of petition; exception; order pendente lite; requirements of petition; providing for an appendix; establishing notice requirements; describing court procedures; recordation of order; prohibiting disclosure of the record except in certain instances; establishing when identifying and nonidentifying information may be disclosed; information forwarded to registrar of vital statistics; issuance of birth certificate; effect of order as to relations between parents and child as to rights of inheritance, including intestacy of adopted child; modifying certain terms to conform to new terminology; setting forth procedure for revocation of adoption; providing for the adoption of adults; jurisdiction of courts; prohibiting certain contractual agreements; providing procedure for consent
to adoption by child welfare agencies or the state department of human services; and establishing notice requirements when termination of parental rights are sought by such agency or department.

Be it enacted by the Legislature of West Virginia:

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

Chapter
48. Domestic Relations.

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 4. ADOPTION.

§48-4-1. Definitions.
§48-4-2. Who may adopt.
§48-4-3. Consent.
§48-4-4. Consent by infants.
§48-4-5. Revocation of consent or relinquishment for adoption; when given; requirements; professional fees; itemization of fees.
§48-4-6. Delivery of child for adoption; filing of petition.
§48-4-7. Petition and appendix.
§48-4-8. Notice.
§48-4-10. Recordation of order; fees; disposition of records; names of adopting parents and persons previously entitled to parental rights not to be disclosed; disclosure of identifying and nonidentifying information; certificate for state registrar of vital statistics; birth certificate.
§48-4-11. Effect of order as to relations of parents and child and as to rights of inheritance; intestacy of adopted child.
§48-4-12. Revocation of adoption.
§48-4-13. Adoption of adults.
§48-4-14. Jurisdiction of courts.
§48-4-15. Contracts limiting or restraining adoptions.

§48-4-1. Definitions.

1 As used in this article, unless the context otherwise requires:
2 (a) A "legal father" is, before adoption, the male person
3
having the legal relationship of parent to a child, (1) who
is married to its mother at the time of conception; or (2) who
is married to its mother at the time of birth of the child; or
(3) who is the biological father of the child and who marries
the mother before an adoption of the child.

(b) A "determined father" is, before adoption, a person
(1) adjudicated to be the father of a child under the pro-
visions of article seven of this chapter; or (2) who makes
an affidavit stating that he is the father of a child and
who is identified as the father by the mother in a like af-
fidavit; or (3) who has, at his instance, been otherwise judi-
cially determined to be the biological father of the child en-
titled to parental rights with respect to the child.

(c) A "putative father" is, before adoption, a person
(1) who is named by the mother as the biological father
but who has not made any claim that he is the biological
father of the child or that he is entitled to parental rights
in any judicial proceeding to which the mother is or has been
a party; or (2) who has made a claim in the adoption pro-
ceeding or in a judicial proceeding pending at the time of
the adoption proceeding that he is the biological father of
a child, which claim has not been adjudicated adversely to
his interest.

(d) An "unknown father" is the biological father who,
before adoption, is neither the legal father, determined father
nor putative father of the child.

(e) A "birth mother" is the biological mother of the
child;

(f) A "birth father" is the biological father of the child;

(g) The "adoptive parents" or "adoptive mother" or "adopt-
tive father" shall mean those persons who, after adoption, are
the mother and father of the child.

§48-4-2. Who may adopt.

Any person not married or any person, with his or her
spouse's consent, or any husband and wife jointly, may petition
3 a circuit court of the county wherein such person or persons
4 reside for a decree of adoption of any minor child or person
5 who may be adopted by the petitioner or petitioners under
6 section thirteen of this article.

§48-4-3. Consent.

1 (a) The mother and legal father or determined father shall
2 consent to the adoption by a writing acknowledged as in the
3 case of deeds, unless the parental rights of such person have
4 been previously terminated, abandoned or permanently relinquished, or the person is under disability solely because of
5 age. If the parental rights have been previously terminated,
6 abandoned or permanently relinquished, the court shall so
determine before awarding the decree of adoption. If the
9 person is under disability, the court may decree the adoption
if it determines (1) that the parental rights of the persons
11 have been previously terminated, abandoned or permanently
12 relinquished, (2) that the person is incurably insane, or (3)
13 the disability arises solely because of age and an otherwise valid
consent has been given.

(b) Any consent to adoption or relinquishment of parental
rights shall authorize the prospective adopting party to consent
to medical treatment of the child.

(c) If all persons entitled to parental rights of the child
sought to be adopted are deceased or have been deprived of
the custody of the person of such child by law, then and in
such case, the written consent, acknowledged as aforesaid,
of the legal guardian of such child or those having at the time
the legal custody of the child shall be obtained and so pre-
23 sented, and if there be no legal guardian nor any person having
25 the legal custody of the child, then such consent must be ob-
26 tained from some discreet and suitable person appointed by
27 the court or judge thereof to act as the next friend of such
28 child in the adoption proceedings.

(d) If one of the persons entitled to parental rights of
the child sought to be adopted is deceased, only the consent
or relinquishment of the surviving person entitled to parental
rights shall be required.
§48-4-4. Consent by Infants.

A consent signed by a person less than eighteen years of age shall be specifically reviewed and approved by the court. If it appears that the person giving such consent is under eighteen years of age at the time of the filing of the petition, a guardian ad litem shall be appointed to assure that the interests of the infant be protected. The court may require the infant to appear in camera, to satisfy the court of the propriety of the consent, or require a deposition to be taken, but neither shall be a prerequisite to a valid decree of adoption.

§48-4-5. Revocation of consent or relinquishment for adoption; when given; requirements; professional fees; itemization of fees.

(a) Parental consent or relinquishment of legal custody for adoption purposes, if given prior to the expiration of seventy-two hours after the birth of the child, may be revoked by such parent within ten days after the birth of the child. Except where a court of competent jurisdiction finds that such consent or relinquishment for adoption was obtained by fraud or duress, no consent or relinquishment of legal custody for adoption of a child, whether given by an adult or a minor, shall be revocable: Provided, That a relinquishment of legal custody for adoption of a child given by a minor to a licensed private child welfare agency or to the state department of human services shall be revocable unless the relinquishment was given in compliance with section one, article three, chapter forty-nine of the code: Provided, however, That the foregoing proviso shall not be construed as precluding a minor from consenting to the adoption of his or her child by an individual or individuals.

(b) No parental consent or relinquishment of legal custody for adoption purposes shall be valid unless it sets forth that the person executing the document has a legal right to revoke the same, and sets forth the method by which the same may be revoked, including the name and location of the person to contact in the event the person desires to exercise his or her right of revocation. Additionally, in the case of a birth
mother, no such consent or relinquishment shall be valid
unless it sets forth that she has been informed of the avail-
ability of counseling services with respect to her decision
and that she has also been informed of the services and
assistance available to her if she chooses to keep her child.

(c) Any payment to physicians, attorneys, adoption agen-
cies or to any other person involved in the adoption process
shall be limited to cover fees from services rendered and such
fees shall be approved by the court.

§48-4-6. Delivery of child for adoption; filing of petition.

(a) Whenever a person delivers a child for adoption the
person first receiving such child and the prospective adopt-
ing parent or parents shall be entitled to receive from such
person a written recital of all known circumstances surround-
ing the birth, medical and family medical history of the
child, and an itemization of any facts or circumstances un-
known or requiring further development.

(b) The person or persons receiving a child for adoption
shall, unless good cause is shown, immediately file a petition
for adoption, with or without all requisite consents, and
the court may, in its discretion, enter an order authorizing
such petitioner or petitioners to assume all responsibility for
the care, custody and control of such child, pendente lite, in-
cluding the right to consent to medical treatment, which decree
shall not be denied except for good cause set forth in the
order.

§48-4-7. Petition and appendix.

(a) The petition shall set forth the name, age and place
of residence of the petitioner or petitioners, and of the
child, and the name by which the child shall be known;
whether such child be possessed of any property and a full
description of the same, if any; and whether the petitioner
or petitioners know the identity of the persons entitled to
parental rights or, that the same are unknown to the petitioner
or petitioners. An effort shall be made to obtain medical and
social information, and that information, along with all non-
identifying information about the birth, shall accompany the
petition and be made a part of the nonidentifying information
to be sealed in the court file. The petition shall be duly
verified according to law.

(b) If the person petitioning for adoption is less than
fifteen years older than the child sought to be adopted, such
fact shall be set forth specifically in the petition. In such
case, the court shall grant the adoption only upon a specific
finding that notwithstanding the differences in age of the
petitioner and child, such adoption is in the best interests of
the child: Provided, That when the petitioner seeks to adopt
a child of his or her spouse, such specific finding shall not be
required and an adoption shall not be denied on the sole
basis of proximity in age. In addition, the petition shall set
forth such of the facts concerning the circumstances of the
birth of the child as the petitioner or petitioners are in-
formed. Either the petition, the various consents attached
thereto or filed in the cause, or an appendix signed by counsel
or other credible persons shall fully disclose all that is known
about the parentage of the child.

§48-4-8. Notice.

(a) Unless waived by a writing acknowledged as in the
case of deeds or by other proper means, notice of the adoption
proceeding shall be served on any person entitled to parental
rights of a child prior to its adoption who has not signed either
a consent for the adoption of the child or a relinquishment of
custody of such child, or whose parental rights have not
otherwise been terminated.

In addition, notice shall be given to any putative or un-
known father who has asserted or exercised parental rights
and duties to and with such child and who has not consented
or relinquished any parental rights and such rights have not
otherwise been terminated, or who has not had reasonable
opportunity before or after the birth of the child to assert or
exercise such rights: Provided, That if such child is more
than six months old at the time such notice would be re-
quired and such father has not asserted or exercised his
parental rights and he knew the whereabouts of the child,
then such father shall be presumed to have had reasonable oppor-
tunity to assert or exercise such rights.

(b) Such notice shall be served on each such person at least twenty days before the date of the final hearing in the adoption proceeding and shall inform the person that his or her parental rights, if any, may be terminated in the proceeding and that such person may appear and defend any such rights within twenty days of such service. In the case of any such person who is a nonresident or whose whereabouts are unknown, service shall be achieved (1) by personal service, (2) by registered or certified mail, return receipt requested, postage prepaid, to the person's last-known address, with instructions to forward, or (3) by publication. If personal service is not acquired, then if the person giving notice shall have any knowledge of the whereabouts of the person to be served, including a last-known address, service by mail shall be first attempted as herein provided. Any such service achieved by mail shall be complete upon mailing and shall be sufficient service without the need for notice by publication. In the event that no return receipt is received giving adequate evidence of receipt of the notice by the addressee or of receipt of the notice at the address to which the notice was mailed or forwarded, or if the whereabouts of the person are unknown, then the person required to give notice shall file with the court an affidavit setting forth the circumstances of any attempt to serve the notice by mail, and the diligent efforts to ascertain the whereabouts of the person to be served. If the court determines that the whereabouts of the person to be served cannot be ascertained and that due diligence has been exercised to ascertain such person's whereabouts, then the court shall order service of such notice by publication as a Class II publica-
tion in compliance with the provisions of article three, chapter fifty-nine of the code, and the publication area shall be the county where such proceedings are had, and in the county where the person to be served was last known to reside. The notice shall state the court and its address but not the names of the adopting parents. In the case of a person under disability, service shall be made on the person and his personal repre-
sentative, or if there be none, on a guardian ad litem.
In the case of service by publication or mail or service on a personal representative or a guardian ad litem, the person shall be allowed thirty days from the date of the first publication or mailing or such service on a personal representative or guardian ad litem in which to appear and defend such parental rights.


(a) When the cause has matured for hearing but not sooner than six months after the child has resided continuously in the home of the petitioner or petitioners, the court shall decree the adoption if:

(1) It determines that no person retains parental rights in such child except the petitioner and the petitioner's spouse, or the joint petitioners;

(2) That all applicable provisions of this article have been complied with;

(3) That the petitioner is or the petitioners are fit persons to adopt the child; and

(4) That it is in the best interests of the child to order such adoption.

(b) The court or judge thereof may adjourn the hearing of such petition or the examination of the parties in interest from time to time, as the nature of the case may require. Between the time of the filing of the petition for adoption and the hearing thereon, the court or judge thereof shall, unless the court or judge otherwise finds that one or more of the petitioners is related by blood or marriage to the child or to persons previously entitled to parental rights, and the court otherwise directs, cause a discreet inquiry to be made to determine whether such child is a proper subject for adoption and whether the home of the petitioner or petitioners is a suitable home for such child. Any such inquiry, if directed, shall be made by any suitable and discreet person not related to either the persons previously entitled to parental rights or the adoptive parents, or by an agency designated by the court, or judge thereof, and the results thereof shall be submitted to the court or judge thereof
prior to or upon the hearing on the petition and shall be filed
with the records of the proceeding and become a part thereof.
The report shall include, but not be limited to, the follow-
ing:

(1) A description of the family members, including medical
and employment histories;

(2) A physical description of the home and surroundings;

and

(3) A description of the adjustment of the child and family.

(c) If it shall be necessary, under the provisions of this
article, that a discreet and suitable person shall be ap-
pointed to act as the next friend of the child sought to
be adopted, then and in that case the court or judge thereof
shall order a notice of the petition and of the time and
place when and where the appointment of next friend will be
made, to be published as a Class II legal advertisement in
compliance with the provisions of article three, chapter
fifty-nine of this code, and the publication area for such
publication shall be the county where such court is located.
At the time and place so named and upon due proof of the
publication of such notice, the court or judge thereof shall
make such appointment, and shall thereupon assign a day for
the hearing of such petition and the examination of the
parties interested.

(d) Upon the day so assigned the court or judge thereof
shall proceed to a final hearing of the petition and examina-
tion of the parties in interest, under oath, and of such other
witnesses as the court or judge thereof may deem necessary
to develop fully the standing of the petitioners and their
responsibility, and the status of the child sought to be adopted;
and if the court or judge thereof shall be of the opinion from
the testimony that the facts stated in the petition are true, and
if upon examination the court or judge thereof is satisfied
that the petitioner is, or the petitioners are, of good moral
character, and of respectable standing in the community, and
are able properly to maintain and educate the child sought
to be adopted, and that the best interests of the child would
be promoted by such adoption, then and in such case the
court or judge thereof shall make an order reciting the
facts proved and the name by which the child shall thereafter
be known, and declaring and adjudging that from the date of
such order, the rights, duties, privileges and relations, there-
tofore existing between the child and those persons previously
entitled to parental rights, shall be in all respects at an
end, and that the rights, duties, privileges and relations be-
tween the child and his or her parent or parents by adoption
shall thenceforth in all respects be the same, including the
rights of inheritance, as if the child had been born to such
adopter or parents in lawful wedlock, except only as
otherwise provided in this article: Provided, That no such
order shall disclose the names or addresses of those persons
previously entitled to parental rights.

§48-4-10. Recordation of order; fees; disposition of records; names
of adopting parents and persons previously entitled
to parental rights not to be disclosed; disclosure of
identifying and nonidentifying information; certificate
for state registrar of vital statistics; birth certificate.

(a) The order of adoption shall be recorded in a book
kept for that purpose, and the clerk shall receive the same fees
as in other cases. All records of proceedings in adoption
cases and all papers and records relating to such proceedings
shall be kept in the office of the clerk of the circuit court
in a sealed file, which file shall be kept in a locked or sealed
cabinet, vault or other container and shall not be open to
inspection or copy by anyone, except as otherwise provided in
this article, or upon court order for good cause shown. No
person in charge of adoption records shall disclose the names
of the adopting parent or parents, the names of persons pre-
viously entitled to parental rights, or the name of the adopted
child, except as otherwise provided in this article, or upon
court order for good cause shown. The clerk of the court
keeping and maintaining the records in adoption cases shall
keep and maintain an index of such cases separate and
distinct from all other indices kept or maintained by him,
and the index of adoption cases shall be kept in a locked
or sealed cabinet, vault or other container and shall not be
open to inspection or copy by anyone, except as otherwise
provided in this article, or upon court order for good cause shown. Nonidentifying information, such as a description of family members and medical histories, may be provided to the adoptive parents and the adopted child by submitting a duly acknowledged request to the clerk of the court. The clerk may charge the requesting party for copies of any documents, as provided in section eleven, article one, chapter fifty-nine of this code.

(b) Identifying information may only be obtained with the duly acknowledged consent of the mother or the legal or determined father who consented to the adoption or whose rights were otherwise relinquished or terminated, together with the duly acknowledged consent of the adopted child upon reaching majority, or upon court order for good cause shown. Such duly acknowledged consents may be filed with the clerk of the court, at any time after the adoption, authorizing release of identifying information. Any person previously entitled to parental rights may from time to time submit additional social or medical information which, notwithstanding other provisions of this article, shall be inserted into the record by the clerk of the court.

(c) Immediately upon the entry of such order of adoption, the court shall direct the clerk thereof forthwith to make and deliver to the state registrar of vital statistics a certificate under the seal of said court, showing:

(1) The date and place of birth of the child, if known;

(2) The name of the mother of the child, if known, and the name of the legal or determined father of the child, if known;

(3) The name by which said child has previously been known;

(4) The names and addresses of the adopting parents;

(5) The name by which the child is to be thereafter known; and

(6) Such other information from the record of the adoption proceedings as may be required by the law governing vital
statistics and as may enable the state registrar of vital statistics
to carry out the duties imposed upon him by this section.

(d) Upon receipt of the certificate, the registrar of vital
statistics shall forthwith issue and deliver by mail to the
adopting parents at their last-known address and to the clerk
of the county commission of the county wherein such order of
adoption was entered, a birth certificate in the form prescribed
by law, except that the name of the child shown in said certifi-
cate shall be the name given him by the order of adoption.
The clerk shall record such birth certificate in the manner set
forth in section twelve, article five, chapter sixteen of this
code.

§48-4-11. Effect of order as to relations of parents and child and
as to rights of inheritance; intestacy of adopted child.

(a) Upon the entry of such order of adoption, any person
previously entitled to parental rights, any parent or parents
by any previous legal adoption, and the lineal or collateral
kindred of any such person, parent or parents, except any
such person or parent who is the husband or wife of the
petitioner for adoption, shall be divested of all legal rights,
including the right of inheritance from or through the adopted
child under the statutes of descent and distribution of this
state, and shall be divested of all obligations in respect to the
said adopted child, and the said adopted child shall be free
from all legal obligations, including obedience and mainten-
ance, in respect to any such person, parent or parents. From
and after the entry of such order of adoption, the adopted
child shall be, to all intents and for all purposes, the legitimate
issue of the person or persons so adopting him or her and
shall be entitled to all the rights and privileges and subject
to all the obligations of a natural child of such adopting par-
ent or parents.

(b) For the purpose of descent and distribution, from and
after the entry of such order of adoption, a legally adopted
child shall inherit from and through the parent or parents
of such child by adoption and from or through the lineal or
collateral kindred of such adopting parent or parents in the
same manner and to the same extent as though said adopted
child were a natural child of such adopting parent or parents, but such child shall not inherit from any person entitled to parental rights prior to the adoption nor their lineal or collateral kindred, except that a child legally adopted by a husband or wife of a person entitled to parental rights prior to the adoption shall inherit from such person as well as from the adopting parent. If a legally adopted child shall die intestate, all property, including real and personal, of such adopted child shall pass, according to the statutes of descent and distribution of this state, to those persons who would have taken had the decedent been the natural child of the adopting parent or parents.

§48-4-12. Revocation of adoption.

(a) A mother, a legal or determined birth father, or a guardian of a child, who did not consent to the adoption of such child, or any person entitled to notice as provided in section eight of this article, or subsections (b) and (c), section one, article three, chapter forty-nine of this code, who was not served with notice as provided in said provisions, may, at any time within one year after learning of or having reasonable opportunity to learn of the adoption, apply by petition to the court in which the adoption was granted, praying that the adoption be vacated. The court to which such application is made shall fix a date and time for a hearing, shall cause notice thereof to be given to the person or persons or agency who were permitted to adopt such minor, and, at the time so fixed, shall hear the petitioner and all parties interested, and may vacate or affirm the adoption in its discretion. Any party interested may appeal to the supreme court of appeals from the decision of the court in the matter, as in other civil cases.

(b) When any minor has been adopted, he may, within one year after becoming of age, sign, seal and acknowledge before proper authority, in the county in which the order of adoption was made, a dissent from such adoption, and file such instrument of dissent in the office of the clerk of the court which granted said adoption and the clerk of the county commission of such county, and such clerks shall
record and index the same. Upon the filing of such instru-
ment of dissent the adoption shall be vacated.

§48-4-13. Adoption of adults.

Any adult person who is a resident of West Virginia may
petition the circuit court or any other court of record having
jurisdiction of adoption proceedings for permission to adopt
one who has reached the age of eighteen years or over,
and, if desired, to change the name of such person. The
consent of the person to be adopted shall be the only con-
sent necessary. The order of adoption shall create the same
relationship between the adopting parent or parents and the
person adopted and the same rights of inheritance as in the
case of an adopted minor child. If a change in name is de-
sired, the adoption order shall so state.

§48-4-14. Jurisdiction of courts.

In counties where the circuit court does not sit as a juvenile
court, concurrent jurisdiction in adoption proceedings is here-
by extended to such juvenile courts.

§48-4-15. Contracts limiting or restraining adoptions.

Any contract, agreement or stipulation which endeavors
to deny to any person or persons the right to petition for
adoption of any person, or which endeavors to alter the time
or manner of adoption as provided in this article, is con-
trary to the public policy of the state and such portion of
any contract, agreement or stipulation is null and void and
of no effect.

CHAPTER 49. CHILD WELFARE.

ARTICLE 3. CHILD WELFARE AGENCIES.

§49-3-1. Consent by agency or department to adoption of child;
statement of relinquishment by parent; petition to ter-
minate parental rights.

(a) Whenever a child welfare agency licensed to place
children for adoption or the state department of human
services shall have been given the permanent care, custody
and guardianship of any child and the rights of the mother
and the rights of the legal, determined, putative or unknown father of such child shall have been terminated by order of a court of competent jurisdiction or by a legally executed relinquishment of parental rights, the child welfare agency or department of human services may consent to the adoption of such child pursuant to the provisions of article four, chapter forty-eight of this code, regulating adoption proceedings. The mother and the legal or determined father of a child, or the mother if the father is putative or unknown, may relinquish the child to a child welfare agency licensed to place children for adoption, or to the department of human services, by a written statement acknowledged as deeds are required to be acknowledged by law. Provided, That if either of the parents of such child is under eighteen years of age, such relinquishment shall not be valid unless and until the same shall have been approved in writing by a judge of a court having jurisdiction of adoption proceedings in the county in which such parent may reside or in which such relinquishment is made.

(b) (1) Whenever the mother has executed a relinquishment pursuant to this section, and the legal, determined, putative or unknown father, as those terms are defined pursuant to the provisions of section one, article four, chapter forty-eight of this code, has not executed a relinquishment, the child welfare agency or state department of human services may, by verified petition, seek to have said father's rights terminated based upon the grounds of abandonment or neglect of said child.

(2) Unless waived by a writing acknowledged as in the case of deeds or by other proper means, notice of the petition shall be served on any person entitled to parental rights of a child prior to its adoption who has not signed a relinquishment of custody of such child.

(3) In addition, notice shall be given to any putative or unknown father who has asserted or exercised parental rights and duties to and with such child and who has not consented or relinquished any parental rights and such rights have not otherwise been terminated, or who has not had reasonable opportunity before or after the birth of the child to assert or exercise such rights. Provided, That if such child is more
than six months old at the time such notice would be re-
quired and such father has not asserted or exercised his parental
rights and he knew the whereabouts of the child, then such
father shall be presumed to have had reasonable opportunity
to assert or exercise such rights.

(c) Upon the filing of the verified petition seeking to
have the father's rights terminated, the court shall set a
hearing on said petition. A copy of the petition and notice
of the date, time and place of the hearing on said petition
shall be personally served on him at least twenty days prior
to the date set for the hearing.

Such notice shall inform the person that his parental rights,
if any, may be terminated in the proceeding and that such
person may appear and defend any such rights within twenty
days of such service. In the case of any such person who is a
nonresident or whose whereabouts are unknown, service shall
be achieved (1) by personal service, (2) by registered or certi-
fied mail, return receipt requested, postage prepaid, to the
person's last-known address, with instructions to forward, or
(3) by publication. If personal service is not acquired, then if
the person giving notice shall have any knowledge of the
whereabouts of the person to be served, including a last-known
address, service by mail shall be first attempted as herein
provided. Any such service achieved by mail shall be com-
plete upon mailing and shall be sufficient service without the
need for notice by publication. In the event that no return
receipt is received giving adequate evidence of receipt of the
notice by the addressee or of receipt of the notice at the address
to which the notice was mailed or forwarded, or if the where-
abouts of the person are unknown, then the person required to
give notice shall file with the court an affidavit setting forth
the circumstances of any attempt to serve the notice by mail,
and the diligent efforts to ascertain the whereabouts of the
person to be served. If the court determines that the where-
abouts of the person to be served cannot be ascertained and
that due diligence has been exercised to ascertain such person's
whereabouts, then the court shall order service of such notice
by publication as a Class II publication in compliance with
the provisions of article three, chapter fifty-nine of the code,
and the publication area shall be the county where such pro-
ceedings are had, and in the county where the person to be
served was last known to reside. In the case of a person under
disability, service shall be made on the person and his per-
sonal representative, or if there be none, on a guardian ad
litem.

In the case of service by publication or mail or service
on a personal representative or a guardian ad litem, the person
shall be allowed thirty days from the date of the first publi-
cation or mailing of such service on a personal representative
or guardian ad litem in which to appear and defend such
parental rights.

(d) A petition under this section may be instituted in the
county where the child resides or where the child is living.

(e) If the court finds that the person certified to parental
rights is guilty of the allegations set forth in the petition,
the court shall enter an order terminating his parental rights
and shall award the full care, custody and control of said child
to the petitioner.

CHAPTER 4

(H. B. 1218—By Delegate Knight and Delegate Faircloth)

[Passed March 6, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter nineteen 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 continuing and reestablishing the rural resource
division of the department of agriculture.

Be it enacted by the Legislature of West Virginia:

That article one, chapter nineteen of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, be amended by
adding thereto a new section, designated section three-a, to read
as follows:
ARTICLE 1. DEPARTMENT OF AGRICULTURE.

§19-1-3a. Rural resource division continued and reestablished.

1 After having conducted a performance and fiscal audit through its joint committee on government operations, pursuant to section nine, article ten, chapter four of this code, the Legislature hereby finds and declares that the rural resource division of the department of agriculture should be continued and reestablished. Accordingly, notwithstanding the provisions of section four, article ten, chapter four of this code, the rural resource division of the department of agriculture shall continue to exist until the first day of July, one thousand nine hundred ninety.

CHAPTER 5
(H.B. 2076—By Delegate Burke)

[Passed March 10, 1984; in effect from passage. Approved by the Governor.]

AN ACT to amend article one, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four-b, relating to the department of agriculture; duties of commissioner; and authorizing the commissioner to increase certain fees by rules to a maximum.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DEPARTMENT OF AGRICULTURE.

§19-1-4b. Authority of commissioner to increase certain fees by rule or regulations.

1 The commissioner is hereby authorized to promulgate and
adopt rules and regulations, in accordance with the provisions of chapter twenty-nine-a of this code, fixing dues for permits, licenses, certificates, registrations and laboratory tests when, in the opinion of the commissioner, it becomes necessary to increase these fees in order to cover the costs of providing the services involved or issuing the permits, licenses, certificates or registrations applicable: Provided, That this authority is granted only with regard to the following sections and articles of this chapter and may be exercised by the commissioner up to a maximum extent of causing all such fees, as the same exists on the first day of January, one thousand nine hundred eighty-four, to be doubled:

Section six, article two-a (permits for public markets), section ten, article two-a (licensing of weighmen and auctioneers); section eleven, article two-a (grading, classifying or standardizing license); section fourteen, article two-a (testing and inspection of livestock for infectious disease); section four, article two-b (license for commercial slaughterer, etc.); section six, article two-c (auctioneer license); section one, article three (commission merchant license); section four, article five-a (warehouse operation license); section two, article nine-a (permit to feed garbage to swine); section three, article ten-a (certificate to sell eggs); section five, article eleven (permit to manufacture or purchase milk and cream); section nine, article twelve (certificate of nurserymen, etc.); section six, article fourteen (fees for feed inspection); section two, article fifteen (registration fee for commercial fertilizer); section four, article fifteen (inspection fees for commercial fertilizers); section two, article fifteen-a (registration of agricultural liming material); section four, article fifteen-a (inspection fee for liming material); and section three, article sixteen (fees for sale of seeds).

Any money collected by the commissioner as a result of any fee increases pursuant to rule or regulation authorized by this section shall be deposited in the same fund or funds with the state treasurer and expended in the same manner as those fees collected prior to the enactment of this section.
AN ACT to amend and reenact section one, article two-b, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing and reestablishing the meat inspection program of the department of agriculture.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2B. INSPECTION OF ANIMALS, MEAT AND MEAT PRODUCTS.

§19-2B-1. Purpose and construction; continuation of meat inspection program.

Subject to the provisions of subsection (a), section seven hereof, the basic purpose of this article is to provide for the inspection, labeling and disposition of animals, carcasses, meat, meat food products and meat by-products which are to be sold or offered for sale through commercial outlets for human consumption, the licensing of commercial slaughterers, custom slaughterers and processors, and the inspection of slaughterhouses and processing plants located in the state of West Virginia. This article, being intended to protect the health of the citizens of West Virginia, shall be liberally construed.

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 meat inspection program should be continued and reestablished. Accordingly, notwithstanding the provisions of section four, article ten, chapter four of this code, the meat inspection program shall continue to exist until the first day of July, one thousand nine hundred ninety.
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-g, relating to providing a short title for the article and declaring its purpose; defining certain terms; providing for authorization of the tree fruit industry self-improvement assessment board by referendum; providing for conducting the referendum and announcing the results; providing for termination of the program by referendum; creating the tree fruit industry self-improvement assessment board to administer the program; requiring the board to annually report on its activities to the Legislature; authorizing the board to promulgate necessary rules and regulations; providing for assessments on tree fruit sales and for refunds of assessments to producers who demand them in writing; providing penalties for failure to collect or remit assessments; providing for the severability of provisions of this article; and providing for termination of the program if it is not reviewed and continued by the Legislature.

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-g, all to read as follows:

ARTICLE 2G. TREE FRUIT INDUSTRY SELF-IMPROVEMENT ASSESSMENT PROGRAM.

§19-2G-1. Short Title.
§19-2G-5. Termination of program by referendum.
§19-2G-6. Tree fruit industry self-improvement assessment board; administration of program; report to Legislature; rules and regulations.
§19-2G-7. Assessment on sales; reimbursement for collecting.
§19-2G-1. Short Title.

This article shall be known and may be cited as the Tree Fruit Industry Self-Improvement Act of 1984.


The purpose of this article is to enhance and promote sales of tree fruits in the state and thereby enhance the profit potential of the state's tree fruit industry. This article furthers that purpose by providing support for efforts to solve problems in tree fruit crop health, production and marketing; by providing support for research and education activities related to the production and marketing of tree fruits and by informing and educating the public concerning the value and benefits of tree fruits or products made from tree fruits.


As used in this article the following terms shall have these meanings, unless the text clearly specifies otherwise:

(a) "Tree fruit industry self-improvement assessment board" or "board" means those persons appointed by the governor in the manner provided for in section six of this article;

(b) "Commissioner" means the commissioner of agriculture of the state of West Virginia and his duly authorized agent or agents;

(c) "Person" means any individual, partnership, corporation, association, fiduciary or other group of persons whether organized or not;

(d) "Producer" means any person in the business of producing tree fruits for direct sale to consumers or for sale to processors for ultimate sale as tree fruit products; and

(e) "Tree fruit industry self-improvement assessment program" or "program" means those activities of the board designed to promote the state's tree fruit industry including, but not limited to, receiving and disbursing assessment funds, ac-
cepting gifts and grants from any private source, supporting
tree fruit research, developing production and marketing
practices, and sponsoring industry and public education efforts.


(a) The provisions of sections six, seven, eight, nine and ten
of this article shall not be implemented until sixty days after
passage of a referendum creating a board. A referendum shall
be passed when voted for by a majority of the tree fruit pro-
ducers participating in the referendum. If any such referendum
is proposed and defeated, no subsequent referendum may be
held for at least two years following the date the initial refer-
endum was defeated.

(b) Upon receipt of a petition signed by not less than fifty
producers, the commissioner shall call a public hearing in ac-
cordance with the provisions of chapter twenty-nine-a of this
code. The subject of this hearing shall be whether a referendum
should be held and the amount of the proposed assessment. If
a majority of those producers present at the hearing are in favor
of the referendum and agree on a proposed assessment, the
commissioner shall notify producers of the date of the pending
referendum by publishing a notice on not less than three differ-
ent days in not less than two newspapers of general circulation
in the state. The commissioner shall also publish notice of the
pending referendum in such other places and in such other
manner as he considers necessary.

(c) Producers shall vote at polling places designated by
the commissioner and provided in each county for that pur-
pose on ballots designed and furnished by the commissioner.
Ballots shall be furnished to producers for voting upon their
presentation of proof, such as tax assessment records, sales
receipts or income tax records, demonstrating that they are
bona fide producers as defined in section three of this article.
Records, receipts or other proof presented may be no more
than one year old. The commissioner shall announce the re-
results of the referendum in not less than two newspapers of
general circulation in the state within seventy-two hours after
the polling places for the referendum are closed and shall
preserve all ballots for a period of one year after the referen-
dum is held.
§19-2G-5. Termination of program by referendum.

The commissioner shall provide for a referendum on continuation or cessation of the board within sixty days after receiving a petition in writing signed by not less than thirty producers requesting that the board be terminated. The commissioner shall notify producers of the date of the pending referendum by publishing a notice on not less than three different days in not less than two newspapers of general circulation in the state. The commissioner shall also publish notice of the pending referendum in such other places and in such other manner as he considers necessary. Any referendum held pursuant to this section five shall be conducted by the commissioner as set forth in section (four) of this article. If a majority of producers voting in the referendum vote for continuation of the board the board shall be continued. If less than a majority of the producers voting in the referendum vote for continuation of the board the board shall be terminated ninety days after the date of the referendum. If such referendum is held and if as a result of that referendum the program is continued, no subsequent referendum may be held within two years after the referendum. Unencumbered money left in the fund upon termination of the program shall be deposited in the general fund of the state of West Virginia.

§19-2G-6. Tree Fruit industry self-improvement assessment board; administration of program; report to Legislature; rules and regulations.

(a) There is hereby created a West Virginia tree fruit improvement assessment board consisting of nine persons who are residents of the state and citizens of the United States and who are and have been actually engaged in the industry of producing tree fruits for the preceding five years. The nine persons who shall serve as members of the board shall be appointed by the governor for terms of three years and may serve successive terms: Provided, That the initial appointments of members of the board shall be three members to serve for terms of one year each, three members to serve for terms of two years each and three members to serve for terms of three years each.
(b) The governor shall make appointments to fill any vacancies which may occur on the board and these appointments shall be only for the unexpired term of the position on the board. In making appointments to the board, the governor shall consider the recommendations made by organizations and groups in West Virginia which are concerned with or engaged in the production of tree fruits for the purpose of marketing tree fruits to consumers or processors. If the governor fails to make an appointment within ninety days after the expiration of any term or within ninety days after a vacancy occurs, the board shall, with the concurrence of a majority of the members still serving, make the necessary appointment. Each member shall hold office until the expiration of his term or until a successor is duly appointed and qualified.

(c) The board shall elect a chairman, a secretary and a treasurer from its membership and shall meet at such times and places as designated by call of the chairman or by a majority of the board. All board meetings shall be held in accordance with the state open meetings law. A stipend shall be paid to each member from board collections not to exceed thirty-five dollars per meeting for each meeting actually attended, and each member shall be reimbursed for his actual expenses incurred with respect to each meeting for room, meals and mileage in the same amount as is provided for by the rules and regulations promulgated by the governor for reimbursing state officials and employees of the state. No board member may receive any other salary or compensation for his services.

(d) The board may contract for services, employ and discharge employees, provide for 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 purposes of this article. The board may not expend funds to influence legislation or for any political campaign.

(e) The board shall administer the tree fruit self-improvement assessment program. All such activity shall be directed toward increasing the sale of tree fruits produced in the state without reference to any particular firm, individual, brand or trade name.
(f) The board shall submit a report, including a complete fiscal accounting of its activities, to the Legislature not later than the fifteenth day of January of each year.

(g) The board may promulgate such rules and regulations as the board considers necessary to carry out the purposes of this article after a public hearing following due notice to all interested persons and compliance with the provisions of the state administrative procedures set forth in chapter twenty-nine-a of this code.

§19-2G-7. Assessment on sales; reimbursement for collecting.

(a) All tree fruit markets, packers, processors, wholesalers, dealers and other persons, excluding persons purchasing tree fruits for their personal consumption or use, purchasing tree fruits, including direct shipments from producers, shall deduct the assessments stipulated in the authorizing referendum, provided for in section four of this article, from the settlement for such tree fruit and to forward it within thirty days to the treasurer of the board. Five percent of the funds so collected shall be retained by the person remitting the funds as reimbursement for additional problems and costs.

(b) The board shall keep accurate records of the amounts of assessments and the dates on which they are received, and of the expenditures of funds and the dates on which they are made. These records shall be preserved for at least five years.


Any producer of tree fruits from whom an assessment has been collected may demand and receive a refund of the total amount of the assessment. The demand for a refund 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 determining that the assessment was paid by the producer, shall make the refund.


When a person who should collect the assessment as
provided in section seven of this article fails to do so or fails to forward it to the treasurer of the board within thirty days, the board shall certify that fact to the commissioner. The commissioner shall write to the person informing him that he has fifteen days to begin the collection or forwarding of the assessment. The person may submit to the board a written justification for nonpayment and upon receiving the justification, the board may extend the allowable payment period. If payment is not made within the fifteen-day period or any extension thereof approved by the board, the commissioner shall revoke any license or permit the person may have to engage in the purchase or sale of agricultural products for resale in the state. Any person whose license or permit is revoked as provided for under this section shall not be eligible for relicensing or for reissuance of his permit for a period of three years.

§19-2G-10. Termination of program by law.

This program shall be terminated on the first day of July, one thousand nine hundred eighty-nine, unless a review of the program's functions is undertaken, pursuant to sections nine, ten and eleven, article ten, chapter four of this code.

CHAPTER 8
(H. B. 1041—By Delegate Steptoe)

[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine-a, article twenty, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the impounding of dogs, cats and other domesticated animals for rabies observation; confinement and quarantine; duty of officer or warden; penalties.

Be it enacted by the Legislature of West Virginia:

That section nine-a, article twenty, 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 20. DOGS.

§19-20-9a. Dogs, cats, etc.; rabies observation.

Any person who owns or harbors any dog, cat or other domesticated animal, whether licensed or unlicensed, which bites any person, shall forthwith confine and quarantine the animal for a period of fourteen days for rabies observation. If such animal is not so confined and quarantined, the humane officer, dog warden or sheriff may cause such animal to be placed in the custody and care of a licensed veterinarian for such purpose at the owner's expense. The penalty for any violation of this section shall be a fine of fifty dollars or confinement in the county jail for a period of no less than two nor more than three days.

CHAPTER 9

(Com. Sub. for S. B. 154—By Senator Lucht)

[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article twenty, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to dogs, cats or other pets; establishing the protection by law of such dogs, cats or other pets; providing for the crimes of killing, injuring, poisoning or stealing such pets; setting forth criminal penalties; creating a right of action against a person who kills or injures such pets; limiting the recovery in any such action in the case of a dog to the assessed value of such dog; providing that no action or prosecution may be maintained in the case of a dog unless such dog shall have been duly registered; authorizing the commissioner of agriculture to designate certain employees to investigate certain activities; requiring that the results of any such investigations be made available to the appropriate law-enforcement officers; providing for the enforcement of this article by certain law-enforcement officers; permitting such officers to charge fees for services ren-
dered; and providing that such fees shall be paid from the county's dog and kennel fund.

Be it enacted by the Legislature of West Virginia:

That section twelve, article twenty, 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 20. DOGS.

§19-20-12. Dogs, other animals and reptiles protected by law; unlawful killing thereof; aggrieved owner's remedy; penalties; penalties for unlawful stealing of pets.

1 (a) Any dog which is registered, kept and controlled as provided in this article or any dog, cat, other animal or any reptile which is owned, kept and maintained as a pet by any person, irrespective of age, shall be protected by law; and any person who shall intentionally and unlawfully kill, injure or poison any such dog, cat, other animal or any reptile as specified above, or shall, in any other manner, intentionally and unlawfully cause the death or injury of any such dog, cat, other animal or any reptile shall be guilty of a misdemeanor, and, upon conviction thereof, shall be ordered to provide public service for not less than thirty nor more than ninety days, or fined not more than three hundred dollars, or both. Any person whose dog, cat, other animal or reptile as specified herein shall be killed or injured wrongfully or unlawfully by any other person shall have a right of action against the person who shall so kill or injure such dog, cat, animal or reptile but in no case involving a dog can recovery be had in excess of the assessed value of such dog.

20 (b) Any person who shall intentionally and unlawfully steal a dog, cat, other animal or reptile as specified in subsection (a) of this section, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be ordered to provide public service for not less than thirty nor more than ninety days or fined not less than three hundred nor more than five hundred dollars, or both. Any person violatin the provisions of this subsection shall for
the second or subsequent offense, be guilty of a mis-

demeanor, and, upon conviction thereof, shall be con-

fined in the county jail for a period of not less than ninety
days nor more than six months, or shall be ordered to
provide public service for not more than one year, and
fined not less than five hundred nor more than one thou-
sand dollars. In no case can any action or prosecution
relating to a dog under the provisions of this section be
maintained if the dog concerned shall not have been duly
registered pursuant to the provisions of this article or
owned and kept pursuant to the provisions of this section
or owned and kept pursuant to the provisions of this
section at the time the cause of action shall have arisen.

(c) The commissioner of agriculture is hereby autho-
rized to designate such reasonable number of his present
employees as may be necessary to investigate alleged in-
cidents of the unlawful stealing of dogs, other domestic
animals or reptiles, alleged incidents of cruelty to such
animals or reptiles and the alleged incidents of the un-
lawful stealing of such animals or reptiles for the purpose
of sale to medical or other research companies. Such
deputies shall make the results of their investigations
known to any law-enforcement officers who have author-
ity to enforce the provisions of this article.

(d) It shall be the duty of all members of the depart-
ment of public safety, sheriffs and police officers to aid
in the enforcement of the provisions of this article, and,
for services rendered in the enforcement thereof, such
persons shall be entitled to fees in the amounts set forth
in section eight. Such fees shall be paid by the county
commission from the dog and kennel fund.

CHAPTER 10

(H. B. 1221—By Delegate Knight and Delegate Faircloth)

[Passed March 6, 1984; in effect ninety days from passage. Approved by the Governor.]
nine hundred thirty-one, as amended, relating to continuing and reestablishing the state soil conservation committee.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21A. SOIL CONSERVATION DISTRICTS.


(a) There is hereby established, to serve as an agency of the state and to perform the functions conferred upon it in this article, the state soil conservation committee. The committee shall consist of seven members. The following shall serve, ex officio, as members of the committee: The director of the state cooperative extension service; the director of the state agricultural experiment station; the director of the department of natural resources; and the state commissioner of agriculture, who shall be chairman of the committee.

The governor shall appoint as additional members of the committee three representative citizens. The term of members thus appointed shall be four years, except that of the first members so appointed, one shall be appointed for a term of two years, one for a term of three years and one for a term of four years. In the event of a vacancy, appointment shall be for the unexpired term.

The committee may invite the secretary of agriculture of the United States of America to appoint one person to serve with the committee as an advisory member.

The committee shall keep a record of its official actions, shall adopt a seal, which seal shall be judicially noticed, and may perform such acts, hold such public hearings and promulgate such rules and regulations as may be necessary for the execution of its functions under this article.

(b) The state soil conservation committee may employ an administrative officer and such technical experts and such other agents and employees, permanent and temporary, as it
may require, and shall determine their qualifications, duties and compensation. The committee may call upon the attorney general of the state for such legal services as it may require. It shall have authority to delegate to its chairman, to one or more of its members, or to one or more agents or employees, such powers and duties as it may deem proper. The committee is empowered to secure necessary and suitable office accommodations, and the necessary supplies and equipment. Upon request of the committee, for the purpose of carrying out any of its functions, the supervising officer of any state agency, or of any state institution of learning shall, insofar as may be possible, under available appropriations, and having due regard to the needs of the agency to which the request is directed, assign or detail to the committee, members of the staff or personnel of such agency or institution of learning, and make such special reports, surveys or studies as the committee may request.

(c) A member of the committee shall hold office so long as he shall retain the office by virtue of which he shall be serving on the committee. A majority of the committee shall constitute a quorum, and the concurrence of a majority in any matter within their duties shall be required for its determination. The chairman and members of the committee shall receive no compensation for their services on the committee, but shall be entitled to expenses, including traveling expenses, necessarily incurred in the discharge of their duties on the committee. The committee shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate public record of all proceedings and of all resolutions, regulations and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements.

(d) In addition to the duties and powers hereinafter conferred upon the state soil conservation committee, it shall have the following duties and powers:

(1) To offer such assistance as may be appropriate to the supervisors of soil conservation districts, organized as
provided hereinafter, in the carrying out of any of their powers and programs;

(2) To keep the supervisors of each of the several districts, organized under the provisions of this article, informed of the activities and experience of all other districts organized hereunder, and to facilitate an interchange of advice and experience between such districts and cooperation between them;

(3) To coordinate the programs of the several soil conservation districts organized hereunder so far as this may be done by advice and consultation;

(4) To secure the cooperation and assistance of the United States and any of its agencies, and of agencies of this state, in the work of such districts;

(5) To disseminate information throughout the state concerning the activities and programs of the soil conservation districts organized hereunder, and to encourage the formation of such districts in areas where their organization is desirable;

(6) To accept and receive donations, gifts, contributions, grants and appropriations in money, services, materials or otherwise, from the United States or any of its agencies, from the state of West Virginia, or from other sources, and to use or expend such money, services, materials or other contributions in carrying out the policy and provisions of this article, including the right to allocate such money, services or materials in part to the various soil conservation districts created by this article in order to assist them in carrying on their operations;

(7) To obtain options upon and to acquire by purchase, exchange, lease, gift, grant, bequest, devise or otherwise, any property, real or personal, or rights or interests therein; to maintain, administer, operate and improve any properties acquired, to receive and retain income from such property and to expend such income as required for operation, maintenance, administration or improvement of such properties.
or in otherwise carrying out the purposes and provisions of this article; and to sell, lease or otherwise dispose of any of its property or interests therein in furtherance of the purposes and the provisions of this article. Money received from the sale of land acquired in the small watershed program shall be deposited in the special account of the state soil conservation committee and expended as herein provided.

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 soil conservation committee should be continued and reestablished. Accordingly, notwithstanding the provisions of section four, article ten, chapter four of this code, the state soil conservation committee shall continue to exist until the first day of July, one thousand nine hundred ninety.

CHAPTER 11
(S. B. 665—By Senator Craigo and Senator Jones)

[Passed March 10, 1984; 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 twenty-seven, relating to designation of the Mason County Regional State Farm Museum as the West Virginia State Farm Museum; ex officio members of board of directors; rules and regulations.

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 twenty-seven, to read as follows:
ARTICLE 27. WEST VIRGINIA STATE FARM MUSEUM.

§19-27-1. West Virginia State Farm Museum; ex officio members of the board of directors; rules and regulations.

1 The corporation now known as "Mason County Regional State Farm Museum" is hereby designated "the West Virginia State Farm Museum" with the exclusive right to the use of said designation, after such amendments as may be made necessary by such change of name, if any, are made in its charter, constitution and bylaws.

2 The governor and commissioner of agriculture are hereby made ex officio members of the board of directors of said museum for the purpose of protecting the interests of the state in the arrangement of the agriculture and other exhibits.

3 The commissioner of agriculture is hereby empowered to make and enforce rules and regulations for the purpose of carrying out the provisions of this section.

CHAPTER 12

(Com. Sub. for H. B. 1856—By Delegate Whitlow and Delegate Bailey)

[Passed March 6, 1984; in effect April 1, 1984. Approved by the Governor.]

AN ACT to amend article seven, chapter sixty 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 generally to the licensure of private clubs by the West Virginia alcohol beverage control commissioner; applications for such licensure and the content thereof; requiring notice of such application for clubs which are to be located within municipalities be given to the clerk or recorder of such municipalities and the duties of such clerk or recorder with respect thereto; report to the governing body of such municipality required and the contents thereof; comments by such municipality to such
commissioner with respect to such licensure and the authority of the commissioner with respect thereto; and certain findings required to be made by the commissioner if licensure is denied.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

§60-7-4a. Notice of application for license to be given to municipal clerk or recorder; duties of clerk or recorder; consistency with zoning and community development programs; authority of commissioner.

A person intending to apply for a license to operate a private club under the provisions of this article at any location within a municipality shall file a notice of such intention with the clerk or recorder of such municipality at least ten days prior to filing an application for such a license with the commissioner. Such notice shall include the address and a general description of the premises to be licensed, the food services to be offered and the patron capacity of the club. The clerk or recorder of the municipality shall report such notice to the governing body of such municipality at its next regular meeting or special meeting to be held not sooner than two days thereafter, together with a report of the zoning administrator for such municipality, if any there be, as to whether:

1 (1) The proposed location of said private club is consistent with the zoning ordinances as either a permitted use or a conditional use of such premises; and

2 (2) The premises are situate in an area designated for the use of community development block grant funds in the municipality, and, if so situate, whether the planned use of the premises is consistent with any plan adopted by the governing body for revitalization or rehabilitation of such area.

Within ten days of such report, the governing body may submit written comment upon such intended use to the commissioner, who shall deny the license upon a finding that
the use of the premises is neither a permitted nor a conditional use under the zoning ordinances of such municipality and that the municipality provides within its business zones suitable alternative locations. The commissioner may deny the license upon a finding that such use is incompatible with any plan adopted by the governing body for revitalization or rehabilitation of the area wherein such premises are situate. The municipality shall not unreasonably exclude a use of the premises which is compatible with such plan or zoning ordinance solely because the use includes premises licensed under this article.

CHAPTER 13

(Com. Sub. for H. B. 1097—By Mr. Speaker, Mr. See, and Delegate I. Damron)

[Passed February 3, 1984; 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 Adjutant General—State Militia, Account No. 9782, supplementing chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-three, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 11, 1984, which included a statement for the Revenue Sharing Trust Fund; and

WHEREAS, It appears from such statement that there now remains unappropriated a balance in the Revenue Sharing Trust Fund available for further appropriation during the current fiscal year of 1983-84, 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 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 Section 10a. Appropriation from Revenue Sharing Trust Fund.

3 134—Revenue Sharing Trust Fund

4 Adjutant General—State Militia

5 Acct. No. 9782

6 1 Property Maintenance ............................... $ 74,000

The purpose of this supplementary appropriation bill is to provide additional moneys to be available for expenditure upon the effective date of the bill and in the current fiscal year 1983-84. Any unexpended balance remaining at the close of the fiscal year 1983-84, as to this item; is hereby reappropriated for expenditure during the fiscal year 1984-85.

CHAPTER 14

(H. B. 1696—By Delegate Goff and Delegate Childers)

[Passed February 27, 1984; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of 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 Insurance Commissioner, Account No. 9790, supplementing chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-three, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 11, 1984, which included a statement for the Revenue Sharing Trust Fund; and

WHEREAS, It appears from such statement that there now remains unappropriated a balance in the Revenue Sharing Trust Fund available for further appropriation during the current fiscal year of 1983-
84, 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 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 items thereto and with the same to read as follows:

1 TITLE 2. APPROPRIATIONS.

2 Section 10a. Appropriations from Revenue Sharing Trust Fund.

3 135—Revenue Sharing Trust Fund

4 Insurance Commissioner

5 Acct. No. 9790

6 1 Personal Services ........................................ $ 71,403
7 2 Current Expenses ........................................ 6,272

8 3 Total ....................................................... $ 77,675

9 The purpose of this supplementary appropriation bill is to provide additional moneys to be available for expenditure upon the effective date of the bill and in the current fiscal year 1983-84. Any unexpended balances of these items remaining at the close of fiscal year 1983-84 are hereby reappropriated for expenditure during the fiscal year 1984-85.

CHAPTER 15

(H. B. 2031—By Delegate Neal and Delegate Jordan)

[Passed March 6, 1984; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of the Department of Corrections—Central Office, Account No. 3680 and the Department of Corrections—Correctional Units, Account No. 3770, for the fiscal year ending the thirtieth day of June, one thousand nine hundred eighty-four, as appropriated by chapter twenty-
nine, acts of the Legislature, regular session, one thousand nine hundred eighty-three, known as the budget bill, and as such accounts were amended by chapter twelve, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-three.

Be it enacted by the Legislature of West Virginia:

That items of the total appropriation of Account No. 3680 and Account No. 3770, as appropriated by chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-three, and as amended as aforesaid, be amended and transferred and with such items to thereafter read as follows:

1  TITLE 2. APPROPRIATIONS.

2  Section 1. Appropriations from General Revenue.

3  39—Department of Corrections—Central Office

4  Acct. No. 3680

5  5 Adult Female Offenders Contract ............ $ 828,750
6  Current Expenses ............... $ 803,750

7  6 Total ........................................ $ 1,651,135

8  41—Department of Corrections—Corrections Units

9  Acct. No. 3770

10  2 Current Expenses ................................... $ 5,724,940

11  6 *Total ........................................ $ 18,550,969
The purpose of this supplementary appropriation bill is to supplement, amend and transfer the sum of two hundred thousand dollars, state general revenues, prior appropriated to item five and the “Current Expenses” subitem thereof in Account No. 3680 from the Central Office account to the Correctional Units Account No. 3770 and item two thereof, being the “Current Expenses” item; with no new moneys being appropriated hereby. The amounts as newly itemized for expenditure in such accounts, during the current fiscal year, one thousand nine hundred eighty-four, shall be available for such expenditure upon the effective date of the bill.

CHAPTER 16
(H. B. 2072—By Delegate Neal)

[Passed March 10, 1984; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of the West Virginia Air Pollution Control Commission, Account No. 4760, for the fiscal year ending the thirtieth day of June, one thousand nine hundred eighty-four, as appropriated by chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-three, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That items of the total appropriation of Account No. 4760, as appropriated by chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-three, known as the budget bill, and being prior appropriated federal funds, be supplemented, amended and transferred and with such items to thereafter read as follows:
TITLE 2. APPROPRIATIONS.

Section 2. Appropriations of federal funds.

57—West Virginia Air Pollution Control Commission

Acct. No. 4760

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$717,704</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>19,700</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 of federal funds for current fiscal year, one thousand nine hundred eighty-four, 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 such fiscal year shall be available for expenditure upon the effective date of the bill.

CHAPTER 17

(H. B. 1508—By Delegate Polan)

[Passed February 27, 1984; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of the West Virginia Railroad Maintenance Authority, Account No. 5690, for the fiscal year ending the thirtieth day of June, one thousand nine hundred eighty-four, as appropriated by chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-three, known as the budget bill, and as such account was amended by chapter twelve, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-three.
Be it enacted by the Legislature of West Virginia:

That items of the total appropriation of Account No. 5690, as appropriated by chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-three, and as amended as aforesaid, and being both prior appropriated federal funds and state general revenues, be supplemented, amended and transferred and with such items to thereafter read as follows:

1 TITLE 2. APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

72—West Virginia Railroad Maintenance Authority

Acct. No. 5690

<table>
<thead>
<tr>
<th></th>
<th>Federal Funds</th>
<th>General Revenue</th>
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<tbody>
<tr>
<td>Fiscal Year 1983-84</td>
<td></td>
<td>Fiscal Year 1983-84</td>
</tr>
<tr>
<td>Personal Services</td>
<td>$32,048</td>
<td>$522,614</td>
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<tr>
<td>Current Expenses</td>
<td>$167,952</td>
<td>$140,000</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement, amend and transfer certain moneys, both federal funds and state general revenue, prior appropriated, from certain line items to certain other line items of the appropriation, with no new moneys being appropriated hereby. The amounts as newly itemized for expenditure during the current fiscal year, one thousand nine hundred eighty-four, shall be available for expenditure upon the effective date of the bill.

CHAPTER 18

(H. B. 1932—By Delegate Burke and Delegate Dalton)

[Passed February 29, 1984: 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-four, as appropriated by chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-three, 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-four, as appropriated by chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-three, 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></td>
<td><strong>83—State Department of Highways</strong></td>
</tr>
<tr>
<td></td>
<td>Acct. No. 6700</td>
</tr>
<tr>
<td></td>
<td>TO BE PAID FROM STATE ROAD FUND</td>
</tr>
<tr>
<td></td>
<td><strong>Federal Revenue</strong></td>
</tr>
<tr>
<td></td>
<td><strong>Fiscal Year</strong></td>
</tr>
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<td></td>
<td><strong>1983-84</strong></td>
</tr>
<tr>
<td>1</td>
<td><strong>TITLE 2. APPROPRIATIONS.</strong></td>
</tr>
<tr>
<td>2</td>
<td><strong>Section 3.</strong></td>
</tr>
<tr>
<td>3</td>
<td><strong>Appropriations from other funds.</strong></td>
</tr>
<tr>
<td>4</td>
<td><strong>83—State Department of Highways</strong></td>
</tr>
<tr>
<td>5</td>
<td>Acct. No. 6700</td>
</tr>
<tr>
<td>6</td>
<td>TO BE PAID FROM STATE ROAD FUND</td>
</tr>
<tr>
<td>7</td>
<td>1 Maintenance, Expressway,</td>
</tr>
<tr>
<td>8</td>
<td>2 Trunkline and Feeder $— $ 43,350,000</td>
</tr>
<tr>
<td>9</td>
<td>3 Maintenance, State Local Services $— 64,047,000</td>
</tr>
<tr>
<td>9</td>
<td>4 Maintenance, Contract Paving and</td>
</tr>
<tr>
<td>10</td>
<td>5 Secondary Road Maintenance $— 23,000,000</td>
</tr>
<tr>
<td>11</td>
<td>6 Inventory Revolving $— 1,500,000</td>
</tr>
<tr>
<td>12</td>
<td>7 Equipment Revolving $— 3,950,000</td>
</tr>
<tr>
<td>13</td>
<td>8 General Operations $— 16,400,000</td>
</tr>
<tr>
<td>14</td>
<td>9 Debt Service $— 84,013,000</td>
</tr>
<tr>
<td>15</td>
<td>10 Interstate Construction $— 164,374,000</td>
</tr>
<tr>
<td>16</td>
<td>11 Other Federal Aid Programs $— 100,600,000</td>
</tr>
<tr>
<td>17</td>
<td>12 Appalachian Program $— 24,000,000</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 1983-1984 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 19

(H. B. 1509—By Delegate Polan)

[Passed February 27, 1984; 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 fiscal year ending the thirtieth day of June, one thousand nine hundred eighty-four, as appropriated by chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-three, 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-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-three, be supplemented, amended and transferred to read as follows:

1 TITLE 2. APPROPRIATIONS.

2 Section 3. Appropriations from other funds.

3 91—Department of Finance and Administration—

4 Information Systems Services Division Fund

5 Acct. No. 8151

6 TO BE PAID FROM SPECIAL REVENUE FUND

7 2 Current Expenses .................. .................. $ 5,483,477
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 1983-84, shall be available for expenditure upon the effective date of the bill.

CHAPTER 20

(H. B. 1520—By Mr. Speaker, Mr. See, by request of the Executive)

[Passed March 7, 1984; in effect from passage. Approved by the Governor.]

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, in the total existing accounts and general revenue appropriations of the Governor's Office, Account No. 1200; of the Office of Economic and Community Development, Account No. 1210; of the Governor's Office—Custodial Fund, Account No. 1230; of the Governor's Office—Civil Contingent Fund, Account No. 1240; of the Office of Emergency Services, Account No. 1300; of the Auditor's Office—General Administration, Account No. 1500; of the Treasurer's Office, Account No. 1600; Municipal Bond Commission, Account No. 1700; of the State Tax Department, Account No. 1800; of the Department of Finance and Administration, Account No. 2100; of the State Board of Insurance, Account No. 2250; of the Attorney General, Account No. 2400; of the Secretary of State, Account No. 2500; of the West Virginia Board of Regents, Account No. 2790 (control); 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 Department of Education—School Lunch Program, Account No. 2870; of the State Board of Education—Vocational Division, Account No. 2890; of the West Virginia Educational Broadcasting Authority, Account No. 2910; of the State Department of Education—Aid to Exceptional Children, Account No. 2960; of the Teachers Retirement Board, Account No. 2980; of the State FFA-FHA Camp and Conference Center, Account No. 3360; of the West Virginia Library Commission, Account No. 3500; of the Department of Culture and History, Account No. 3510; of the Department of Corrections—Probation and Parole Board, Account No. 3650; of the Department of Corrections—Correctional Units, Account No. 3770; of the State Health Department, Account No. 4000; of the Department of Veteran’s Affairs—Veterans Home, Account No. 4010; of the Solid Waste Disposal, Account No. 4020; of the Department of Veterans’ Affairs, Account No. 4040; of the Department of Human Services, Account No. 4050; of the State Commission on Aging, Account No. 4060; of the State Health Department—Retardation Centers, Account No. 4150; of the State Health Department—Mental Hospitals, Account No. 4160; of the State Health Department—Public Hospitals, Account No. 4170; of the State Board of Education—Rehabilitation Division, Account No. 4400; of the Bureau of Labor and Department of Weights and Measures, Account No. 4500; of the Department of Mines, Account No. 4600; of the West Virginia Air Pollution Control Commission, Account No. 4760; of the Nonintoxicating Beer Commissioner, Account No. 4900; of the West Virginia Racing Commission, Account No. 4950; 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, Account No. 5130; 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 Vir-
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Virginia Civil Service System, Account No. 5840; of the West Virginia Public Legal Services Council, Account No. 5900; of the Human Rights Commission, Account No. 5980; of the Women's Commission, Account No. 6000; of the West Virginia Public Employees Retirement Board, Account No. 6140; of the West Virginia Public Employees Insurance Board, Account No. 6150; of the Insurance Commissioner, Account No. 6160; and the State Fire Commission, Account No. 6170, as heretofore appropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-four, by chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-three, known as the budget bill, as previously supplemented and amended by chapters nine through thirteen, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-three.

WHEREAS, The Governor in his State of the State message on January 11, 1984, expressed the need for expiration of said funds, and also stated said expiration would not be detrimental to the efficiency or operation of said departments; 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 revised programs 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. 1200, 1210, 1230, 1240, 1300, 1500, 1600, 1700, 1800, 2100, 2250, 2400, 2500, 2790, 2800, 2810, 2840, 2850, 2860, 2870, 2890, 2910, 2960, 2980, 3360, 3500, 3510, 3650, 3770, 4000, 4010, 4020, 4040, 4050, 4060, 4150, 4160, 4170, 4400, 4500, 4600, 4760, 4900, 4950, 5100, 5110, 5120, 5130, 5200, 5650, 5670, 5690, 5700, 5800, 5840, 5900, 5980, 6000, 6140, 6150, 6160, 6170, appropriated by chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-three, known as the budget bill, as
previously supplemented and amended by chapters nine through thirteen, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-three, 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, to thereafter read as follows:

1 TITLE 2. Appropriations.

2 Section 1. Appropriations from general revenue.

3 Executive

4 5—Governor's Office

5 Acct. No. 1200

6 2 Other Personal Services $867,888
7 3 Current Expenses 378,023
8 4 Equipment 1,000

9 5 Total $1,306,911

10 6—Office of Economic and Community Development

11 Acct. No. 1210

12 1 Personal Services $1,922,003
13 2 Current Expenses 2,110,262
14 3 Equipment 3,106
15 4 The Economic Development Loan
16 5 Fund 1,212,500
17 7 A.R.C. Assessment 310,400
18 8 Partnership Grants 1,355,000
19 9 Fire Departments 970,000
20 10 Civil Air Patrol 86,330
21 11 Emergency Assistance 242,500
22 12 Coal Development 268,961

23 17 Total $8,701,062
<table>
<thead>
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<th></th>
<th>Appropriations</th>
</tr>
</thead>
<tbody>
<tr>
<td>24</td>
<td><strong>7—Governor's Office—Custodial Fund</strong></td>
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<td>25</td>
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<td>26</td>
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<td>27</td>
<td><strong>8—Governor's Office—Civil Contingent Fund</strong></td>
</tr>
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<td>28</td>
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<td>29</td>
<td>1 Unclassified—Total $1,115,500</td>
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<td>30</td>
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<td>32</td>
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<td>34</td>
<td><strong>10—Auditor's Office—General Administration</strong></td>
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<tr>
<td>36</td>
<td>4 Equipment $156,186</td>
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<tr>
<td>37</td>
<td>5 Microfilm 1,000</td>
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<td>38</td>
<td>6 Total $2,127,974</td>
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<td><strong>13—Treasurer's Office</strong></td>
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<tr>
<td>40</td>
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<td>41</td>
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<td>42</td>
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### 16—State Tax Department

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<td>5 Circuit Breaker Reimbursement</td>
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<td>6 Multistate Tax Compact</td>
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### 17—Department of Finance and Administration

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### 18—State Board of Insurance

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<td>4 Premiums, Claims and</td>
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<td>5 Other Expenses</td>
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<td>$4,596,117</td>
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### LEGAL

### 19—Attorney General

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### INCORPORATING AND RECORDING

### 21—Secretary of State

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<td>4 Equipment</td>
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<td>5 Certification of Primary and General Elections</td>
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### Appropriations

**EDUCATIONAL**

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

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<td></td>
<td>Bureau for Coal Research</td>
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<td>National Research Center for Coal</td>
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<td>Transportation Services</td>
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#### 23—West Virginia Board of Regents

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<td>Scholarship Program</td>
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<td>Tuition Contract Programs</td>
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#### 24—West Virginia College of Osteopathic Medicine

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#### 25—Marshall University-Medical School

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### Appropriations

#### 26—West Virginia University-Medical School

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<td>Current Expenses</td>
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<td>5</td>
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#### 27—State Department of Education

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<td>Statewide Testing Program</td>
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#### 28—State Department of Education—School Lunch Program

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#### 29—State Board of Education—Vocational Division

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<td>143  2 Current Expenses</td>
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<td>144  9 New and Expanding Industries</td>
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<td><strong>145  17 Total</strong></td>
<td><strong>$ 11,999,999</strong></td>
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<td>30—Educational Broadcasting Authority</td>
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<td>148  4 Regional ETV</td>
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<td>149  5 WWVU-TV</td>
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<td><strong>150  7 Total</strong></td>
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<td>32—State Department of Education—Aid for Exceptional Children</td>
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<td>Acct. No. 2960</td>
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<td>154  1 Personal Services</td>
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<td>155  2 Current Expenses</td>
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<td>156  3 Equipment</td>
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<td><strong>157  8 Total</strong></td>
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<td>33—Teachers Retirement Board</td>
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<td>160  1 Teachers Retirement Fund</td>
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<td><strong>161  4 Total</strong></td>
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<td>35—State FFA-FHA Camp and Conference Center</td>
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<td>164  3 Repairs and Alterations</td>
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<td>165  4 Equipment</td>
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<td><strong>166  5 Total</strong></td>
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<td>36—West Virginia Library Commission</td>
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<td>170</td>
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<td>Library Matching Fund</td>
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<td>*(Construction)</td>
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37—Department of Culture and History

Acct. No. 3510

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<tr>
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CORRECTIONS

38—Department of Corrections—Probation and Parole Board

Acct. 3650

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41—Department of Corrections—Correctional Units

Acct. No. 3770

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<td>Capital Outlay</td>
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### HEALTH AND HUMAN SERVICES

#### 42—State Health Department

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<td>13</td>
<td>Grants to Counties and EMS</td>
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<td>19</td>
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<td>Alcohol, Drug Abuse and D.D.</td>
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#### 43—Department of Veterans Affairs—Veterans Home

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#### 44—Solid Waste Disposal

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#### 45—Department of Veterans Affairs

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<td>Educational Opportunities for Children of War Veterans</td>
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<tr>
<td>4</td>
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<td>5</td>
<td>In Aid of Veterans Day Patriotic Exercises</td>
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<tbody>
<tr>
<td>10</td>
<td>$756,825</td>
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</table>

**46—Department of Human Services**

<table>
<thead>
<tr>
<th></th>
<th>Current Expenses</th>
<th></th>
<th>Medical Services</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>$3,714,856</td>
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<tr>
<td>8</td>
<td>$19,700,465</td>
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<td>10</td>
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<td>11</td>
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<tr>
<td>20</td>
<td>$105,212,430</td>
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**47—State Commission on Aging**

<table>
<thead>
<tr>
<th></th>
<th>Personal Services</th>
<th></th>
<th>Programs for Elderly</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$95,835</td>
<td></td>
<td>$2,773,237</td>
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<tr>
<td>2</td>
<td>$58,490</td>
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<td>4</td>
<td>$197,000</td>
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<tbody>
<tr>
<td>9</td>
<td>$3,179,562</td>
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</table>

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

<table>
<thead>
<tr>
<th></th>
<th>Personal Services</th>
<th></th>
<th>Equipment</th>
</tr>
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<tbody>
<tr>
<td>1</td>
<td>$8,309,136</td>
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<tr>
<td>3</td>
<td>$193,090</td>
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<tr>
<td>4</td>
<td>$261,320</td>
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</table>

<table>
<thead>
<tr>
<th></th>
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<tbody>
<tr>
<td>5</td>
<td>$10,058,497</td>
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**49—State Health Department—Mental Hospitals**

<table>
<thead>
<tr>
<th></th>
<th>Personal Services</th>
<th></th>
<th>Repairs and Alterations</th>
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<tr>
<td>1</td>
<td>$17,946,971</td>
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<td>$5,940,063</td>
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<td>$261,320</td>
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<table>
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<tbody>
<tr>
<td>5</td>
<td>$15,018,091</td>
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### Ch. 20

#### APPROPRIATIONS

**Student Nurse Affiliation Program (Huntington)**

- Equipment: 
- Student Nurse Affiliation

<table>
<thead>
<tr>
<th>Equipment</th>
<th>Total</th>
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<tbody>
<tr>
<td>239,240</td>
<td>58,282</td>
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<tr>
<td></td>
<td>$24,665,847</td>
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</table>

**50—State Health Department—Public Hospitals**

- Acct. No. 4170
  - Personal Services: $10,394,287
  - Current Expenses: $3,850,393
  - Repairs and Alterations: $176,930

<table>
<thead>
<tr>
<th>Acct. No. 4170</th>
<th>Total</th>
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<tbody>
<tr>
<td>1</td>
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<td>$176,930</td>
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<td>$14,490,623</td>
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**51—State Board of Education—Rehabilitation Division**

- Acct. No. 4400
  - Personal Services: $3,743,874

<table>
<thead>
<tr>
<th>Acct. No. 4400</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$3,743,874</td>
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<tr>
<td></td>
<td>$8,677,429</td>
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</table>

**BUSINESS AND INDUSTRIAL RELATIONS**

**53—Bureau of Labor and Department of Weights and Measures**

- Acct. No. 4500
  - Personal Services: $963,590
  - Current Expenses: $282,126

<table>
<thead>
<tr>
<th>Acct. No. 4500</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$963,590</td>
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<tr>
<td>2</td>
<td>$282,126</td>
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<td>$1,245,716</td>
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**54—Department of Mines**

- Acct. No. 4600
  - Personal Services: $3,322,247
  - Current Expenses: $1,428,282

<table>
<thead>
<tr>
<th>Acct. No. 4600</th>
<th>Total</th>
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<tr>
<td>1</td>
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<td>$1,428,282</td>
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<td>$4,750,529</td>
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<tr>
<td>288</td>
<td>Equipment</td>
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<tr>
<td>289</td>
<td>Miner Training Education and Certification</td>
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<td>290</td>
<td>Board of Coal Mine Health and Safety</td>
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<tr>
<td>291</td>
<td>Gas Well Certification</td>
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<td>Total</td>
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<td>295</td>
<td><strong>57—West Virginia Air Pollution Control Commission</strong></td>
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<td>299</td>
<td><strong>60—West Virginia Nonintoxicating Beer Commissioner</strong></td>
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<td>302</td>
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<td>303</td>
<td>2 Current Expenses</td>
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<td>304</td>
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<td>305</td>
<td><strong>61—West Virginia Racing Commission</strong></td>
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<td>306</td>
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<td>307</td>
<td>1 Personal Services</td>
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<tr>
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<td>309</td>
<td><strong>AGRICULTURE</strong></td>
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<tr>
<td>310</td>
<td><strong>62—Department of Agriculture</strong></td>
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<td>311</td>
<td>Acct. No. 5100</td>
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<tr>
<td>312</td>
<td>2 Other Personal Services</td>
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<tr>
<td>313</td>
<td>5 Multiflora Rose Eradication Program</td>
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<td>314</td>
<td>6 Program</td>
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<td>315</td>
<td>8 Total</td>
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<td>Section</td>
<td>Appropriations</td>
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<td>---------</td>
<td>----------------</td>
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<td>63</td>
<td>Farm Management Commission</td>
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<td>Acct. No. 5110</td>
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<td>1 Personal Services</td>
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<td>4 Equipment</td>
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<td>Department of Agriculture—Soil Conservation Committee</td>
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<td><strong>Total</strong></td>
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<td>Geological and Economic Survey</td>
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<td>1 Personal Services</td>
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<td>2 Current Expenses</td>
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<td>Department of Natural Resources</td>
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<td>Acct. No. 5650</td>
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<td>1 Personal Services</td>
<td>$8,647,406</td>
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<td>2 Current Expenses</td>
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<td>3 Repairs and Alterations</td>
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<td>4 Equipment</td>
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<td>Appropriations</td>
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<td>345</td>
<td>Water Resources Board and Reclamation Board of Review</td>
</tr>
<tr>
<td>346</td>
<td>Chief Logan State Park</td>
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<td>347</td>
<td>Total</td>
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<td>71—Water Development Authority</td>
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<td>Acct. No. 5670</td>
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<tr>
<td>351</td>
<td>Capital Outlay—Sewer</td>
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<td>Total</td>
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<td>72—West Virginia Railroad Maintenance Authority</td>
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<td>354</td>
<td>Acct. No. 5690</td>
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<td>Personal Services</td>
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<td>Total</td>
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<td>357</td>
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<td>73—Department of Public Safety</td>
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<td>Acct. No. 5700</td>
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<td>Personal Services</td>
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<td>Current Expenses</td>
</tr>
<tr>
<td>362</td>
<td>Total</td>
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<td>363</td>
<td>74—Adjutant General— State Militia</td>
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<td>364</td>
<td>Acct. No. 5800</td>
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<tr>
<td>366</td>
<td>Personal Services</td>
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<td>367</td>
<td>Repairs and Alterations</td>
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<tr>
<td>368</td>
<td>Equipment</td>
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<tr>
<td>369</td>
<td>Compensation of Commanding Officers, Clerical Allowances and Uniform Allowances</td>
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<td>370</td>
<td>Property Maintenance</td>
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<td>371</td>
<td>State Armory Board</td>
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<td>373</td>
<td>Total</td>
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### MISCELLANEOUS BOARDS AND COMMISSIONS

#### 75—West Virginia Civil Service System

<table>
<thead>
<tr>
<th>Acct. No. 5840</th>
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</table>
| 1 Personal Services | $749,670  
| 2 Current Expenses | $233,447  
| **Total** | **$987,117**  

#### 76—West Virginia Public Legal Services Council

<table>
<thead>
<tr>
<th>Acct. No. 5900</th>
</tr>
</thead>
</table>
| 2 Appointed Counsel Fees | $2,970,014  
| **Total** | **$3,627,919**  

#### 77—Human Rights Commission

<table>
<thead>
<tr>
<th>Acct. No. 5980</th>
</tr>
</thead>
</table>
| 1 Personal Services | $321,362  
| 2 Current Expenses | $134,904  
| 3 Equipment | $2,882  
| **Total** | **$459,148**  

#### 78—Women's Commission

<table>
<thead>
<tr>
<th>Acct. No. 6000</th>
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</table>
| 2 Current Expenses | $13,864  
| **Total** | **$46,710**  

#### 79—West Virginia Public Employees Retirement Board

<table>
<thead>
<tr>
<th>Acct. No. 6140</th>
</tr>
</thead>
</table>
| 1 Employers Accumulation Fund | $11,810,620  
| **Total** | **$13,430,620**  

### CHAPTER 21

(H. B. 2071—By Delegate Farley)

[Passed March 7, 1984; 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 revolving revenue fund, Account No. 8421-09, as appropriated by chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-three, known as the budget bill.

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

That the sum of three hundred seventy-five 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-three, available for expenditure in the current fiscal year 1983-84, as appropriated by chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-three, 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 three hundred seventy-five thousand dollars, such moneys being formerly appropriated by the language of “Sec. 13. Special revenue appropriations.” section in the budget bill for the current fiscal year 1983-84.
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-five.

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

“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.
### 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 employment security—Acct. No. 4510
- 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 commission—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
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training and education Acct. No. 1220 ........................................ 87
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Auditor's office (social security)—Acct. No. 1510 .................................. 89
Auditor's office (unemployment compensation)—Acct. No. 1520 ................. 90
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Treasurer's office—Acct. No. 1600 ................................................ 90
Treasurer's office (school building sinking fund)—Acct. No. 1650 ................. 90

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Department of veterans affairs—Acct. No. 4040 ................................... 105
Department of veterans affairs—(veterans home)—Acct. No. 4010 .................. 104
Governor's commission for the blind—Acct. No. 4450 .......................... 107
Governor's commission on disabled persons—Acct. No. 4460 ....................... 108
Solid waste disposal—Acct. No. 4020 ............................................. 105
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State commission on aging—Acct. No. 4060 ....................................... 106
State health department (central office)—Acct. No. 4000 .......................... 103
State health department—medical facilities (control)—Acct. No. 4070 ................ 106

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§3. Appropriations from other funds.
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### PAYABLE FROM MEDICAL SCHOOL FUND

<table>
<thead>
<tr>
<th>Source Description</th>
<th>Account No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Board of Regents—(West Virginia University medical center revenue fund)</td>
<td>9285</td>
</tr>
<tr>
<td>West Virginia University—(medical center)</td>
<td>9280</td>
</tr>
</tbody>
</table>

### PAYABLE FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Source Description</th>
<th>Account No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Auditor's office (land department operating fund)</td>
<td>8120</td>
</tr>
<tr>
<td>Board of regents (special capital improvement fund)</td>
<td>8830</td>
</tr>
<tr>
<td>Board of regents (special capital improvement fund)</td>
<td>8840</td>
</tr>
<tr>
<td>Board of regents (state system registration fee—revenue bond construction fund)</td>
<td>8845</td>
</tr>
<tr>
<td>Board of regents (state system registration fee—special capital improvements fund—capital improvement and bond retirement fund)</td>
<td>8835</td>
</tr>
<tr>
<td>Board of regents (state system tuition fee—special capital improvement fund—capital improvement and bond retirement fund)</td>
<td>8855</td>
</tr>
<tr>
<td>Court of claims—(crime victim reparation)</td>
<td>8412</td>
</tr>
<tr>
<td>Department of agriculture</td>
<td>8180</td>
</tr>
<tr>
<td>Department of banking</td>
<td>8395</td>
</tr>
<tr>
<td>Department of finance and administration (division of purchasing—revolving fund)</td>
<td>8140</td>
</tr>
<tr>
<td>Department of finance and administration (information systems services division fund)</td>
<td>8151</td>
</tr>
<tr>
<td>Department of natural resources</td>
<td>8300</td>
</tr>
<tr>
<td>Department of public safety—(drunk driving prevention fund)</td>
<td>8355</td>
</tr>
<tr>
<td>Department of public safety (inspection fees)</td>
<td>8350</td>
</tr>
<tr>
<td>General John McCausland Memorial Farm</td>
<td>8194</td>
</tr>
<tr>
<td>Geological and economic survey</td>
<td>8589</td>
</tr>
<tr>
<td>Health care cost review authority</td>
<td>8510</td>
</tr>
<tr>
<td>Public service commission</td>
<td>8280</td>
</tr>
<tr>
<td>Public service commission (consumer advocate)</td>
<td>8295</td>
</tr>
<tr>
<td>Public service commission (gas pipeline division)</td>
<td>8285</td>
</tr>
<tr>
<td>Public service commission (motor carrier division)</td>
<td>8290</td>
</tr>
<tr>
<td>Real estate commission</td>
<td>8010</td>
</tr>
<tr>
<td>State committee of barbers and beauticians</td>
<td>8220</td>
</tr>
<tr>
<td>State health department—hospital services revenue account (special fund) (capital improvement, renovation and operation)</td>
<td>8500</td>
</tr>
<tr>
<td>Treasurer's office—(abandoned and unclaimed property)</td>
<td>8000</td>
</tr>
<tr>
<td>West Virginia alcohol beverage control commissioner</td>
<td>9270</td>
</tr>
<tr>
<td>West Virginia hospital finance authority</td>
<td>8520</td>
</tr>
<tr>
<td>West Virginia racing commission</td>
<td>8080</td>
</tr>
</tbody>
</table>

### PAYABLE FROM STATE ROAD FUND

<table>
<thead>
<tr>
<th>Source Description</th>
<th>Account No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Department of motor vehicles</td>
<td>6710</td>
</tr>
<tr>
<td>State department of highways</td>
<td>6700</td>
</tr>
</tbody>
</table>

### PAYABLE FROM WORKERS' COMPENSATION FUND

<table>
<thead>
<tr>
<th>Source Description</th>
<th>Account No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Workers' compensation commissioner</td>
<td>9000</td>
</tr>
</tbody>
</table>

§5. Awards for claims against the state.

§6. Reappropriations.

§7. Appropriations from surplus revenue.

State department of education—(state aid to schools) | 2950 |
| Water development authority | 5670 |

§8. Supplemental and deficiency appropriations from revenue sharing trust fund.

Department of natural resources | 9725 |
| West Virginia public legal services council | 9791 |
§9. Reappropriations—Revenue sharing trust fund.

§10. Appropriations from federal block grants.

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State health department—(preventive health)—Acct. No. 8506 140
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§11. Appropriations from countercyclical fiscal assistance trust fund.

§12. Special revenue appropriations.

§13. State improvement fund appropriations.

§14. Specific funds and collection accounts.

§15. Appropriations for refunding erroneous payment.

§16. Sinking fund deficiencies.

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

§18. Appropriations for local governments.

§19. Total appropriations.

§20. General school fund.

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-five.

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 expenditure during the fiscal year one thousand nine hundred eighty-five.

Any unexpended balances remaining for Federal Funds at the close of the fiscal year 1983-84 are hereby reappropriated for expenditure during the fiscal year 1984-85.
### APPROPRIATIONS

#### LEGISLATIVE

1—Senate

Acct. No. 1010

<table>
<thead>
<tr>
<th></th>
<th>Federal Funds</th>
<th>State General Revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Fiscal Year</td>
<td>Fiscal Year</td>
</tr>
<tr>
<td>Compensation of Members</td>
<td>$—</td>
<td>$220,000</td>
</tr>
<tr>
<td>Compensation and per diem of officers and employees</td>
<td>$—</td>
<td>$566,620</td>
</tr>
<tr>
<td>Expenses of Members</td>
<td>$—</td>
<td>$155,000</td>
</tr>
<tr>
<td>Current Expenses and Contingent Fund</td>
<td>$—</td>
<td>$200,000</td>
</tr>
<tr>
<td>Printing Blue Book</td>
<td>$—</td>
<td>$110,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$—</td>
<td><strong>$1,251,620</strong></td>
</tr>
</tbody>
</table>

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

The appropriations for the Senate for the fiscal year 1983-84 are to remain in full force and effect, and are hereby reappropriated to June 30, 1985.

Any balances so reappropriated may be transferred and credited to the 1984-85 accounts.

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

The Clerk of the Senate, with approval of the President, is authorized to draw his requisition upon the Auditor, payable out of the Current Expenses and Contingent Fund of the Senate, for any bills for supplies and services that may have been incurred by the Senate and not included in the appropriation bill, for supplies and services incurred in preparation for the opening, the conduct
of the business and after adjournment of any regular or
extraordinary session, and for the necessary operation of
the Senate offices, the requisition for same to be ac-
companied 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 ses-
sion 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 personnel during
and between sessions of the Legislature, notwithstanding
any such Senate resolution, to be fixed by the President
of the Senate. The Clerk is hereby authorized to draw
his requisitions for the payment of all such staff personnel
upon the State Auditor, payable out of the appropriation
for Compensation and per diem of officers and em-
ployees or Current Expenses and Contingent Fund of the
Senate for such services.

For duties imposed by law and the Senate, the Clerk
of the Senate shall be paid a monthly salary as provided
in Senate resolution adopted January, 1984, and payable
out of the amount appropriated for Compensation and
per diem of officers and employees.

### 2—House of Delegates

<table>
<thead>
<tr>
<th>Acct. No. 1020</th>
</tr>
</thead>
<tbody>
<tr>
<td>1  Compensation of Members .......... $ — $ 346,000</td>
</tr>
</tbody>
</table>
| 2  Compensation and per diem of of-
  ficers and employees ............... — $ 406,000 |
| 3  Expenses of Members ................ — $ 611,000 |
| 4  Current Expenses and Conting-
  gent Fund .......................... — $ 825,000 |
| 5  Total...................................... $ — $ 2,188,000 |
The appropriations for the House of Delegates for the fiscal year 1983-84 are to remain in full force and effect, and are hereby reappropriated to June 30, 1985.

Any balances so reappropriated may be transferred and credited to the 1984-85 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 Compensation and per diem of officers and employees item or the Current Expenses and Contingent Fund item of the House of Delegates.

3—Joint Expenses

Acct. No. 1030

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Joint Committee on Government and Finance</td>
<td>$3,358,425</td>
</tr>
<tr>
<td>2</td>
<td>To pay cost of Legislative Printing</td>
<td>$740,000</td>
</tr>
<tr>
<td>3</td>
<td>Rule Making Review Committee</td>
<td>$50,000</td>
</tr>
<tr>
<td>4</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td>$4,148,425</td>
</tr>
</tbody>
</table>

The appropriation for Joint Expenses for the fiscal year 1983-84 are to remain in full force and effect and are hereby reappropriated to June 30, 1985. Any balances so reappropriated may be transferred and credited to the 1984-85 accounts.

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

JUDICIAL

4—Supreme Court—General Judicial

Acct. No. 1110

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$15,213,241</td>
</tr>
<tr>
<td>2</td>
<td>Other Expenses</td>
<td>$2,692,058</td>
</tr>
<tr>
<td>3</td>
<td>Judges Retirement System</td>
<td>$1,034,623</td>
</tr>
<tr>
<td>4</td>
<td>Other Court Costs</td>
<td>$2,011,700</td>
</tr>
<tr>
<td>5</td>
<td>Judicial Training Program</td>
<td>$100,000</td>
</tr>
<tr>
<td>6</td>
<td>Mental Hygiene Fund</td>
<td>$320,000</td>
</tr>
<tr>
<td>7</td>
<td><strong>Total</strong></td>
<td>$21,371,622</td>
</tr>
</tbody>
</table>

This appropriation shall be administered by the Administrative Director of the State Supreme Court of Appeals.
who shall draw his requisitions for warrants in payment
in the form of payrolls, making deductions therefrom, as
required by law, for taxes and other items.

The appropriation for Judges' Retirement System is to
be transferred to the Judges' Retirement Fund, in accor-
dance with the law relating thereto upon requisition of
the Administrative Director of the State Supreme Court
of Appeals.

Any unexpended balance remaining in this appropria-
tion at the close of the fiscal year 1983-84 is hereby re-
appropriated for expenditure during the fiscal year 1984-
85.

Any balances so reappropriated may be transferred and
credited to the 1984-85 accounts.

EXECUTIVE

5—Governor's Office

Acct. No. 1200

1 Salary of Governor $ — $ 65,507
2 Other Personal Services — $ 961,237
3 Current Expenses — $ 366,405
4 Equipment — $ 4,340

5 Total $ — $ 1,397,489

6—Office of Economic and Community Development

Acct. No. 1210

1 Personal Services $ 1,661,818 $ 2,155,814
2 Current Expenses $ 1,869,617 $ 2,290,400
3 Equipment $ 12,850 $ 16,500
4 The Economic Development Loan Fund — $ 1,000,000
5 Regional Council — $ 220,000
6 A.R.C. Assessment — $ 210,000
7 Partnership Grants — $ 1,000,000
8 Fire Departments — $ 800,000
9 Civil Air Patrol — $ 89,000
11 Aeronautics Commission—Airport
12 Matching —— 300,000
13 Emergency Assistance —— 100,000
14 Coal Development —— 290,845
15 National Youth Science Camp —— 100,000
16 Learn not to Burn—Public School Education Program —— 0
17 To Local Entities ………… 34,324,777 —
18 Transfer to State Spending Units 7,335,000 —
19

20 Total ………… $ 45,204,062 $ 8,572,559


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

7—Office of Economic and Community Development
Emergency Employment, Training and Education

Acct. No. 1220


8—Governor’s Office—Custodial Fund

Acct. No. 1230

1 Unclassified—Total —— $ 333,322
2 To be used for current general expenses, including compensation of employees, household maintenance, cost of
4 official functions and any additional household expenses occasioned by such official functions.

9—Governor's Office—Civil Contingent Fund

Acct. No. 1240

1 Unclassified—Total $ — $ 1,081,635

2 Of the appropriation it is the intent that funds be expended for the publication of the Governor's official papers, inaugural expenses and the painting of the Governor's official portrait.

3 Of the appropriation there may be expended, at the discretion of the Governor, an amount not to exceed $1,000 as West Virginia's contribution to the Interstate Oil Compact Commission.

10 Any unexpended balance remaining in this appropriation at the close of the fiscal year 1983-84 is hereby appropriated for expenditure during the fiscal year 1984-85.

10—Office of Emergency Services

Acct. No. 1300

1 Personal Services $ 220,685 $ 251,330
2 Current Expenses $ 189,846 44,371
3 Repairs and Alterations $ 25,000 6,500
4 Equipment $ 116,495 —
5 To Local Entities $ 675,000 —
6 Transfer to State Spending
7 Units $ 394,000

8 Total $ 1,621,026 $ 302,201

FISCAL

11—Auditor's Office—General Administration

Acct. No. 1500

1 Salary of State Auditor $ — $ 42,580
2 Other Personal Services — $ 1,502,174
3 Current Expenses — $ 653,672
4 Equipment ____________________________  —  53,000  
5 Microfilm ____________________________  —  20,000  

6 Total _________________________________ $  —  $ 2,271,426  

7 Any unexpended balance remaining in the appropriation for “Equipment” at the close of the fiscal year 1983-84 is hereby reappropriated for expenditure during the fiscal year 1984-85.

12—Auditor’s Office—Social Security  
Acct. No. 1510  
1 To match contributions of state employees for  
2 Social Security—Total _____________ $  —  $ 19,975,584  
3 The above appropriation is intended to cover the state’s share of social security costs for those spending units operating from the General Revenue Fund. The State Department of Highways, Department of Motor Vehicles, Workers’ Compensation Commissioner, Public Service Commission, and other departments operating from Special Revenue Funds and/or Federal Funds shall pay their proportionate share of the social security cost for their respective divisions.

12 Any unexpended balance remaining in the appropriation for “Auditor’s Office—Social Security” at the close of the fiscal year 1983-84 is hereby reappropriated for expenditure during the fiscal year 1984-85.

13—Auditor’s Office—Unemployment Compensation  
Acct. No. 1520  
1 Unclassified—Total __________________ $  —  $ 1,800,000  
2 The above appropriation is intended to cover the state’s share of unemployment compensation costs for those spending units operating from the General Revenue Fund. The State Department of Highways, Department of Motor Vehicles, Workers’ Compensation Commissioner, 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 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.

14—Treasurer's Office

Acct. No. 1600

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Salary of State Treasurer</td>
<td>$</td>
</tr>
<tr>
<td>Other Personal Services</td>
<td></td>
</tr>
<tr>
<td>Current Expenses</td>
<td></td>
</tr>
<tr>
<td>Equipment</td>
<td></td>
</tr>
<tr>
<td>Microfilm Program</td>
<td></td>
</tr>
</tbody>
</table>

Total $ 1,120,598

15—Treasurer's Office—School Building Sinking Fund

Acct. No. 1650

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>$</td>
</tr>
</tbody>
</table>

$ 15,706,500

Any unexpended balance remaining in the appropriation for "Treasurer's Office—School Building Sinking Fund" at the close of the fiscal year 1983-84 is hereby reappropriated for expenditure during the fiscal year 1984-85.

16—Municipal Bond Commission

Acct. No. 1700

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$</td>
</tr>
<tr>
<td>Current Expenses</td>
<td></td>
</tr>
<tr>
<td>Equipment</td>
<td></td>
</tr>
</tbody>
</table>

Total $ 135,968
### 17-State Tax Department

**Acct. No. 1800**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$9,190,979</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$6,200,902</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$23,000</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$147,806</td>
</tr>
<tr>
<td>5 Circuit Breaker Reimbursement</td>
<td>$15,000</td>
</tr>
<tr>
<td>6 Multi-State Tax Compact</td>
<td>$57,500</td>
</tr>
<tr>
<td>7 Property Reappraisal Program</td>
<td>$9,301,273</td>
</tr>
</tbody>
</table>

**Total** $24,936,460

Any unexpended balance remaining in the appropriation for “Other Expenses” and “Property Reappraisal Program” at the close of the fiscal year 1983-84 is hereby reappropriated for expenditure during the fiscal year 1984-85.

### 18-Department of Finance and Administration

**Acct. No. 2100**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$119,206</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$1,328,552</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$1,000</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$641,065</td>
</tr>
<tr>
<td>5 Postage</td>
<td>$1,800,000</td>
</tr>
<tr>
<td>6 Utilities</td>
<td>$410,000</td>
</tr>
<tr>
<td>7 Public Transportation</td>
<td>$410,000</td>
</tr>
<tr>
<td>8 Fire Service Fee</td>
<td>$39,000</td>
</tr>
<tr>
<td>9 Building Equipment and Supplies</td>
<td>$12,200</td>
</tr>
<tr>
<td>10 So. Regional Ed. Board</td>
<td>$80,000</td>
</tr>
<tr>
<td>11 Council of State Governments</td>
<td>$37,300</td>
</tr>
<tr>
<td>12 National Governors Association</td>
<td>$39,800</td>
</tr>
<tr>
<td>13 So. States Energy Board</td>
<td>$19,400</td>
</tr>
</tbody>
</table>

**Total** $2,089,823

The Workers’ Compensation Commissioner, 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 Administration monthly for all meter service. Any spending unit operating from Special Revenue or receiving reimbursement for postage costs from the federal government shall refund to the Postage account of the Department of Finance and Administration such amounts. Should this appropriation for postage be insufficient to meet the mailing requirements of the State spending units as set out above, any excess postage meter service requirements shall be a proper charge against the units, and each spending unit shall refund to the Postage appropriation of the Department of Finance and Administration any amounts required for the department for postage in excess of this appropriation.

Any unexpended balance remaining in the "Postage Account" at the close of the fiscal year 1983-84 is hereby reappropriated for expenditure during the fiscal year 1984-85.

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

19—State Board of Insurance

Acct. No. 2250

<table>
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<td>$3,000</td>
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<tr>
<td>Premiums, Claims and</td>
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</tr>
<tr>
<td>Other Expenses</td>
<td>$4,000,000</td>
</tr>
<tr>
<td>Total</td>
<td>$4,127,106</td>
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</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 insuffi-
cient 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**

**20—Attorney General**

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Salary of Attorney General</td>
<td>$45,855</td>
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<td>Other Personal Services</td>
<td>$1,766,079</td>
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<td>Current Expenses</td>
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<td>4</td>
<td>Equipment</td>
<td>$63,815</td>
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<tr>
<td>5</td>
<td>Publication of Reports and Opinions</td>
<td>$20,000</td>
</tr>
<tr>
<td>6</td>
<td>To Protect the Resources or Tax Structure of the State in Controversies or Legal Proceedings affecting same</td>
<td>$3,250</td>
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<tr>
<td>7</td>
<td>Consumer Protection</td>
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<td>Current Expenses</td>
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<td>Equipment</td>
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<td>Total</td>
<td>$2,593,203</td>
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</table>

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 1983-84 is hereby reappropriated for expenditure during the fiscal year 1984-85.

21—Commission on Uniform State Laws

Acct. No. 2450

1 Unclassified—Total $ — $ 12,000
2 To pay expenses of members of the Commission on Uniform State Laws.

INCORPORATING AND RECORDING

22—Secretary of State

Acct. No. 2500

1 Salary of Secretary of State $ — $ 39,305
2 Other Personal Services $ — $ 463,510
3 Current Expenses $ — $ 192,799
4 Equipment $ — $ 28,000
5 Certification of Primary and General Elections $ — $ 6,000
6 Publication of State Register $ — $ 94,075
7 Election Training Presentation $ — $ 15,000
8 Total $ — $ 838,689

EDUCATIONAL

23—West Virginia Board of Regents (Control)

Acct. No. 2790

1 Personal Services $ — $ 119,671,368
2 Current Expenses $ — $ 23,898,000
3 Repairs and Alterations $ — $ 1,309,000
4 Equipment $ — $ 1,124,000
5 Bureau of Coal Research $ — $ 1,205,000
6 National Research Center for Coal and Energy $ — $ 1,600,000
7 Transportation Services—
8 W.V.U. $ — $ 0
9 Doctoral Research—W.V.U. $ — $ 25,000
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<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Amount</th>
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</thead>
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<tr>
<td>11</td>
<td>Autism Training Center</td>
<td>0</td>
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<td>12</td>
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**24—West Virginia Board of Regents**

Acct. No. 2800

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<td>Personal Services</td>
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<td>3</td>
<td>Equipment</td>
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<tr>
<td>4</td>
<td>Higher Education Grant Program</td>
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<tr>
<td>5</td>
<td>Tuition Contract Programs</td>
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**25—West Virginia College of Osteopathic Medicine**

Acct. No. 2810

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<td>Current Expenses</td>
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<td>Repairs and Alterations</td>
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<td>4</td>
<td>Equipment</td>
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**26—Marshall University—Medical School**

Acct. No. 2840

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<th>Account</th>
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<td>Personal Services</td>
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**27—West Virginia University—Medical School**

Acct. No. 2850

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### Appropriations

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

#### State Department of Education

**Acct. No. 2860**

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<td>Regional Education Service</td>
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The above appropriation includes the State Board of Education and their executive office.

#### State Department of Education—School Lunch Program

**Acct. No. 2870**

<table>
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<th>Current Expenses</th>
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<th>Repairs and Alterations</th>
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<tbody>
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<td>Tuition Waiver</td>
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</table>

The above appropriation includes the State Board of Education and their executive office.
### APPROPRIATIONS

<table>
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<th>Item</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Equipment</td>
<td>$8,000</td>
</tr>
<tr>
<td>Aid to Counties—Includes hot lunches and canning for hot lunches</td>
<td>$1,950,000</td>
</tr>
<tr>
<td>To Local Entities</td>
<td>$27,098,055</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$28,223,016</strong></td>
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</table>

#### 30—State Board of Education—Vocational Division

**Acct. No. 2890**

<table>
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<th>Item</th>
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<tbody>
<tr>
<td>Personal Services</td>
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<td>Vocational Aid</td>
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<tr>
<td>Adult Basic Education</td>
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<td>Start-up Funds and Equipment for New and Existing Facilities</td>
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<td><strong>Total</strong></td>
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Any unexpended balance remaining in the appropriation for “New and Expanding Industries” at the close of the fiscal year 1983-84 is hereby reappropriated for expenditure during the fiscal year 1984-85.

#### 31—Educational Broadcasting Authority

**Acct. No. 2910**

<table>
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<tr>
<td>Regional ETV and Radio</td>
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<tr>
<td>Capital Outlay—Equipment</td>
<td>—</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$600,000</strong></td>
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</table>

[Note: The document continues with more entries and details not shown here.]
7  "Regional ETV and Radio" is for participation in the 
8 construction and operation of Regional ETV and radio 
9 stations by state colleges and universities. 
10 Funds may be transferred to Special Revenue accounts 
11 for matching county and/or Federal Funds.

32—State Department of Education—State Aid to Schools

<p>| | | | |</p>
<table>
<thead>
<tr>
<th></th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Professional Educators</td>
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<td>Service Personnel</td>
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<td>Fixed Charges</td>
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<td>4</td>
<td>Transportation</td>
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<tr>
<td>5</td>
<td>Administration</td>
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<td>6</td>
<td>Other Current Expenses</td>
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<td>Improve Instructional Programs</td>
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<td>8</td>
<td>Basic Foundation Allowances</td>
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<td>Less Local Share</td>
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<td>Total Basic State Aid</td>
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<td>Staffing Improvement</td>
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33—State Department of Education—
Aid for Exceptional Children

<p>| | | | |</p>
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<th></th>
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<td>Aid-to-Counties</td>
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Regional Education Service  
Agency Grants — 212,000

Special State  
Projects — 209,397

Regional Education Service Agency  
Evaluations — 220,000

Medley Educational Programs — 1,135,000

Summer Camp for Gifted Children — 77,978

Equipment for the Blind — 50,000

To Local Entities 19,303,805

Total $20,577,203 $8,947,409

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.
34—Teachers’ Retirement Board

Acct. No. 2980

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Teachers Retirement Fund</td>
<td>$39,670,000</td>
</tr>
<tr>
<td>Supplemental Benefits for Annuitants</td>
<td>$5,623,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$45,293,000</strong></td>
</tr>
</tbody>
</table>

35—West Virginia Schools for the Deaf and the Blind

Acct. No. 3330

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$3,328,186</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$898,800</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$396,200</td>
</tr>
<tr>
<td>Equipment</td>
<td>$223,100</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$4,846,286</strong></td>
</tr>
</tbody>
</table>

36—State FFA-FHA Camp and Conference Center

Acct. No. 3360

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$136,805</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$93,700</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$19,000</td>
</tr>
<tr>
<td>Equipment</td>
<td>$5,250</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$254,755</strong></td>
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</table>

37—West Virginia Library Commission

Acct. No. 3500

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$86,449</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$1,001,283</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$220,500</td>
</tr>
<tr>
<td>Equipment</td>
<td>$4,100</td>
</tr>
<tr>
<td>Per-Capita Grants</td>
<td>$5,812,964</td>
</tr>
<tr>
<td>Books, Periodicals and Films</td>
<td>$250,000</td>
</tr>
<tr>
<td>Library Matching Fund—</td>
<td>$20,000</td>
</tr>
<tr>
<td>(Construction)</td>
<td></td>
</tr>
<tr>
<td>To Local Entities</td>
<td>$400,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$744,939</strong></td>
</tr>
</tbody>
</table>

100 APPROPRIATIONS [Ch. 22
Any unexpended balance remaining in the appropriation for "Library Matching Fund (Construction)" at the close of the fiscal year 1983-84 is hereby reappropriated for expenditure during the fiscal year 1984-85.

38—Department of Culture and History

Acct. No. 3510

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$81,743</td>
<td>$1,048,872</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>100,364</td>
<td>287,899</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>—</td>
<td>30,100</td>
</tr>
<tr>
<td>Equipment</td>
<td>4,000</td>
<td>51,900</td>
</tr>
<tr>
<td>Arts and Humanities Fund</td>
<td>430,000</td>
<td>656,539</td>
</tr>
<tr>
<td>Personal Services</td>
<td>—</td>
<td>178,688</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>7,500</td>
<td>601</td>
</tr>
<tr>
<td>Grants and Contractual Services</td>
<td>422,900</td>
<td>477,250</td>
</tr>
<tr>
<td>Department Programming Fund</td>
<td>—</td>
<td>480,400</td>
</tr>
<tr>
<td>Outreach and Education</td>
<td>—</td>
<td>92,570</td>
</tr>
<tr>
<td>Technical Assistance</td>
<td>—</td>
<td>92,830</td>
</tr>
<tr>
<td>Cultural Center Programs</td>
<td>—</td>
<td>295,000</td>
</tr>
<tr>
<td>Historical Preservation</td>
<td>171,565</td>
<td>150,751</td>
</tr>
<tr>
<td>Washington Carver Camp</td>
<td>—</td>
<td>140,113</td>
</tr>
<tr>
<td>Grants, Fairs and Festivals</td>
<td>—</td>
<td>711,500</td>
</tr>
<tr>
<td>Independence Hall</td>
<td>—</td>
<td>0</td>
</tr>
<tr>
<td>Total</td>
<td>$788,072</td>
<td>$3,558,074</td>
</tr>
</tbody>
</table>

The above appropriations for "Arts and Humanities Fund", "Department Programming Funds", "Grants, Fairs and Festivals", and "Washington Carver Camp" shall be expended only upon authorization of the Department of Culture and History and in accordance with the provisions of Chapter 5A and Chapter 12, Article 3 of the Code of West Virginia.

All federal moneys received as reimbursement to the Department of Culture and History for moneys expended
from the General Revenue Fund for Arts and Humanities and Historical Preservation are hereby reappropriated for the purposes as originally made, including Personal Services, Current Expenses and Equipment.

Any unexpended balance remaining in the appropriation “Washington Carver Camp” at the close of the fiscal year 1983-84 is hereby reappropriated for expenditure during the fiscal year 1984-85.

**CORRECTIONS**

**39—Department of Corrections**

*Probation and Parole Board*

<table>
<thead>
<tr>
<th>Acct. No. 3650</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Salaries of Members of Board of Probation and Parole $— $ 80,625</td>
</tr>
<tr>
<td>3 Other Personal Services — $ 55,850</td>
</tr>
<tr>
<td>4 Current Expenses — — $ 25,000</td>
</tr>
<tr>
<td>5 Repairs and Alterations — — $ 300</td>
</tr>
<tr>
<td>6 Equipment — — — $ 1,600</td>
</tr>
<tr>
<td>7 Total $— $ 163,375</td>
</tr>
</tbody>
</table>

**40—Department of Corrections—Central Office**

<table>
<thead>
<tr>
<th>Acct. No. 3680</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services $— $ 449,665</td>
</tr>
<tr>
<td>2 Current Expenses — — $ 213,418</td>
</tr>
<tr>
<td>3 Repairs and Alterations — — $ 1,500</td>
</tr>
<tr>
<td>4 Equipment — — — $ 200,000</td>
</tr>
<tr>
<td>5 Adult Female Offenders Contract — — $ 944,646</td>
</tr>
<tr>
<td>Personal Services 20,904 —</td>
</tr>
<tr>
<td>Current Expenses 923,742 —</td>
</tr>
<tr>
<td>6 Total $— $ 1,809,229</td>
</tr>
</tbody>
</table>

**41—West Virginia Penitentiary**

<table>
<thead>
<tr>
<th>Acct. No. 3750</th>
</tr>
</thead>
</table>
| 1 Any unexpended balance remaining in the appropria-
2 Appropriation for "Capital Outlay" at the close of the fiscal year 1983-84 is hereby reappropriated for expenditure during the fiscal year 1984-85.

42—Department of Corrections—Correctional Units

Acct. No. 3770

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$10,970,754</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$6,898,394</td>
</tr>
<tr>
<td>Inmate Medical Expenses</td>
<td>1,586,887</td>
</tr>
<tr>
<td>Other</td>
<td>5,311,507</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>239,500</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>115,000</td>
</tr>
<tr>
<td>5 Capital Outlay</td>
<td>2,000,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$20,223,648</strong></td>
</tr>
</tbody>
</table>

7 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

43—State Health Department—Central Office

Acct. No. 4000

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$2,064,991</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$6,647,836</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>18,191,227</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>4,628,830</td>
</tr>
<tr>
<td>5 Reimbursement to Community</td>
<td>114,000</td>
</tr>
<tr>
<td>6 Mental Health and Mental Retardation Centers</td>
<td>74,914</td>
</tr>
<tr>
<td>7 Mental Health and Mental Retardation Centers</td>
<td>130,104</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>17,801,508</strong></td>
</tr>
</tbody>
</table>
Reimbursement to Community Behavioral Health Programs for Social Services — 1,613,632
Special Olympics — 28,000
State Aid to Local Agencies — 5,717,898
Grants to Counties and EMS Entities — 1,870,000
Maternal and Child Health Clinics, Clinicians and Medical Contracts and Fees — 1,430,000
Foster Grandparents Stipends/Travel — 62,370
Hemophiliac Assistance Program — 122,326
Placement Programs for the Developmentally Disabled — 3,842,750
Primary Care Contracts to Community Health Centers — 1,831,500
Agent Orange — 200,000
Alcohol, Drug Abuse, and D. D. Corporate Nonprofit Community Health Center F.M.H.A. — 2,436,000
Mortgage Finance — 105,913
Total — $ 20,445,132 $ 48,472,667

Any unexpended balance remaining in the appropriation for "Agent Orange" at the end of the fiscal year 1983-84 is hereby reappropriated for expenditure during fiscal year 1984-85.

Department of Veterans Affairs—Veterans Home

Acct. No. 4010

Personal Services $ — $ 1,164,064
Current Expenses — 502,250 —
Equipment — 37,000 —
Total — $ 539,250 $ 1,164,064

Any unexpended balance remaining in the appropriation for "Repairs and Alterations" and "Equipment" at the close of the fiscal year 1983-84 is hereby reappropriated for expenditure during the fiscal year 1984-85.
45—Solid Waste Disposal

Acct. No. 4020

1 Personal Services ........................................ $ — $ 93,095
2 Current Expenses ........................................ — $ 32,100
3 Equipment .................................................. — $ 1,000

4 Total ........................................................ $ — $ 126,195

46—Department of Veterans Affairs

Acct. No. 4040

1 Personal Services ........................................ $ — $ 670,270
2 Current Expenses ........................................ — $ 129,998
3 Equipment .................................................. — $ 2,000
4 Educational opportunities for children of War Veterans — $ 9,500
5 In aid of Veterans Day Patriotic Exercises — $ 7,000

8 Total ........................................................ $ — $ 818,768

9 Moneys in Lines 6-7 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.

47—Department of Human Services

Acct. No. 4050

1 Personal Services ........................................ $ 13,343,898 $ 10,214,707
2 Current Expenses ........................................ 174,138,839 $ 3,783,056
3 Repairs and Alterations ................................ — $ 17,000
4 Equipment .................................................. 69,290 $ 56,757
5 Assistance Payments ...................................... — $ 19,591,317
6 Social Security Matching Fund ........................ — $ 686,018
7 Indigent Burials ......................................... — $ 620,000
8 Social Services ............................................ — $ 20,075,465
9 Emergency Assistance .................................... — $ 1,000,000
10 Medical Services ........................................ — $ 52,141,731
11 T.R.I.P. .................................................... — $ 605,000
### Appropriations

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>10</strong> Food Stamp (Value)</td>
<td>$150,000,000★</td>
<td>—</td>
</tr>
<tr>
<td><strong>11</strong> Government Donated Food</td>
<td>$22,000,000★</td>
<td>—</td>
</tr>
<tr>
<td><strong>12</strong> Public Employees Retirement</td>
<td></td>
<td>428,403</td>
</tr>
<tr>
<td><strong>13</strong> Public Employees Health Insurance</td>
<td></td>
<td>420,004</td>
</tr>
<tr>
<td><strong>14</strong> Handicapped Children</td>
<td></td>
<td>0</td>
</tr>
<tr>
<td><strong>15</strong> Total</td>
<td>$187,552,027</td>
<td>$109,639,458</td>
</tr>
<tr>
<td><strong>For Information Only—Not included in Total</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>48—State Commission on Aging</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Acct. No. 4060</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>1</strong> Personal Services</td>
<td>$302,882</td>
<td>$124,465</td>
</tr>
<tr>
<td><strong>2</strong> Current Expenses</td>
<td>$165,788</td>
<td>68,000</td>
</tr>
<tr>
<td><strong>3</strong> Equipment</td>
<td>7,200</td>
<td>—</td>
</tr>
<tr>
<td><strong>4</strong> Programs for Elderly</td>
<td></td>
<td>2,987,000</td>
</tr>
<tr>
<td><strong>5</strong> Senior Citizen Centers—Land</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>6</strong> Acquisition, Construction</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>6a</strong> and Repairs and Alterations</td>
<td></td>
<td>200,000</td>
</tr>
<tr>
<td><strong>7</strong> Golden Mountaineer Program</td>
<td></td>
<td>103,365</td>
</tr>
<tr>
<td>Personal Services</td>
<td>45,365</td>
<td>—</td>
</tr>
<tr>
<td>Other Expenses</td>
<td>58,000</td>
<td>—</td>
</tr>
<tr>
<td><strong>8</strong> Silver Haired Legislature</td>
<td></td>
<td>20,000</td>
</tr>
<tr>
<td><strong>9</strong> To Local Entities</td>
<td>7,430,712</td>
<td>—</td>
</tr>
<tr>
<td><strong>10</strong> Total</td>
<td>$7,906,582</td>
<td>$3,502,830</td>
</tr>
<tr>
<td><strong>11</strong> Any unexpended balance remaining in the appropriation for “Senior Citizen Centers—land acquisition, construction, repairs and alterations”, at the close of the fiscal year 1983-84 is hereby reappropriated for expenditure during the fiscal year 1984-85.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>49—State Health Department—Medical Facilities (Control)</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Acct. No. 4070</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>1</strong> Personal Services</td>
<td>—</td>
<td>$42,681,539</td>
</tr>
<tr>
<td><strong>2</strong> Current Expenses</td>
<td>—</td>
<td>13,369,075</td>
</tr>
<tr>
<td><strong>3</strong> Repairs and Alterations</td>
<td>—</td>
<td>667,850</td>
</tr>
<tr>
<td><strong>4</strong> Equipment</td>
<td>—</td>
<td>385,593</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.

50—State Board of Education—Rehabilitation Division

Acct. No. 4400

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>FY 19XX</th>
<th>FY 19XX</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$10,552,861</td>
<td>$5,023,186</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>4,958,801</td>
<td>1,035,300</td>
</tr>
<tr>
<td>3</td>
<td>Repairs and Alterations</td>
<td>130,536</td>
<td>1,400</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>303,845</td>
<td>51,600</td>
</tr>
<tr>
<td>5</td>
<td>Case Services</td>
<td>2,739,223</td>
<td>2,302,500</td>
</tr>
<tr>
<td>6</td>
<td>Social Security Matching Fund</td>
<td>538,497</td>
<td>302,996</td>
</tr>
<tr>
<td>7</td>
<td>WVU—Reimbursement</td>
<td>594,000</td>
<td>50,900</td>
</tr>
<tr>
<td>8</td>
<td>Workshop Development</td>
<td>527,000</td>
<td>1,181,400</td>
</tr>
<tr>
<td>9</td>
<td>Blind Services Coordinating Unit</td>
<td>—</td>
<td>37,000</td>
</tr>
<tr>
<td>10</td>
<td>Disability Determination—Medical Payments</td>
<td>6,589,000</td>
<td>—</td>
</tr>
<tr>
<td>11</td>
<td>Total</td>
<td>$26,933,763</td>
<td>$9,986,282</td>
</tr>
</tbody>
</table>

51—Governor’s Commission for the Blind

Acct. No. 4450

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>FY 19XX</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>$—</td>
</tr>
</tbody>
</table>
52—Governor’s Commission on Disabled Persons
Acct. No. 4460

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>$0</td>
</tr>
</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>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$203,214 $1,082,852</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$96,493 $319,300</td>
</tr>
<tr>
<td>3</td>
<td>Repairs and Alterations</td>
<td>$900</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>$4,600</td>
</tr>
<tr>
<td>5</td>
<td>Labor Management Advisory Council</td>
<td>$25,650</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>$299,707 $1,433,302</td>
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</tbody>
</table>

54—Department of Employment Security
Acct. No. 4510

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Interest Assessment—Total</td>
<td>$1,900,000</td>
</tr>
</tbody>
</table>

The above appropriation is intended to pay the federal government interest due on loan advances made to the state of West Virginia for payment of unemployment compensation benefits.

55—Department of Mines
Acct. No. 4600

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$3,617,142</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$220,000 $1,448,350</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>$100,000 $71,000</td>
</tr>
<tr>
<td>4</td>
<td>Miner Training, Education and Certification</td>
<td>$139,592</td>
</tr>
<tr>
<td>5</td>
<td>Board of Coal Mine Health and Safety</td>
<td>$95,176</td>
</tr>
<tr>
<td>6</td>
<td>Gas Well Certification</td>
<td>$228,022</td>
</tr>
</tbody>
</table>
## Appropriations

### 9 Development of Mine Safety

9 Program ........................................ $205,641

### 10 Total

$320,000 $5,804,923

### 56—Interstate Commission on Potomac River Basin

**Acct. No. 4730**

1 West Virginia’s contribution to Potomac River Basin Interstate Commission ...$19,600

### 57—Ohio River Valley Water Sanitation Commission

**Acct. No. 4740**

1 West Virginia’s contribution to the Ohio River Valley Water Sanitation Commission

### 58—West Virginia Air Pollution Control Commission

**Acct. No. 4760**

1 Personal Services $820,653 $573,262
2 Current Expenses $379,590 177,512
3 Equipment $40,000 1,000

### 59—State Athletic Commission

**Acct. No. 4790**

1 Unclassified—Total $5,500

### 60—West Virginia State Aeronautics Commission

**Acct. No. 4850**

1 Any unexpended balance remaining in the appropriation “Airport Matching” at the close of the fiscal year 1983-84 is hereby reappropriated for expenditure during fiscal year 1984-85.

### 61—West Virginia Nonintoxicating Beer Commissioner

**Acct. No. 4900**

1 Personal Services $324,472
2 Current Expenses $76,200
### 62—West Virginia Racing Commission

Acct. No. 4950

<table>
<thead>
<tr>
<th>Category</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$1,014,558</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$131,500</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$13,000</td>
</tr>
<tr>
<td>4 Total</td>
<td>$1,159,058</td>
</tr>
</tbody>
</table>

### AGRICULTURE

63—Department of Agriculture

Acct. No. 5100

<table>
<thead>
<tr>
<th>Category</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Salary of Commissioner</td>
<td>$42,580</td>
</tr>
<tr>
<td>2 Other Personal Services</td>
<td>$228,708</td>
</tr>
<tr>
<td>3 Current Expenses</td>
<td>$143,366</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$55,000</td>
</tr>
<tr>
<td>5 Multiflora Rose Eradication</td>
<td>$115,000</td>
</tr>
<tr>
<td>6 Program</td>
<td>$300,000</td>
</tr>
<tr>
<td>7 Gypsy Moth Program</td>
<td>$88,080</td>
</tr>
<tr>
<td>8 Total</td>
<td>$3,610,169</td>
</tr>
</tbody>
</table>

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.

64—Farm Management Commission

Acct. No. 5110

<table>
<thead>
<tr>
<th>Category</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$1,019,747</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$990,000</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$265,000</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$293,000</td>
</tr>
<tr>
<td>5 Livestock Purchase</td>
<td>$273,000</td>
</tr>
<tr>
<td>6 Total</td>
<td>$2,840,747</td>
</tr>
</tbody>
</table>
### 65—Department of Agriculture—
**Soil Conservation Committee**

Acct. No. 5120

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>344,221</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>122,699</td>
</tr>
<tr>
<td>3 Watershed Program</td>
<td>150,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>616,920</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for “Watershed Program” and “Mud River Flood Control Project”, at the close of the fiscal year 1983-84 is hereby reappropriated for expenditure during the fiscal year 1984-85.

### 66—Department of Agriculture—Division of Rural Resources
**(Matching Fund)**

Acct. No. 5130

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>791,717</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>222,287</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>47,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>1,061,004</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.

### 67—Department of Agriculture—Meat Inspection

Acct. No. 5140

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>400,506</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>288,057</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>2,395</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>690,953</td>
</tr>
</tbody>
</table>

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

#### 68—Department of Agriculture—Agricultural Awards

**Acct. No. 5150**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agriculture Awards</td>
<td>$70,000</td>
</tr>
<tr>
<td>Fairs and Festivals</td>
<td>$148,450</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$218,450</strong></td>
</tr>
</tbody>
</table>

#### Conservation and Development

#### 69—Geological and Economic Survey

**Acct. No. 5200**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$1,319,990</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$304,612</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$20,888</td>
</tr>
<tr>
<td>Equipment</td>
<td>$14,000</td>
</tr>
<tr>
<td>Special Studies</td>
<td>$60,698</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,720,188</strong></td>
</tr>
</tbody>
</table>

#### 70—Department of Natural Resources

**Acct. No. 5650**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$9,510,442</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$3,163,678</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$630,000</td>
</tr>
<tr>
<td>Equipment</td>
<td>$452,203</td>
</tr>
<tr>
<td>Fire Prevention Control</td>
<td>$696,580</td>
</tr>
<tr>
<td>Personal Services</td>
<td>$634,180</td>
</tr>
<tr>
<td>Other Expenses</td>
<td>$62,400</td>
</tr>
<tr>
<td>Water Resources Board and</td>
<td></td>
</tr>
<tr>
<td>Reclamation Board of Review</td>
<td>$122,380</td>
</tr>
<tr>
<td>Debt Service</td>
<td>$1,116,540</td>
</tr>
<tr>
<td>Canaan Valley State Park</td>
<td>$0</td>
</tr>
<tr>
<td>Cacapon State Park</td>
<td></td>
</tr>
<tr>
<td>Capital Outlay</td>
<td>$232,000</td>
</tr>
<tr>
<td>Chief Logan State Park</td>
<td>$100,000</td>
</tr>
<tr>
<td>To Local Entities</td>
<td>$29,800</td>
</tr>
<tr>
<td>Transfer To State</td>
<td></td>
</tr>
<tr>
<td>Spending Units</td>
<td>$205,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$16,023,823</strong></td>
</tr>
</tbody>
</table>
Ch. 22] APPROPRIATIONS 113

17 Any unexpended balance remaining in the appropriation for “Reeds Creek Hatchery,” and “Chief Logan State Park” at the close of the fiscal year 1983-84 is hereby re-appropriated for expenditure during the fiscal year 1984-85.

22 Any unexpended balance remaining in the appropriation for “Castleman’s Run Lake” at the close of the fiscal year 1983-84 is hereby reappropriated for expenditure during the fiscal year 1984-85 and redesignated for “Chief Logan State Park”.

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

71—Public Land Corporation

Acct. No. 5660

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$171,500</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$73,400</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$20,000</td>
</tr>
<tr>
<td>Equipment</td>
<td>$5,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$269,900</strong></td>
</tr>
</tbody>
</table>

6 Any unexpended balance remaining in the appropriation for “Public Land Corporation” and “Blennerhassett Island” at the close of the fiscal year 1983-84 is hereby reappropriated for expenditure during the fiscal year 1984-85.

11 Any unexpended balance in the appropriation item as originally made to this account in fiscal year 1972-73 under the designation “Total” and the amount, and as brought forward and remaining at the close of fiscal year 1983-84, is hereby reappropriated for expenditure during fiscal year 1984-85, and is hereby redesignated, as to purpose, for “Chief Logan State Park”.

72—Water Development Authority

Acct. No. 5670

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capital Outlay—Sewer</td>
<td>$237,790</td>
</tr>
</tbody>
</table>
2 Capital Outlay—Water ................. $ 164,820
3 Loan and Grant Program ........... $ 377,390

4 Total ........................................ $ 780,000


73—West Virginia Railroad Maintenance Authority

Acct. No. 5690

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$ 530,476</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$ 140,000</td>
</tr>
<tr>
<td>3</td>
<td>Repairs and Alterations</td>
<td>200,000</td>
</tr>
<tr>
<td>4</td>
<td>Baltimore and Ohio—</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Passenger Service</td>
<td>0</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>$ 910,476</td>
</tr>
</tbody>
</table>

PROTECTION

74—Department of Public Safety

Acct. No. 5700

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$ 13,754</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$ 15,257,418</td>
</tr>
<tr>
<td>3</td>
<td>Repairs and Alterations</td>
<td>59,579</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>2,100,000</td>
</tr>
<tr>
<td>5</td>
<td>Emergency Fund</td>
<td>7,452,318</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>$ 730,000</td>
</tr>
</tbody>
</table>

75—Adjutant General—State Militia

Acct. No. 5800

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$ 170,808</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$ 259,288</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>352,758</td>
</tr>
<tr>
<td>4</td>
<td>Emergency Fund</td>
<td>730,000</td>
</tr>
<tr>
<td>Item</td>
<td>Amount</td>
<td>Notes</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>-------------</td>
<td>------------------------</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>187,000</td>
<td>62,000</td>
</tr>
<tr>
<td>Equipment</td>
<td>5,000</td>
<td>20,000</td>
</tr>
<tr>
<td>Compensation of Commanding Officers, Clerical Allowances</td>
<td></td>
<td>124,000</td>
</tr>
<tr>
<td>Property Maintenance</td>
<td></td>
<td>1,006,658</td>
</tr>
<tr>
<td>State Armory Board</td>
<td></td>
<td>2,428,805</td>
</tr>
<tr>
<td>College Education Fund</td>
<td></td>
<td>200,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>715,566</strong></td>
<td><strong>4,830,751</strong></td>
</tr>
</tbody>
</table>

**MISCELLANEOUS BOARDS AND COMMISSIONS**

**76—West Virginia Civil Service System**

Acct. No. 5840

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$861,579</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$246,500</td>
</tr>
<tr>
<td>Equipment</td>
<td>$4,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,112,079</strong></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.

**77—West Virginia Public Legal Services Council**

Acct. No. 5900

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Council and Central Office</td>
<td>$187,866</td>
</tr>
</tbody>
</table>
Appropriations

2 Appointed Counsel Fees — 3,823,881
3 Public Defender Operations — 352,300
4 Criminal Law Research Center
5 Appellate Division — 125,742

6 Total $ — $ 4,489,789

Any unexpended balance remaining in the appropriation “Appointed Counsel Fees” at the close of the fiscal year 1983-84 is hereby reappropriated for expenditure during the fiscal year 1984-85.

78—Human Rights Commission

Acct. No. 5980

1 Personal Services $ 185,688 $ 429,543
2 Current Expenses — 65,999 233,948
3 Equipment — — 11,708

4 Total $ 251,687 $ 675,199

79—Women’s Commission

Acct. No. 6000

1 Personal Services $ — $ 49,880
2 Current Expenses — — 22,300
3 Equipment — — 1,900

4 Total $ — $ 74,080

80—West Virginia Public Employees Retirement Board

Acct. No. 6140

1 Employers Accumulated Fund $ — $ 12,561,966
2 Expense Fund — — 70,000
3 Supplemental Benefits For
4 Annuitants — — 1,992,000

5 Total $ — $ 14,623,966

The above appropriation is intended to cover the state’s share of West Virginia Public Employees Retirement coverage for those departments operating from the Gen-
eral Revenue Fund. The State Department of Highways, Department of Motor Vehicles, Workers' Compensation Commissioner, 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.

81—West Virginia Public Employees Insurance Board

Acct. No. 6150

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Expense Fund</td>
<td>$334,648</td>
</tr>
<tr>
<td>Public Employees Health Insurance State Contributions</td>
<td>$91,059,068</td>
</tr>
<tr>
<td>Total</td>
<td>$91,393,716</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 the General Revenue Fund. The State Department of Highways, Department of Motor Vehicles, Workers' Compensation Commissioner, 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.

Any unexpended balance remaining in the appropriation "Public Employees Health Insurance State Contributions" at the close of the fiscal year 1983-84 is hereby reappropriated for expenditure during the fiscal year 1984-85.

82—Insurance Commissioner

Acct. No. 6160

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$638,696</td>
</tr>
</tbody>
</table>


### Appropriations

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$623,822</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$295,175</td>
</tr>
<tr>
<td>3</td>
<td>Repairs and Alterations</td>
<td>$3,151</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>$36,374</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$958,522</td>
</tr>
</tbody>
</table>

### Claims from General Revenue

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Total</td>
<td>$0</td>
</tr>
</tbody>
</table>

1. **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-five.

2. **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-five.

Any unexpended balances remaining for Federal Funds at the close of the fiscal year 1983-84 are hereby reappropriated for expenditure during the fiscal year 1984-85.
### Appropriations

**85—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 1984-85</th>
<th>Other Revenue Fiscal Year 1984-85</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maintenance Expressway, Trunk-line and Feeder</td>
<td>$ —</td>
<td>$47,523,000</td>
</tr>
<tr>
<td>Maintenance, State Local Services</td>
<td>—</td>
<td>64,707,000</td>
</tr>
<tr>
<td>Maintenance, Contract Paving and</td>
<td>—</td>
<td>10,584,000</td>
</tr>
<tr>
<td>Secondary Road Maintenance</td>
<td>—</td>
<td>1,425,000</td>
</tr>
<tr>
<td>Inventory Revolving</td>
<td>—</td>
<td>4,125,000</td>
</tr>
<tr>
<td>Equipment Revolving</td>
<td>—</td>
<td>17,674,000</td>
</tr>
<tr>
<td>General Operations</td>
<td>—</td>
<td>85,000,000</td>
</tr>
<tr>
<td>Debt Service</td>
<td>—</td>
<td>168,768,000</td>
</tr>
<tr>
<td>Interstate Construction</td>
<td>—</td>
<td>123,821,000</td>
</tr>
<tr>
<td>Other Federal Aid Programs</td>
<td>—</td>
<td>22,738,000</td>
</tr>
<tr>
<td>Appalachian Program</td>
<td>—</td>
<td>3,789,000</td>
</tr>
<tr>
<td>Nonfederal Aid Construction</td>
<td>—</td>
<td>$550,154,000</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.
### Appropriations

**86—Department of Motor Vehicles**

Acct. No. 6710

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$2,437,312</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$3,580,457</td>
</tr>
<tr>
<td>Equipment</td>
<td>$50,950</td>
</tr>
<tr>
<td>Purchase of License Plates</td>
<td>$493,200</td>
</tr>
<tr>
<td>Social Security Matching</td>
<td>$168,412</td>
</tr>
<tr>
<td>Public Employees Retirement Matching</td>
<td>$227,581</td>
</tr>
<tr>
<td>Public Employees Health</td>
<td>$349,237</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$7,307,149</strong></td>
</tr>
</tbody>
</table>

**87—Department of Education—Veterans Education**

Acct. No. 7979

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$65,120</td>
</tr>
<tr>
<td>Other Expenses</td>
<td>$55,793</td>
</tr>
<tr>
<td>Equipment</td>
<td>$500</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$121,413</strong></td>
</tr>
</tbody>
</table>

Expenditures from this appropriation shall not exceed the amount to be reimbursed by the Federal Government.

Federal Funds in excess of the amounts hereby appropriated may be made available by budget amendment upon request of the State Superintendent of Schools and approval of the Governor for any emergency which might arise in the operation of this division during the fiscal year.

**88—Treasurer's Office—Abandoned and Unclaimed Property**

Acct. No. 8000

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$56,020</td>
</tr>
<tr>
<td>Other Expenses</td>
<td>$48,795</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$104,815</strong></td>
</tr>
</tbody>
</table>
89—Real Estate Commission  
Acct. No. 8010  
TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services $ — $ 153,295  
2 Current Expenses $ — $ 118,700  
3 Equipment $ — $ 5,000  
4 Total $ — $ 276,995

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

90—West Virginia Racing Commission  
Acct. No. 8080  
TO BE PAID FROM SPECIAL REVENUE FUND

1 Medical Expenses $ — $ 5,000  
2 The total amount of this appropriation shall be paid from Special Revenue Fund out of collections of license fees and fines as provided by law.  
3 No expenditures shall be made from this account except for hospitalization, medical care and/or funeral expenses for persons contributing to this fund.

91—Auditor’s Office—Land Department Operating Fund  
Acct. No. 8120  
TO BE PAID FROM SPECIAL REVENUE FUND

1 Unclassified—Total $ — $ 12,000  
2 The total amount of this appropriation shall be paid from Special Revenue Fund out of fees and collections as provided by law.

92—Department of Finance and Administration—Division of Purchasing—Revolving Fund  
Acct. No. 8140  
TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services $ — $ 809,379  
2 Current Expenses $ — $ 490,300
3 Equipment

4 Social Security Matching

5 Public Employees Retirement

6 Matching

7 Public Employees Health

8 Insurance

9 Total

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.

The above appropriation includes salaries and operating expenses.

There is hereby appropriated from this fund, in addition to the above appropriation, the necessary amount for the purchase of supplies for resale.

93—Department of Finance and Administration—Information Systems Services Division Fund

Acct. No. 8151

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services

2 Current Expenses

3 Equipment

4 Social Security Matching

5 Public Employees Retirement

6 Matching

7 Public Employees Health

8 Insurance

9 Total

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.
### 94—Department of Agriculture

Acct. No. 8180

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$413,267</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$23,390</td>
</tr>
<tr>
<td>3 Social Security Matching</td>
<td>$28,978</td>
</tr>
<tr>
<td>4 Public Employees Retirement</td>
<td>$39,188</td>
</tr>
<tr>
<td>5 Matching</td>
<td>$31,000</td>
</tr>
<tr>
<td>6 Public Employees Health Insurance</td>
<td></td>
</tr>
</tbody>
</table>

**Total** $535,823

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.

### 95—General John McCausland Memorial Farm

Acct. No. 8194

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified—Total</td>
<td>$80,000</td>
</tr>
</tbody>
</table>

Funds for the above appropriation shall be disbursed in accordance with Chapter 19, Article 26 of the Code of West Virginia.

### 96—State Committee of Barbers and Beauticians

Acct. No. 8220

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$134,691</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$108,700</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$1,800</td>
</tr>
</tbody>
</table>

**Total** $245,191

The total amount of this appropriation shall be paid from Special Revenue Fund out of collections made by the State Committee of Barbers and Beauticians as provided by law.
### 97—Public Service Commission

**Acct. No. 8280**

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$51,600</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$22,127</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$106,000</td>
</tr>
<tr>
<td>4 Social Security Matching</td>
<td>$233,511</td>
</tr>
<tr>
<td>5 Public Employees Retirement Matching</td>
<td>$315,780</td>
</tr>
<tr>
<td>6 Public Employees Health Insurance</td>
<td>$296,200</td>
</tr>
</tbody>
</table>

**Total** $73,727

The total amount of this appropriation shall be paid from Special Revenue Fund out of collections for special license fees from public service corporations as provided by law.

Any unexpended balance remaining in the appropriation for “Headquarters Building Development” at the close of fiscal year 1983-84 is hereby reappropriated for expenditure during the fiscal year 1984-85.

### 98—Public Service Commission—Gas Pipeline Division

**Acct. No. 8285**

**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>$26,875</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$15,841</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$1,500</td>
</tr>
<tr>
<td>4 Social Security Matching</td>
<td>$10,898</td>
</tr>
<tr>
<td>5 Public Employees Retirement Matching</td>
<td>$14,737</td>
</tr>
<tr>
<td>6 Public Employees Health Insurance</td>
<td>$11,000</td>
</tr>
</tbody>
</table>

**Total** $42,716

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 com-
panies.

Any unexpended balance remaining in the appropria-
tion for "Headquarters Building Development" at the
close of fiscal year 1983-84 is hereby reappropriated for
expenditure during the fiscal year 1984-85.

99—Public Service Commission—Motor Carrier Division

Acct. No. 8290

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>$1,017,857</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$348,000</td>
</tr>
<tr>
<td>Equipment</td>
<td>$5,000</td>
</tr>
<tr>
<td>Social Security Matching</td>
<td>$71,282</td>
</tr>
<tr>
<td>Public Employees Retirement Matching</td>
<td>$96,396</td>
</tr>
<tr>
<td>Public Employees Health Insurance</td>
<td>$94,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,632,535</strong></td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid
from Special Revenue Fund out of receipts collected
and in the exercise of regulatory authority over motor
carriers as authorized by law.

Any unexpended balance remaining in the appropria-
tion for "Headquarters Building Development" at the
close of fiscal year 1983-84 is hereby reappropriated for
expenditure during the fiscal year 1984-85.

100—Public Service Commission—Consumer Advocate

Acct. No. 8295

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>$270,053</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$289,000</td>
</tr>
<tr>
<td>Equipment</td>
<td>$6,800</td>
</tr>
<tr>
<td>Social Security Matching</td>
<td>$18,955</td>
</tr>
<tr>
<td>5 Public Employees Retirement</td>
<td>25,633</td>
</tr>
<tr>
<td>-----------------------------------------------</td>
<td>--------</td>
</tr>
<tr>
<td>6 Matching</td>
<td>-</td>
</tr>
<tr>
<td>7 Public Employees Health</td>
<td>14,300</td>
</tr>
<tr>
<td>8 Insurance</td>
<td>-</td>
</tr>
</tbody>
</table>

| Total                                         | 624,741 |

The total amount of this appropriation shall be paid from Special Revenue Fund out of collections made by the Public Service Commission.

101—Department of Natural Resources

Acct. No. 8300

<table>
<thead>
<tr>
<th>1 Personal Services</th>
<th>$ —</th>
</tr>
</thead>
<tbody>
<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 Land Purchase and Buildings</td>
<td>—</td>
</tr>
</tbody>
</table>

| Total                                         | $ 8,340,835 |

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 1983-84 and available for capital improvement and land purchase purposes are hereby re-appropriated for expenditure in fiscal year 1984-85, all in accordance with Chapter 20, Article 2, Section 34, Code of West Virginia.

102—Department of Public Safety—Inspection Fees

Acct. No. 8350

<table>
<thead>
<tr>
<th>1 Personal Services</th>
<th>$ 464,817</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 Current Expenses</td>
<td>199,567</td>
</tr>
</tbody>
</table>
### Repairs and Alterations
- Amount: 2,000

### Equipment
- Amount: 12,000

**Total**: $678,384

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

### Department of Public Safety
**Drunk Driving Prevention Fund**

**Acct. No. 8355**

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current Expenses</td>
<td>$595,000</td>
</tr>
<tr>
<td>Equipment</td>
<td>$5,000</td>
</tr>
</tbody>
</table>

**Total**: $600,000

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.

### Department of Banking

**Acct. No. 8395**

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>$615,286</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$610,586</td>
</tr>
<tr>
<td>Equipment</td>
<td>$6,000</td>
</tr>
</tbody>
</table>

**Total**: $1,231,872

### Court of Claims—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>Personal Services</td>
<td>$115,000</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$27,000</td>
</tr>
<tr>
<td>Item</td>
<td>Description</td>
</tr>
<tr>
<td>------</td>
<td>-------------</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
</tr>
</tbody>
</table>

These funds are intended to be expended for court costs and administrative costs.

106—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>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Administrative</td>
<td>$104,640</td>
</tr>
<tr>
<td></td>
<td>Personal Expenses</td>
<td>$70,520</td>
</tr>
<tr>
<td></td>
<td>Current Expenses</td>
<td>34,120</td>
</tr>
<tr>
<td>2</td>
<td>Contingency for repairs and alterations, equipment, emergency services and miscellaneous</td>
<td>500,000</td>
</tr>
<tr>
<td>3</td>
<td>Greenbrier Center—Capital outlay and renovations for certification, life safety and energy conservation</td>
<td>130,000</td>
</tr>
<tr>
<td>4</td>
<td>Lakin Hospital—Capital outlay and renovations for certification, life safety and energy conservation</td>
<td>150,000</td>
</tr>
<tr>
<td>5</td>
<td>Huntington Hospital—Hartley capital outlay and renovations for JCAH accreditation</td>
<td>3,000,000</td>
</tr>
<tr>
<td>6</td>
<td>Spencer Hospital—Hartley capital outlay and renovations for certification</td>
<td>750,000</td>
</tr>
<tr>
<td>7</td>
<td>Contingency for repairs and alterations, equipment, emergency services and miscellaneous</td>
<td>500,000</td>
</tr>
<tr>
<td>8</td>
<td>DD and Chronic Mentally Ill Group Homes—Hartley capital outlay and renovations</td>
<td>2,250,000</td>
</tr>
</tbody>
</table>
Ch. 22] APPROPRIATIONS

27 Andrew S. Rowan—Capital outlay and renovations for certification, life safety and energy conservation — 375,000
28 Hopemont Hospital—Capital outlay and renovations for certification, life safety and energy conservation — 300,000
29 Fairmont Emergency — Capital outlay and renovations for certification, life safety and energy conservation — 40,000
30 Denmar Hospital—Capital outlay and renovations for certification, life safety and energy conservation — 50,000
31 Adolescent Residential Treatment Center — — 1,270,000
32 Pinecrest Hospital—Capital outlay and renovations for certification, life safety and energy conservation — 870,000
33 DD and Chronic Mentally Ill Group Homes—Hartley capital outlay and renovations — 1,924,000

52 Total $ — $12,213,640

53 The total amount of this appropriation shall be paid from the Hospital Services Revenue Account Special Fund created by the 1981 Legislature (WV Code 16-1-15a).

54 Projects are to be paid on a cash basis and made available from the date of passage. Items and projects of this appropriation are to begin as funds become available in the special fund. Projects are to begin in the listed order of priority herein, except implementation costs, not to exceed ten percent of each appropriation, and shall be made available from the date of passage.

55 Any unexpended balances remaining at the close of fiscal year 1983-84 for the prior-appropriated and brought-
forward items of this account are hereby reappropriated for expenditure in fiscal year 1984-85. The unexpended balances of the items “Huntington Hospital, Capital Outlay and Renovations—$750,000” and “Huntington Hospital, Capital Outlay—$1,800,000”, as originally appropriated in this account (then designated Acct. No. 8491-12) in fiscal year 1982-83 and as herein reappropriated for expenditure during fiscal year 1984-85, are hereby redesignated as to purpose and shall be expendable in fiscal year 1984-85 for “Adolescent Residential Treatment Center—Barboursville Area” by the State Health Department.

107—Health Care Cost Review Authority

Acct. No. 8510

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>$283,837</td>
</tr>
<tr>
<td></td>
<td></td>
<td>$1,108,054</td>
</tr>
</tbody>
</table>

The above appropriation item is to be expended in accordance with and pursuant to the provisions of Chapter 102, Acts of the Legislature, Regular Session, 1983, and from the special revolving fund designated “Health Care Cost Review Fund.”

108—West Virginia Hospital Finance Authority

Acct. No. 8520

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>$1,000</td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from Special Revenue Fund out of fees and collections as provided by Enrolled Committee Substitute for Senate Bill 585, Regular Session, 1984.

Special funds in excess of the amount herein appropriated may be made available by budget amendments upon request of the Commissioner of Finance and Administration and the approval of the Governor.
109—Geological and Economic Survey

Acct. No. 8589

TO BE PAID FROM SPECIAL REVENUE FUND

1  Unclassified—Total $40,000

2  The above appropriation shall be used in accordance

3  with Chapter 95, Acts of the Legislature, Regular Session,

4  1983.

100—Board of Regents

Special Capital Improvement Fund

Acct. No. 8830

TO BE PAID FROM SPECIAL REVENUE FUND

1  Debt Service $545,000

2  The total amount of this appropriation shall be paid

3  from the nonrevolving Capital Improvement Fund created

4  by the 1959 Legislature, as amended.

111—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 $2,386,000

2  Capital Building Repairs and

3  Alterations $4,200,000

4  (Supplements Operating Budget

5  at Colleges and Universities)

6  Miscellaneous Campus Develop-

7  ment Projects $1,300,000

8  Planning Fund $1,000,000

9  (To be used for project planning

10  and design)

11  Concord College Campus Devel-

12  opment $500,000
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 1983-84 appropriations at the close of the fiscal year 1983-84 are hereby reappropriated for expenditure during the fiscal year 1984-85 with the exception of accounts 8835-37 and 8835-65 which shall be expired at the close of the fiscal year 1983-84.

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

TO BE PAID FROM SPECIAL REVENUE FUND

1 Debt Service $1,644,000

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

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

TO BE PAID FROM SPECIAL REVENUE FUND

1 Any unexpended balances remaining in prior years and 1983-84 appropriations are hereby reappropriated for expenditure during fiscal year 1984-85.

114—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 $3,888,000
2 Building and Campus Renewal $7,750,000
<table>
<thead>
<tr>
<th></th>
<th>Appropriations</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>(Formula based allocation of funds for major building repairs, renovations and upgrading, HVAC, mechanical and electrical system upgrading and replacement; roof replacement; grounds improvements; and similar projects)</td>
</tr>
<tr>
<td>11</td>
<td>West Virginia University Campus Development</td>
</tr>
<tr>
<td>13</td>
<td>(West Virginia University Medical Center Building Renewal/ Renovation)</td>
</tr>
<tr>
<td>16</td>
<td>Jackson's Mill</td>
</tr>
<tr>
<td>18</td>
<td>(Capital Outlay— Building Repairs, Renovations and Upgrading)</td>
</tr>
<tr>
<td>20</td>
<td>Potomac State College</td>
</tr>
<tr>
<td>22</td>
<td>Marshall University Campus Development</td>
</tr>
<tr>
<td>24</td>
<td>(Science Building (Phase II)— Supplement)</td>
</tr>
<tr>
<td>26</td>
<td>Marshall University—</td>
</tr>
<tr>
<td>27</td>
<td>Fairfield Stadium</td>
</tr>
<tr>
<td>28</td>
<td>(Seat Demolition)</td>
</tr>
<tr>
<td>29</td>
<td>Concord College Campus Development</td>
</tr>
<tr>
<td>31</td>
<td>(Remodel Administration Building Auditorium)</td>
</tr>
<tr>
<td>33</td>
<td>West Virginia State College</td>
</tr>
<tr>
<td>34</td>
<td>Campus Development</td>
</tr>
<tr>
<td>35</td>
<td>(President's Residence)</td>
</tr>
<tr>
<td>36</td>
<td>West Virginia Network for Educational Telecomputing</td>
</tr>
<tr>
<td>38</td>
<td>(System Upgrade and computer equipment acquisitions)</td>
</tr>
</tbody>
</table>

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 1983-84 appropriations are hereby reappropriated for expenditure in fiscal year 1984-85, with the exception of account 8855-05 which shall expire at the close of the fiscal year 1983-84.

115—Workers’ Compensation Commissioner

Acct. No. 9000

TO BE PAID FROM WORKERS’ COMPENSATION FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$7,754,069</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$5,148,689</td>
</tr>
<tr>
<td>Equipment</td>
<td>$601,375</td>
</tr>
<tr>
<td>Social Security Matching</td>
<td>$529,142</td>
</tr>
<tr>
<td>Public Employees Retirement Matching</td>
<td>$750,277</td>
</tr>
<tr>
<td>Public Employees Health Insurance</td>
<td>$774,927</td>
</tr>
<tr>
<td>Employees Excess Liability Fund</td>
<td>$571,799</td>
</tr>
<tr>
<td>Personal Services</td>
<td>$120,494</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$369,586</td>
</tr>
<tr>
<td>Equipment</td>
<td>$44,000</td>
</tr>
<tr>
<td>Social Security Matching</td>
<td>$8,353</td>
</tr>
<tr>
<td>Public Employees Retirement Matching</td>
<td>$11,336</td>
</tr>
<tr>
<td>Public Employees Health</td>
<td>$18,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$16,130,278</strong></td>
</tr>
</tbody>
</table>

There is hereby authorized to be paid out of the above appropriation for “Current Expenses” the amount necessary for the premiums on bonds given by the State Treasurer as Bond Custodian for the protection of the Workers’ Compensation Fund. This sum shall be transferred to the Board of Insurance.

116—West Virginia Alcohol Beverage Control Commissioner

Acct. No. 9270

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$9,133,956</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$6,008,920</td>
</tr>
</tbody>
</table>
Ch. 22] APPROPRIATIONS 135

3 Repairs and Alterations —— 72,800
4 Equipment ———— 109,000
5 Social Security Matching —— 633,250
6 Public Employees Retirement
7 Matching ———— 856,351
8 Public Employees Health
9 Insurance ———— 1,317,507
10 Total ———— $ 18,131,784

The total amounts of this appropriation shall be paid from Special Revenue Fund out of liquor revenues.

The above appropriations include the salary of the commissioner, salaries of store personnel, store inspectors, store operating expenses and equipment; and salaries, expenses and equipment of administration offices.

There is hereby appropriated from liquor revenues, in addition to the appropriation, the necessary amount for the purchase of liquor as provided by law.

117—West Virginia University—Medical Center

Acct. No. 9280

TO BE PAID FROM MEDICAL SCHOOL FUND

1 Educational Programs $ — $ — $ 39,128,205
   Personal Services —— 23,208,205
   Current Expenses —— 10,784,000
   Repairs and
   Alterations —— 1,324,000
   Equipment —— 1,422,000
   Family Practice
   Residency Support —— 890,000
   Community Hospital
   Residency Support —— 1,000,000
   Capital Outlay —— 500,000

2 Total $ — — $ 39,128,205

Any unexpended balances remaining in the appropriations for "Capital Outlay" and the 1983-84 appropriation for the West Virginia University Medical Center at the close of the fiscal year 1983-84 are hereby reappropriated for expenditure during fiscal year 1984-85.
Any balances so reappropriated may be transferred and credited to the 1984-85 accounts.

118—Board of Regents—West Virginia University
Medical Center Revenue Fund

Acct. No. 9285

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hospital Operations</td>
<td>$65,934,000</td>
</tr>
<tr>
<td>Capital Outlay</td>
<td>3,200,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$69,134,000</strong></td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for “Board of Regents—West Virginia University Medical Center Revenue Fund” at the close of the fiscal year 1983-84 is hereby reappropriated for expenditure during the fiscal year 1984-85.

Any balances so reappropriated may be transferred and credited to the 1984-85 accounts: Provided, That in the event the Board of Regents is divested of the management and operational responsibilities for university hospital, the spending authority in the amount of $69,134,000 for university hospital operations and capital outlay shall be rescinded.

Sec. 5.—Awards for claims against the state.—There are hereby appropriated, for the remainder of the fiscal year 1983-84 and to remain in effect until June 30, 1985, from the funds as designated, in the amounts as specified, and for the claimants as named in Enrolled House Bill 1407, Acts, Legislature, Regular Session, 1984—crime victim reparation fund of $150,395.81 for payment of claims against the state.

There are hereby appropriated for the fiscal year 1984-85, from the funds as designated, in the amounts as specified, and for the claimants as named in Enrolled House Bills 1373 and 1406, Acts, Legislature, Regular Session, 1984—total general revenue funds of $862,110.16, state road funds of $614,259.55 and special revenue funds of $76,937.44 for payment of claims against the state.
Sec. 6.—Reappropriations.—Any unexpended balances under Title II, Section 1, remaining at the close of fiscal year 1983-84 in the following accounts are hereby reappropriated for expenditure during fiscal year 1984-85: Acct. No. 4201-18 (73) and Acct. No. 5661-13 (74). Further, the unexpended balances of such Acct. No. 4201-18 (73), as originally appropriated in Sec. 4, Item VI of the Budget Act for 1972-73 and brought forward, are hereby redesignated as to purpose and shall be expendable in fiscal year 1984-85 for “Reimbursement to Community Mental Health and Mental Retardation Centers” by the State Health Department.

Sec. 7. Appropriations from surplus revenue.—The following items are hereby appropriated from the state fund, general revenue, and are to be available for expenditure during the fiscal year 1984-85 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 appropriations made by this section shall be payable only from the surplus accrued as of June 30, 1984.

In the event that the surplus revenues as of June 30, 1984 are not sufficient to meet all of the appropriations made by this section, then the appropriations shall be made in the following order of priority and shall be available, only to the extent of the total actual surplus accrued as of June 30, 1984.

119—State Department of Education—State Aid to Schools

Acct. No. 2950

1 Salary Equalization—Total ...........$ — $ 29,000,000

120—Water Development Authority

Acct. No. 5670

1 Capital Outlay—Sewer ...............$ — $ 8,200,000
2 (To match federal funds)

Sec. 8.—Supplemental and deficiency appropriations from revenue sharing trust fund.—The following items
3 are hereby appropriated from the Revenue Sharing Trust
4 Fund to be available for expenditure from date of passage.

121—Revenue Sharing Trust Fund—Department of Natural
Resources
Acct. No. 9725
1 Capital Outlay—Cacapon State Park—Total...$ 100,000

122—Revenue Sharing Trust Fund—West Virginia Public
Legal Services Council
Acct. No. 9791
1 Appointed Counsel—Total $190,657

Sec. 9.—Reappropriations—revenue sharing trust
fund.—Any unexpended balances to the appropriations
made by and under Sec. 8 of the 1973 Budget Act and Sup-
plementary Acts to Chapter 10, Acts of the Legislature,
Regular Session, 1973, under Sec. 5 of the 1974 Budget
Act, and Supplementary Acts to Chapter Two, Acts of the
Legislature, Regular Session, 1975, under Sec. 7, Acts of
the Legislature, Regular Session, 1976, and Supplementary
Acts of Chapter 7, Acts of the Legislature, Regular Ses-
10 sion, 1976, and as amended in Sec. 7 of the 1977 Budget
11 Act, 1978 Budget Act, 1979 Budget Act, 1980 Budget Act,
13 Act, except for Acct. No. 9721-10 item “Partnership
14 Grants—Wyoming County Multipurpose Facility”—
15 $1,219,300—is hereby redesignated, as to purpose, for
16 “Board of Regents—West Virginia Southern Community
17 College Center, Pineville, West Virginia” and except for
the appropriation under Chapter 7, Acts of the Legislature,
19 Regular Session, 1976, and Sec. 7 thereof, for Acct. No.
20 9710 and item “Weirton Area Mental Health Area—
21 $1,600,000” which item is hereby reduced by $40,000 and
22 with such $40,000 being designated in new item, as to
23 purpose, for “Brooke County Opportunity Center con-
24 struction project”, at the close of the fiscal year 1983-84
25 are hereby reappropriated for expenditure and as newly
26 designated during the fiscal year 1984-85.
Sec. 10.—Appropriations from federal block grants.—
The following items are hereby appropriated from Federal Block Grants and to be available for expenditure during the fiscal year 1984-85.

123—Office of Economic and Community Development—
Community Development
Acct. No. 8029

<table>
<thead>
<tr>
<th>TO BE PAID FROM FEDERAL FUNDS</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
</tr>
<tr>
<td>2 Current Expenses</td>
</tr>
<tr>
<td>3 Equipment</td>
</tr>
<tr>
<td>4 To Local Entities</td>
</tr>
<tr>
<td>5 Total</td>
</tr>
</tbody>
</table>

124—Office of Economic and Community Development—
Community Service
Acct. No. 8031

<table>
<thead>
<tr>
<th>TO BE PAID FROM FEDERAL FUNDS</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
</tr>
<tr>
<td>2 Current Expenses</td>
</tr>
<tr>
<td>3 Equipment</td>
</tr>
<tr>
<td>4 To Local Entities</td>
</tr>
<tr>
<td>5 Total</td>
</tr>
</tbody>
</table>

125—State Department of Education—Education Grant
Acct. No. 8242

<table>
<thead>
<tr>
<th>TO BE PAID FROM FEDERAL FUNDS</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 Total</td>
</tr>
</tbody>
</table>
126—State Health Department—Primary Care
Acct. No. 8501
TO BE PAID FROM FEDERAL FUNDS

1  To Local Entities—Total .................................. $  5,500,000

127—State Health Department—Maternal and Child Health
Acct. No. 8502
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>$ 506,277</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$ 6,562,725</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>$ 33,720</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td>$ 7,102,722</td>
</tr>
</tbody>
</table>

128—State Health Department—Alcohol, Drug Abuse and Mental Health
Acct. No. 8503
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>$ 365,935</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$ 5,029,940</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>$ 29,500</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td>$ 5,425,375</td>
</tr>
</tbody>
</table>

129—State Health Department—Preventive Health
Acct. No. 8506
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>$ 297,412</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$ 815,758</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>$ 9,565</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td>$ 1,122,735</td>
</tr>
</tbody>
</table>
130—Department of Human Services—Energy Assistance
Acct. No. 9147

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>$ 2,010,426</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>14,666,301</td>
</tr>
<tr>
<td>3 Transfer to State Spending Units</td>
<td>1,852,969</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$18,529,696</strong></td>
</tr>
</tbody>
</table>

131—Department of Human Services—Social Service
Acct. No. 9161

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>$ 8,458,060</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>15,338,351</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$ 23,796,411</strong></td>
</tr>
</tbody>
</table>

Sec. 11.—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-five, 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. 12.—Special revenue appropriations.—There is hereby appropriated for expenditure during the fiscal year one thousand nine hundred eighty-five, 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. 13.—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-five, 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-five, 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. 14.—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. 15.—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 re-
unding 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. 16.—Sinking fund deficiencies.—There is hereby
appropriated to the Governor a sufficient amount to meet
any deficiencies that may arise in the mortgage finance
bond insurance fund of the West Virginia Housing Devel-
opment Fund which is under the supervision and control
of the state municipal bond commission as provided by
Chapter 31, Article 18, Section 20b of the Code of West Vir-
ginia, one thousand nine hundred thirty-one, as amended,
or in the funds of the state municipal bond commission be-
cause of the failure of any state agency for either general
obligations or revenue bonds or any local taxing district
for general obligations bonds to remit funds necessary for
the payment of interest and sinking fund requirements.
The Governor is authorized to transfer from time to time
such amounts to the state 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
Development Fund or from any state agency or local tax-
ing district for which the Governor advanced funds, with
interest at the rate carried by the bonds for the security
or payment of which the advance was made.

Sec. 17.—Appropriations to pay costs of publication of
delinquent corporations.—There is hereby appropriated
out of state fund, General Revenue, out of funds not
otherwise appropriated, to be paid upon requisition of the
Auditor and/or the Governor, as the case may be, a sum
sufficient to pay the cost of publication of delinquent cor-
Sec. 18.—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. 19.—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. 20.—General school fund.—The balance of the proceeds of the general school fund remaining after the payment of the appropriations made by this act is 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 appropriations 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, it is the intent of this act that reappropriation shall be to the succeeding or later spending unit created unless otherwise indicated.
Sec. 2.—Constitutionality.—If any part of this act is declared unconstitutional by a court of competent jurisdiction, its decision shall not affect any portion of this act which remains, but the remaining portion shall be in full force and effect as if the portion declared unconstitutional had never been a part of the act.

CHAPTER 23

(Com. Sub. for H. B. 1675—By Delegate Gilliam)

[Passed March 9, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article one, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section two, article three of said chapter; to amend and reenact sections eight, twenty, twenty-five and twenty-six, article four of said chapter; to amend and reenact section twelve, article eight of said chapter; to further amend said article eight by adding thereto a new section, designated section twelve-c; to amend and reenact sections one and four, article eight-a of said chapter; to amend article eighteen, chapter forty-seven by adding thereto a new section, designated section four-a, all relating to general definitions; defining a “bankers’ bank”; redefining “branch bank”; relating to the general powers and duties of the West Virginia board of banking and financial institutions; authorizing said board to approve or disapprove applications to incorporate and organize bankers’ banks; further authorizing said board to exempt a bankers’ bank from the provisions of chapter thirty-one-a; relating to qualifying shares of the directors of state-chartered banks; relating to stockholder examining committees; relating to limitations on dividend payments; exemptions from such limitations if approved by the commissioner of banking; relating to limitations on a state-chartered banking institution’s investment in a bankers’ bank; relating to the establishment of branch banks; phasing in removal of limitations and restrictions
on branch banking; removing provisions that limit any bank to ten percent of the total deposits of all banking institutions in this state; relating to loan origination offices; said offices being permissible if loans approved and made at bank's principal office or branch bank; relating to elimination of certain restrictions on bank holding companies, including provision that limits any bank holding company to ten percent of the total deposits of all banking institutions in this state and the provision that prohibits a bank holding company from acquiring a savings and loan association or other depository institution; relating to statement of purpose of Legislature with regard to limitation of acquisition of twenty percent of total deposits in state.

Be it enacted by the Legislature of West Virginia:

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

Chapter

31A. Banks and Banking.

47. Regulation of Trade.

CHAPTER 31A. BANKS AND BANKING.

Article

3. Board of Banking and Financial Institutions.
4. Banking Institutions and Service Generally.
8. Hearings; Administrative Procedures; Judicial Review; Unlawful Acts; Penalties.
8A. Acquisition of Bank Shares.
ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.


1 As used in this chapter, unless the context in which used plainly requires a different meaning:

(a) The word "action," in the sense of a judicial proceeding, means any proceeding in a court of competent jurisdiction in which rights are adjudicated and determined and shall embrace, and include recoupment, counterclaim, setoff and other related, similar and summary proceedings;

(b) The words "bank" and "banking institution" mean a corporation heretofore or hereafter chartered to conduct a banking business under the laws of West Virginia or an association heretofore or hereafter authorized to conduct a banking business in West Virginia under the laws of the United States and having its principal office in this state and shall embrace and include a trust company or an institution combining banking and trust company facilities, functions and services so chartered or authorized to conduct such business in this state, and shall include industrial banks authorized by article seven, chapter thirty-one of this code, subject to the limitations therein imposed on such industrial banks and further subject to the limitations imposed thereon in this article;

(c) The words "bankers' bank" mean a banking institution, insured by the Federal Deposit Insurance Corporation, the stock of which is owned exclusively by banks and other depository institutions, and such banking institution and all subsidiaries thereof are engaged exclusively in providing services for banks and other depository institutions and their officers, directors and employees;

(d) The term "banking business" means the functions, services and activities contained, detailed and embraced in sections thirteen and fourteen, article four of this chapter, and as elsewhere defined by law;

(e) The word "board" means the West Virginia board of banking and financial institutions;
(f) The words "branch bank" mean an office or other place at which a bank performs any or all banking business. For purposes of this chapter, a branch bank does not include:

(1) A bank's principal place of business;

(2) Any customer bank communication terminals installed and operated pursuant to section twelve-b, article eight of this chapter; and

(3) Any loan origination office authorized by section twelve-c, article eight of this chapter:

(g) The words "commissioner" or "commissioner of banking" mean the commissioner of banking of West Virginia;

(h) The word "community" means a city, town or other incorporated area, or, where not so incorporated, a trading area;

(i) The word "department" means the department of banking of West Virginia;

(j) The words "deputy commissioner" or "deputy commissioner of banking" mean the deputy commissioner of banking of West Virginia;

(k) The word "fiduciary" means any trustee, agent, executor, administrator, curator, committee, guardian or conservator, special commissioner, receiver, trustee in bankruptcy, assignee for creditors, or any holder of a similar position of trust or responsibility;

(l) The words "financial institutions" mean banks, building and loan associations, industrial banks, industrial loan companies, supervised lenders, credit unions and all other similar institutions, whether persons, firms or corporations, which are by law under the jurisdiction and supervision of the commissioner of banking;

(m) The word "officer" when referring to any financial institution, means any person designated as such in the by-laws and includes, whether or not so designated, any executive officer, the chairman of the board of directors, the chairman of the executive committee, and any trust officer,
assistant vice president, assistant treasurer, assistant secretary, assistant trust officer, assistant cashier, assistant comptroller, or any other person who performs the duties appropriate to those offices, and the terms "executive officer" as herein used, when referring to banking institutions, mean an officer of a bank whose duties involve regular, active and substantial participation in the daily operations of such institution and who, by virtue of his position, has both a voice in the formulation of the policy of the bank and responsibility for implementation of the policy, such responsibility of and functions performed by the individual, and not his title or office, being determinative of whether he is an "executive officer";

(n) The words "person" or "persons" mean 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;

(o) The words "safe-deposit box" mean a safe-deposit box, vault or other safe-deposit receptacle maintained by a lessor bank, and the rules relating thereto apply to property or documents kept therein in the bank's vault under the joint control of lessor and lessee;

(p) The words "state bank" or "state banking institution" mean a bank chartered under the laws of West Virginia, as distinguished from a national banking association; and

(q) The words "trust business" mean the functions, services and activities contained, detailed and embraced in section fourteen, article four of this chapter, and as elsewhere defined by law and as may be included within the meaning of the term "banking business."

ARTICLE 3. BOARD OF BANKING AND FINANCIAL INSTITUTIONS.

§31A-3-2. General powers and duties.

(a) In addition to other powers conferred by this chapter, the board shall have the power to:
3 (1) Regulate its own procedure and practice;
4 (2) Promulgate reasonable rules and regulations to implement any provision of this article, such rules and regulations to be promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code;
5 (3) Advise the commissioner in all matters within his jurisdiction;
6 (4) Study the organization, programs and services of financial institutions and the laws relating thereto in this state and in other jurisdictions, and to report and recommend to the governor and the Legislature all such changes and amendments in laws, policies and procedures relating thereto as may be by it deemed proper; and
7 (5) Grant permission and authority to a financial institution:
8 (A) To participate in a public agency hereafter created under the laws of this state or of the United States, the purpose of which is to afford advantages or safeguards to financial institutions or to depositors therein, and to comply with all lawful requirements and conditions imposed upon such participants;
9 (B) To engage in any financial institution activity, services, procedures and practices in which financial institutions of the same type subject to the jurisdiction of the federal government may hereafter be authorized by federal laws, rules or regulations to engage, notwithstanding any contrary provision of this code; and
10 (C) To pay interest on demand deposits of the United States or any agency thereof, if the payment of such interest shall be permitted under any applicable federal law, rule or regulation.
11 Any permission and authority granted by the board pursuant to this subdivision (5) shall cease and terminate upon the adjournment of the next regular session of the Legislature, unless the Legislature shall at such session enact legislation authorizing the financial institution participation, activity,
services and procedures or payment of interest with respect to
which such permission and authority were granted, in which
event such permission and authority shall continue in effect
until the effective date of such legislation.

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

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

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

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

(4) Approve or disapprove applications to incorporate and
organize state-chartered bankers' banks in accordance with the
provisions of sections six and seven, article four of this chap-

(5) Exempt a bankers' bank from any provision of this
chapter if the board finds that such provision is inconsistent
with the purpose for which a bankers' bank is incorporated
and organized and that the welfare of the public or any bank-
ing institution or other financial institution would not be
jeopardized thereby;

(6) Revoke the certificate of authority, permit, certifi-
cate or license of any state banking institution to engage in
business in this state if such institution shall fail or refuse to
comply with any order of the commissioner entered pursuant
(7) Suspend or remove a director, officer or employee of any financial institution who is or becomes ineligible to hold such position under any provision of law or rule and regulation or order, or who willfully disregards or fails to comply with any order of the board or commissioner made and entered in accordance with the provisions of this chapter or who is dishonest or grossly incompetent in the conduct of financial institution business;

(8) To receive from state banking institutions applications to establish branch banks by the purchase of the business and assets and assumption of the liabilities of, or merger or consolidation with, another banking institution, or by the construction, lease or acquisition of branch bank facilities in an unbanked area; examine and investigate such applications, to hold hearings thereon, and to approve or disapprove such applications, all in accordance with section twelve, article eight of this chapter;

(9) Approve or disapprove the application of any state bank to purchase the business and assets and assume the liabilities of, or merge or consolidate with, another state banking institution in accordance with the provisions of section seven, article seven of this chapter;

(10) Approve or disapprove the application of any state bank to purchase the business and assets and assume the liabilities of a national banking association, or merge or consolidate with a national banking association to form a resulting state bank in accordance with the provisions of section seven, article seven of this chapter;

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

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

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-8. Directors, their qualifications and oaths.
§31A-4-20. Stockholders' annual meeting; financial statement; appointment, duties and report of examining committee; employment of accountants; examiners may require presence of executive or examining committee.
§31A-4-25. Dividends; limitations; penal provisions.
§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.

§31A-4-8. Directors, their qualifications and oaths.

For every state-chartered banking institution there shall be a board of not less than five nor more than twenty-five directors, who shall meet at least once each month and who shall have power to do, or cause to be done, all things that are proper to be done by the banking institution; and a majority of whom shall at all times be residents of this state. Every such director shall own capital stock in the banking institution of which he is a director. Said director must own
shares in the aggregate par value of not less than five hundred dollars, an exception being that if a bank holding company has control of that banking institution, shares owned by a director of the subsidiary bank in the controlling bank holding company will satisfy the requirements of this section: Provided, That the director owns, in his own right, common or preferred stock of the controlling bank holding company in an amount equal to or greater than any one of the following: (i) Aggregate par value of five hundred dollars; (ii) aggregate shareholders' equity of five hundred dollars; or (iii) aggregate fair market value of five hundred dollars. Determination of the fair market value of the controlling bank holding company's stock shall be based upon the value of that stock on the date it was purchased or on the date the person became a director, whichever is greater. If a bank holding company controls more than one bank subsidiary, a director owning at least five hundred dollars of the shares of a bank holding company is qualified, if otherwise permitted by applicable law, to serve as a director of every bank subsidiary controlled by that bank holding company. Before entering on the discharge of his duties as such director, he shall take an oath that he will, so far as the duty devolves upon him, diligently and honestly administer the affairs of the banking institution, and that he will not knowingly or willingly permit to be violated any of the provisions of the laws of this state relative to banking and banking institutions, and that the stock standing in his name upon the books of the banking institution is not hypothecated or pledged in any way as security for loans obtained from or debts owing to the banking institution of which he is a director, and that the number of shares necessary to qualify a stockholder to be a director are not now, and shall not at any time while he serves as a director, be pledged or hypothecated in any manner for any debt or obligation of the director, or any other person; which oath subscribed by him and certified by the officer before whom it was taken shall be filed and preserved in the office of the commissioner of banking. Should a director fail to subscribe to the oath herein provided within sixty days after notice of his election, or at any time after qualifying as such, sell or dispose of, or
49 in any manner hypothecate or pledge as security for a debt
50 or obligation, such qualifying shares, or any number
51 thereof, necessary for his qualification, thereupon the remain-
52 ing directors shall elect another director in his stead. No
53 person shall serve as a director of any banking institution who
54 has evidenced personal dishonesty and unfitness to serve as
55 such director by his conduct or practice with another financial
56 institution which resulted in a substantial financial loss or
57 damage thereto or who has been convicted of any crime in-
58 volving personal dishonesty.

§31A-4-20. Stockholders' annual meeting; financial statement; ap-
1 pointment, duties and report of examining com-
2 mittee; employment of accountants; examiners may
3 require presence of executive or examining com-
4 mittee.

The stockholders of each state banking institution shall
1 meet annually and at such annual meeting it shall be the
2 duty of the cashier or other executive officer of such bank-
3 ing institution to prepare and submit to the stockholders a
4 clear and concise statement of the financial condition of
5 the corporation as of the close of business on the last day of
6 the month next preceding. At such meeting, the stockholders
7 present in person or by proxy shall elect an examining com-
8 mittee composed of not less than three nor more than five
9 persons, each of whom shall be a stockholder either in such
10 banking institution, or, if such banking institution is con-
11 trolled by a bank holding company, in that bank holding
12 company. At such time or times as it may be directed to do
13 so by the written request of the board of directors or the
14 commissioner of banking, such committee shall immediately
15 proceed to examine the condition of the bank and, upon
16 completion of such examination, shall file its report in writ-
17 ing with the board of directors. Such report shall set forth
18 in detail all items included in the assets of the bank which
19 the committee has reason to believe are not of the value
20 at which they appear on the books and records of the bank,
21 and shall give the value of each of such items according
22 to its judgment. The board of directors shall cause such
23 report to be retained as a part of the records of the bank
and shall transmit a duly authenticated copy thereof to the commissioner of banking. With the consent and approval of the stockholders, such committee may employ registered or certified public accountants to make such examination or make the same in conjunction with any official examination made by any supervisory authority. Any official examiner of the department of banking may require the presence of the examining committee or the executive committee during his examination.

§31A-4-25. Dividends; limitations; penal provisions.

(a) The directors of any state-chartered banking institution may quarterly, semiannually or annually, declare a dividend of so much of the net profits of that banking institution as they shall judge expedient, except that until the surplus fund of such banking institution shall equal its common stock, no dividends shall be declared unless there has been carried to the surplus fund not less than one-tenth part of that banking institution's net profits of the preceding half year in the case of quarterly or semiannual dividends, or not less than one-tenth part of its net profits of the preceding two consecutive half-year periods in the case of annual dividends;

(b) The prior approval of the commissioner of banking shall be required if the total of all dividends declared by such banking institution in any calendar year shall exceed the total of its net profits of that year combined with its retained net profits of the preceding two years;

(c) For the purpose of this section the term "net profits" shall mean the remainder of all earnings from current operations plus actual recoveries on loans and investments and other assets, after deducting from the total thereof, all current operation expenses, actual losses and all federal and state taxes;

(d) Any director voting to declare any dividend, in violation of the provisions of this section, shall be personally liable to the creditors of such banking institution for any loss occasioned thereby, and shall be guilty of a misdemeanor.
§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 unconditional 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 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, shall not be subject to any limitation based on capital and surplus.

(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 (12USC §§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 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), 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 (b), section 22, 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 installments of principal and interest on such obligations; or

(iii) By a pledge of both 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 obligations involved, moneys in an amount which, together with any other moneys irrevocably committed under the annual contributions 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 obligations, 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; and
(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 subsection, a state-chartered banking institution may purchase 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 section 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 fifteen percent of the unimpaired capital and unimpaired surplus of that state-chartered banking institution.

(7) Notwithstanding any other provision of this subsection, a state-chartered banking institution may purchase for its own account shares of stock of a bankers' bank or a bank
holding company which owns or controls such bankers' bank, but in no event shall the total amount of such stock held by such state-chartered banking institution exceed at any time fifteen percent of the unimpaired capital and unimpaired surplus of that state-chartered banking institution and in no event shall the purchase of such stock result in that state-chartered banking institution acquiring more than twenty percent of any class of voting securities of such bankers' bank or of the bank holding company which owns or control such bankers' bank.

(8) 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 or director 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 prior 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.

**ARTICLE 8. HEARINGS; ADMINISTRATIVE PROCEDURES; JUDICIAL REVIEW; UNLAWFUL ACTS; PENALTIES.**

§31A-8-12. Procedure for authorization of branch banks; penalties for violation of section.

§31A-8-12c. Loan origination offices permitted.

**§31A-8-12. Procedure for authorization of branch banks; penalties for violation of section.**

(a) No banking institution shall 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, at a customer bank communication terminal permitted by section twelve-b of this article, or at any loan origination office permitted by section twelve-c of this article.

Any banking institution which on January one, one thousand nine hundred eighty-four, was authorized to operate an off-premises walk-in or drive-in facility, pursuant to the law then in effect, may, as of the effective date of this act, operate such facility as a branch bank and it shall not be necessary, for the continued operation of such branch bank, to obtain additional approvals, notwithstanding the provisions of subsection (d) of this section and subdivision (6), subsection (b), section two, article three of this chapter.

(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 banking institution may establish branch banks either by:

(1) The construction, lease or acquisition of branch bank facilities as follows:
(A) After the effective date of this act, within the county in which that banking institution's principal office is located or within the county in which that banking institution had prior to January first, one thousand nine hundred eighty-four, established a branch bank, pursuant to subdivision (2) of this subsection;

(B) After January first, one thousand nine hundred eighty-seven, within the county in which that banking institution's principal office is located or within any county contiguous to the county in which that banking institution's principal office is located; and

(C) After January first, one thousand nine hundred ninety-one, within any county in this state; or

(2) The purchase of the business and assets and assumption of the liabilities of, or merger or consolidation with, another banking institution.

(d) 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 (g) of this section, the board may approve or disapprove the application of any state banking institution to establish a branch bank.

(e) The principal office of a banking institution as of the effective date of this act 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) 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.

(g) 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, with-
in 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.

(h) The commissioner shall prescribe the form of the application for a branch bank and shall collect an examination 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, 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 investigation 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.

(i) Upon completion of the examination and investigation with respect to such application, the board shall, if a hearing be required pursuant to subsection (j) of this section, forthwith 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; and
(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.

(j) 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 (g) 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;

(4) The applicant state-chartered 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;

(5) The establishment of the proposed branch bank would not result in a monopoly, nor be in furtherance of any combination or conspiracy to monopolize the business of banking in any section of this state; and

(6) The establishment of the proposed branch bank would not have the effect in any section of the state of substantially lessening competition, nor tend to create a monopoly or in any other manner be in restraint of trade, unless the anti-
competitive effects of the establishment of that proposed
branch bank are clearly outweighed in the public interest
by the probable effect of the establishment of the proposed
branch bank in meeting the convenience and needs of the
community to be served by that proposed branch bank.

(k) 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 af-
fected by a final judgment of a circuit court following judicial
review as provided in the foregoing sentence may seek re-
view thereof by appeal to the supreme court of appeals in
the manner provided in article six, chapter twenty-nine-a of
this code.

(l) Pursuant to the resolution of its board of directors
and with the prior written 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.

(m) 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.

§31A-8-12c. Loan origination offices permitted.

1 Origination of loans by employees or agents of a banking
institute at offices other than that banking institution’s
principal office or branch bank is permitted: Provided, That
any such loans originating at said office are approved and
made at the banking institution’s principal place of business
or branch bank.

ARTICLE 8A. ACQUISITION OF BANK SHARES.

§31A-8A-1. Legislative findings and purpose.
§31A-8A-4. Acquisition of bank shares; when prior notification of board
necessary; exemptions.

§31A-8A-1. Legislative findings and purpose.

1 After a review of the structure of banking organizations
in the state of West Virginia, and after full consideration of
the complex issues involved, the Legislature hereby finds
and determines that:

(a) Well managed and financially sound banking institu-
tions are essential to the financial well-being of the citizens,
and the promotion of the future economic and industrial
growth and development of this state;

(b) The formation of bank holding companies will strength-
en and supplement traditional banking services and facilitate
the development of the type of banking institutions that are
necessary for the economic and industrial growth and develop-
ment of this state;

(c) It is in the best interests of this state and its citizens
for the board to have the power and authority to disapprove
the acquisition of a bank by a bank holding company when
the board determines that such acquisition would result in a
monopoly, substantially lessen competition, or be contrary
to the best interests of the shareholders or customers of the
bank involved; and

(d) The deposits of the citizens of this state are a sub-
stantial and valuable resource which should serve the eco-


laws or regulations pursuant to Title 12, United States Code, §§1841-1850 (being the act of Congress entitled the Bank Holding Company Act of 1956, as amended), and the payment of an examination and investigation fee to the board of two thousand five hundred dollars:

(1) For any action to be taken that causes any company to become a bank holding company;

(2) For any action to be taken that causes any bank to become a subsidiary of a bank holding company;

(3) For any bank holding company to acquire direct or indirect ownership or control of any shares of any bank if, after such acquisition, such company will directly or indirectly own or control more than five percent of the voting shares of such bank;

(4) For any bank holding company or subsidiary thereof, other than a bank, to acquire all or substantially all of the assets of a bank;

(5) For any bank holding company to merge or consolidate with any other bank holding company; or

(6) For any bank holding company to take any action which would violate the Federal Bank Holding Company Act.

(b) The provisions of subsection (a) of this section shall not apply to:

(1) Shares acquired by a bank:

(A) In good faith in a fiduciary capacity, except where shares are held under a trust that constitutes a company as defined in section two of this article and except as provided in subdivisions (2) and (3), subsection (b), section three of this article; or

(B) In the regular course of securing or collecting a debt previously contracted in good faith, but any shares acquired after the effective date of this act in securing or collecting any such previously contracted debt shall be disposed of within a period of five years from the date on which they were acquired; or
(2) Additional shares acquired by a bank holding company in a bank in which such bank holding company owned or controlled a majority of the voting shares prior to such acquisition. For the purpose of the preceding sentence, bank shares acquired after the effective date of this act shall not be deemed to have been acquired in good faith in a fiduciary capacity if the acquiring bank or company has sole discretionary authority to exercise voting rights with respect thereto, but in such instances acquisitions may be made without prior notice to the board if the board, upon notice and submission of information in form and content as it shall approve, filed within ninety days after the shares are acquired, approved retention or, if retention is disapproved, the acquiring bank disposes of the shares or its sole discretionary voting rights within five years after issuance of the order of disapproval.

(c) If, within ninety days from the date of submission pursuant to subsection (a) of this section, after notice and a hearing pursuant to the provisions of section three, article three of this chapter, the board enters an order disapproving the proposed action described in subdivision (1), (2), (3), (4), (5) or (6), subsection (a) of this section, it shall be unlawful to take such action. The board shall disapprove the proposed action described in subdivision (1), (2), (3), (4), (5) or (6), subsection (a) of this section on the following grounds:

(1) The action would result in a monopoly, or would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any section of this state;

(2) The action would have the effect in any section of the state of substantially lessening competition, or would tend to create a monopoly or in any other manner would be in restraint of trade, unless the anticompetitive effects of the proposed action are clearly outweighed in the public interest by the probable effect of the action in meeting the convenience and needs of the community to be served; or

(3) Taking into consideration the financial and managerial
resources and further prospects of the company or companies and the banks concerned, the action would be contrary to the best interests of the shareholders or customers of the bank whose shares are affected by such action.

(d) Notwithstanding any other provisions of this section, no proposed action described in subdivision (1), (2), (3), (4), (5) or (6), subsection (a) of this section, shall be approved if such approval will permit any bank holding company or any subsidiary thereof to acquire, directly or indirectly, five percent or more of the interest in or assets of a bank or bank holding company located in this state if the operations of any banking subsidiary of such bank holding company are located outside this state.

(e) Nothing contained in this section shall affect the obligation of any person or company to comply with the provisions of any order of any court or the commissioner entered prior to the effective date of this act.

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 18. ANTITRUST ACT; RESTRAINT OF TRADE.


After a review of the structure of depository institutions in the state of West Virginia, the Legislature hereby determines that:

(a) It is in the best interest of this state and its citizens to foster and encourage healthy competition among its domestic depository institutions;

(b) Excessive concentration or control of the deposit resources of this state is antithetical to fostering a competitive environment; and

(c) Therefore, to control more than twenty percent of the deposits of all the depository institutions (the term "depository institutions" shall include, but is not limited to, state-chartered banking institutions, national banking associations, federal savings and loan associations, bank holding companies, savings and loan holding companies, federal savings banks, state-chartered industrial loan companies, state-chartered
AN ACT to amend and reenact section four, article fifteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the equal right of blind and disabled persons to use public facilities; trained dogs permitted in public facilities.

Be it enacted by the Legislature of West Virginia:

That section four, article fifteen, 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 15. WHITE CANE LAW.

§5-15-4. Equal right to use public facilities.

(a) Blind and disabled persons shall have the same right as persons with normal sight to the full and free use of the highways, roads, streets, sidewalks, walkways, public buildings, public facilities and other public places.

(b) Blind and disabled persons are entitled to full and equal accommodations, advantages, facilities and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motor buses, streetcars, boats or any other public conveyances or modes of transportation, hotels, lodging places, restaurants, other places of public accommodation, amusement or resort, and other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons.
(c) Every blind person, every deaf person and every person who is physically disabled because of any neurological, muscular or skeletal disorder that causes weakness or inability to perform any physical function shall have the right to be accompanied by a guide or support dog, wearing a harness, especially trained for the purpose, which serves as a guide, leader, listener or support in any of the places, accommodations or conveyances specified in subsection (b) of this section without being required to pay an extra charge for the admission of such guide or support dog, but the blind, deaf or disabled person shall, upon request, present for inspection credentials issued by an accredited school for training guide or support dogs. The blind, deaf or disabled person shall be liable for any damage done by such guide or support dog to the premises or facilities or to persons using such premises or facilities. Such dog shall not occupy a seat in any public conveyance and shall be upon a leash while using the facilities of a common carrier.

CHAPTER 25
(S. B. 744—Originating in the Senate Committee on Finance)

[Passed March 10, 1984; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two and four, article two, chapter thirteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the issuance of refunding bonds by counties, municipal corporations, school districts and independent school districts; providing for the refunding of outstanding bonds in advance of the maturity or redemption thereof and for terms and conditions under which such bonds may be issued in an amount, or bearing interest at a rate, which exceeds the amount or interest rate of the bonds being refunded.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. REFUNDING BONDS.

§13-2-1. What political divisions may issue refunding bonds; when issued.

§13-2-2. Terms of refunding bonds; time, place and amount of payments.

§13-2-4. Disposition of bonds; cancellation of original bonds.

§13-2-1. What political divisions may issue refunding bonds; when issued.

Any county, by and through its county commission, either for and on behalf of the county or for and on behalf of any magisterial district or group of magisterial districts therein; any municipal corporation, by and through its council or other governing body in lieu thereof; or any school district, or any independent school district, by and through its board of education or other fiscal body in lieu thereof, may, in the manner and subject to the limitations and conditions contained in this article, issue and sell its bonds for the purpose of refunding the bonds of such political division which have become or are becoming due and payable and for the discharge of which there are or will be when the bonds mature no funds or insufficient funds available; or when, in the opinion of the governing body of the political division obligated to the payment of such bonds, the rate of levy necessary to provide funds for their discharge will impose excessive taxes upon the taxpayers of such political division; or for the purpose of providing for the payment of outstanding bonds in advance of the maturity or redemption thereof through the making of a deposit as provided in section four of this article; or for the purpose of rendering outstanding bonds not due when such outstanding bonds are to be presented for payment before maturity by the exercise of option provisions or by agreement with the holders thereof. Such refunding bonds may be issued bearing the same or a higher or lesser rate of interest than the bonds to be refunded. Except to the
extent that additional taxes for such purpose have been
approved by the voters and the levy of such additional
taxes provided for in the manner stipulated in sections
seven through fourteen of article one of this chapter,
no such refunding bonds shall be issued bearing a higher
rate of interest than the bonds being refunded or shall
be issued in a principal amount exceeding the principal
amount of the bonds to be refunded unless the amount
of debt service payable on such refunding bonds in each
year is equal to or less than the amount of taxes expected
to be available therefor as shall be certified by the chair-
man of the West Virginia municipal bond commission
prior to the issuance of such refunding bonds. The
amount of taxes expected to be available in each year
for purposes of this section shall be based upon the rates
of levy stipulated in the order directing the election at
which the issuance of the bonds being refunded was
approved by the voters and upon the most recent
assessed valuation of the affected property prior to such
election. In the event only a portion of the bonds provided
for such order are being refunded or have been issued, an
appropriate reduction shall be made in the amount of
taxes expected to be available based upon the actual debt
service requirements of bonds which have been issued
but are not being refunded and the estimated debt service
requirements of bonds which have not been issued.

§13-2-2. Terms of refunding bonds; time, place and amount
of payments.

Upon determining to issue such refunding bonds, the
governing body of such political division shall, by resolu-
tion, authorize the issuance of such bonds in an amount
not exceeding the principal amount permitted by section
one of this article, fix the date thereof, the rate of interest
which such bonds shall bear, payable semiannually, and
require that the bonds shall bear, payable at the office
of the state treasurer and at such other place or places
as the body issuing the same may designate. Such reso-
lution shall also provide that such bonds shall mature
serially in annual installments beginning not more than
three years after the date thereof, and the last of such
annual installments shall mature in not exceeding thirty-four years from the date of such bonds. The amount payable in each year on the refunding bonds, together with any unrefunded or unissued bonds of the prior issue, may be so fixed that, when the amount of interest is added to the principal amount to be paid during the respective years, the total amount payable in each year shall be as nearly equal as practicable; or such bonds may be made payable in annual installments as nearly equal in principal as may be practicable.

§13-2-4. Disposition of bonds; cancellation of original bonds.

The governing body of the political subdivision issuing bonds under this article shall first offer the bonds to the secretary of state for purchase by any of the governmental agencies of the state authorized by law to purchase such bonds, in accordance with the provisions of section nine, article three of this chapter. If the state does not purchase any or all of the bonds so offered, the governing body may sell the same or any part thereof and collect the proceeds, or such bonds may be delivered to the holder or holders of the bonds to be refunded in exchange therefor.

It is the intention of this article to authorize political divisions to issue bonds for the purpose of refunding outstanding bonds without thereby contracting any additional indebtedness, and it shall be conditional upon the delivery of any refunding bonds that a like principal amount of the bonds to be refunded be cancelled and paid simultaneously with the issuance and delivery of such refunding bonds.

For all purposes of this section, bonds shall be considered to have been cancelled and paid in advance of their due date or date of redemption if there shall have been deposited with the West Virginia municipal bond commission either:

(a) Moneys, sufficient to pay when and as due all amounts of principal and interest payable on such bonds; or
(b) Direct obligations of the United States of America or the state of West Virginia, or obligations fully and irrevocably secured as to the payment of both principal and interest by such direct obligations, the payment on which when due will provide moneys, sufficient to pay when and as due all amounts of principal and interest payable on such bonds.

All such amounts shall be set aside and held in trust and irrevocably dedicated solely to the payment of such bonds, except that amount in excess of the amounts required for the payment of the bonds so refunded may be applied to the payment of costs related to the issuance, carrying, insuring or servicing the refunding bonds, including costs of credit or market enhancement services, such as letters of credit, remarketing arrangements and similar services. Any amount deposited pursuant to this section may include amounts already held on deposit by the West Virginia municipal bond commission for the payment of the bonds to be refunded.

CHAPTER 26
(Com. Sub. for H. B. 1205—By Delegate McKinley and Delegate Knight)
[Passed March 6, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article eight, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing and reestablishing the capitol building commission.

Be it enacted by the Legislature of West Virginia:

That section one, article eight, 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 8. CAPITOL BUILDING COMMISSION.
§4-8-1. Creation; composition; qualifications of members.

1 There is continued a capitol building commission, herein-
after referred to as the commission, which shall be composed
of five members who shall be appointed by the governor with
the advice and consent of the Senate on the first day of
July, one thousand nine hundred seventy-six, plus the com-
missioner of the department of finance and administration
who shall be a nonvoting member. No more than three mem-
bers shall be of the same political party. One member shall be
an architect selected from three persons recommended by
the board of architects, one member shall be a registered
professional engineer selected from three persons recommended
by the board of engineers, one member shall be selected
from three persons who are interested in the historical beauty,
value and preservation of the capitol building recommended
by the commissioner of culture and history and two members
shall be selected from the public at large.

After having conducted a performance 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 capitol building commission
should be continued and reestablished. Accordingly, notwith-
standing the provisions of section four, article ten, chapter
four of this code, the capitol building commission shall con-
tinue to exist until the first day of July, one thousand nine
hundred eighty-six.

CHAPTER 27
(S. B. 85—By Senator Boettner)

[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article one, chapter
forty-nine of the code of West Virginia, one thousand nine
hundred thirty-one, as amended; to amend and reenact
sections two, three, four, five and eight, article six of said
chapter forty-nine; to further amend said article six by
adding thereto a new section, designated section ten; to
amend and reenact sections five and eight, article six-a of
said chapter forty-nine; to further amend said chapter forty-
nine by adding thereto two new articles, designated articles six-c and six-d, relating to child abuse and neglect generally; defining certain terms; providing for the representation of parties in abuse and neglect proceedings; allowing a preadjudication improvement period; describing the rights of parties during hearing; requiring abuse and neglect proceeding to be given priority on court docket; providing for transcript on appeal; describing the procedure for transferring temporary custody of a child alleged to be abused or neglected; authorizing the temporary removal of children not alleged to be abused or neglected under certain circumstances; providing for preliminary hearing and discretionary improvement period; authorizing child protection service worker to take custody of child or children without court order under certain circumstances; establishing a procedure for medical and mental examinations during proceedings; authorizing persons to apply for an order of custody for medical examination prior to the filing of a petition to obtain evidence of abuse or neglect; describing the dispositions available to the court upon a finding of abuse or neglect; setting forth conditions under which a court shall determine that there is no reasonable likelihood that conditions of abuse or neglect can be substantially corrected; empowering the court to grant an improvement period as an alternative disposition; providing for foster care review by courts and the annual reporting to the court as to placements of children; describing the duties of the prosecuting attorney in cases of child abuse and neglect and requiring an annual report to the grand jury regarding the discharge of such duties; providing reporting procedures for cases of child abuse and neglect and requiring the department of human services to forward reports of serious injury to law-enforcement agencies, prosecuting attorneys or the coroner or the medical examiner; defining the misdemeanor offense of failure to report cases of abuse or failure to forward reports of serious injury and establishing a penalty therefor; creating a children's trust fund for child abuse and neglect prevention; setting forth legislative findings and intent; defining certain terms; establishing the children's trust fund and providing for the deposit of money received by the fund with the state.
treasurer; authorizing the commissioner of the department of human services to transmit requisitions to the auditor upon a majority vote of the members appointed and then serving on the commission on children and youth; describing the purposes for which funds may be used; providing a procedure for taxpayers to contribute a portion of any refund from their personal income tax; describing the duties of the commission on children and youth in relation to the children's trust fund and the additional responsibilities of the commission; providing for the commission on children and youth making recommendations to the governor and the Legislature; creating the West Virginia child protective services act; setting forth purpose and intent; requiring the department of human services to develop a family case plan for families placed upon an improvement period or referred to the department following an adjudication and finding of abuse and neglect; describing the contents of a family case plan and an expanded workers' case plan; and requiring the commissioner of the department of human services within the limits of available funds to establish certain programs and services.

Be it enacted by the Legislature of West Virginia:

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

Article

1. Purposes; Definitions.
2. Procedure in Cases of Child Neglect and Abuse.
3. Reports of Children Suspected to be Abused or Neglected.

ARTICLE 1. PURPOSES; DEFINITIONS.

§49-1-3. Definitions relating to abuse and neglect.
(a) "Abused child" means a child whose health or welfare is harmed or threatened by:

(1) A parent, guardian or custodian who knowingly or intentionally inflicts, attempts to inflict, or knowingly allows another person to inflict, physical injury, or substantial mental or emotional injury, upon the child or another child in the home; or

(2) Sexual abuse or sexual exploitation.

In addition to its broader meaning, physical injury may include an injury to the child as a result of excessive corporal punishment.

(b) "Abusing parent" means a parent, guardian or other custodian, regardless of his or her age, whose conduct, as alleged in the petition charging child abuse or neglect, has been adjudged by the court to constitute child abuse or neglect.

(c) "Child abuse and neglect" or "child abuse or neglect" means physical injury, substantial mental or emotional injury, sexual abuse, sexual exploitation or negligent treatment or maltreatment of a child by a parent, guardian or custodian who is responsible for the child’s welfare, under circumstances which harm or threaten the health and welfare of the child.

(d) "Child abuse and neglect services" means social services which are directed toward:

(1) Protecting and promoting the welfare of children who are abused or neglected;

(2) Identifying, preventing and remedying conditions which cause child abuse and neglect;

(3) Preventing the unnecessary removal of children from their families by identifying family problems and assisting families in resolving problems which could lead to a removal of children and a breakup of the family;

(4) In cases where children have been removed from their families, providing services to the children and the families so as to restore such children to their families;
Placing children in suitable adoptive homes when restoring the children to their families is not possible or appropriate; and

Assuring the adequate care of children away from their families when the children have been placed in the custody of the department or third parties.

"Imminent danger to the physical well-being of the child" means an emergency situation in which the welfare or the life of the child is threatened. Such emergency situation exists when there is reasonable cause to believe that any child in the home is or has been sexually abused or sexually exploited, or reasonable cause to believe that the following conditions threaten the health or life of any child in the home:

1. Nonaccidental trauma inflicted by a parent, guardian, custodian, sibling or a babysitter or other caretaker; or
2. A combination of physical and other signs indicating a pattern of abuse which may be medically diagnosed as battered child syndrome; or
3. Nutritional deprivation; or
4. Abandonment by the parent, guardian or custodian; or
5. Inadequate treatment of serious illness or disease; or
6. Substantial emotional injury inflicted by a parent, guardian or custodian.

"Multidisciplinary team" means a group of professionals and paraprofessionals representing a variety of disciplines who interact and coordinate their efforts to identify, diagnose and treat specific cases of child abuse and neglect. Multidisciplinary teams may include, but are not limited to, medical, child care and law-enforcement personnel, social workers, psychologists and psychiatrists. Their goal is to pool their respective skills in order to formulate accurate diagnoses and to provide comprehensive coordinated treatment with continuity and follow-up for both parents and children. "Community
"team" means a multidisciplinary group which addresses the general problem of child abuse and neglect in a given community, and may consist of several multidisciplinary teams with different functions.

(g) (1) "Neglected child" means a child:

(A) Whose physical or mental health is harmed or threatened by a present refusal, failure or inability of the child's parent, guardian or custodian to supply the child with necessary food, clothing, shelter, supervision, medical care or education, when such refusal, failure or inability is not due primarily to a lack of financial means on the part of the parent, guardian or custodian; or

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

(2) "Neglected child" does not mean a child:

(A) Whose parent, guardian or custodian has failed to provide him with medical care because such medical care conflicts with the tenets and practices of a recognized religious denomination or order of which such parent, guardian or custodian is an adherent or member; or

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

(h) "Parenting skills" means a parent's competencies in providing physical care, protection, supervision and psychological support appropriate to a child's age and state of development.

(i) "Sexual abuse" means:

(A) As to a child who is less than sixteen years of age, any of the following acts which a parent, guardian or custodian shall engage in, attempt to engage in, or knowingly procure another person to engage in, with such child, notwithstanding the fact that the child may have willingly participated in such conduct or the fact that the child may have suffered no apparent physical injury or mental or emotional injury as a result of such conduct:
(i) Sexual intercourse; or
(ii) Sexual intrusion; or
(iii) Sexual contact; or

(B) As to a child who is sixteen years of age or older, any of the following acts which a parent, guardian or custodian shall engage in, attempt to engage in, or knowingly procure another person to engage in, with such child, notwithstanding the fact that the child may have consented to such conduct or the fact that the child may have suffered no apparent physical injury or mental or emotional injury as a result of such conduct:

(i) Sexual intercourse; or
(ii) Sexual intrusion; or
(iii) Sexual contact; or

(C) Any conduct whereby a parent, guardian or custodian displays his or her sex organs to a child, or procures another person to display his or her sex organs to a child, for the purpose of gratifying the sexual desire of the parent, guardian or custodian, of the person making such display, or of the child, or for the purpose of affronting or alarming the child.

(j) "Sexual contact" means sexual contact as that term is defined in section one, article eight-b, chapter sixty-one of this code.

(k) "Sexual exploitation" means an act whereby:

(I) A parent, custodian or guardian, whether for financial gain or not, persuades, induces, entices or coerces a child to engage in sexually explicit conduct as that term is defined in section one, article eight-c, chapter sixty-one of this code;

(2) A parent, guardian or custodian persuades, induces, entices or coerces a child to display his or her sex organs for the sexual gratification of the parent, guardian, custodian or a third person, or to display his or her sex organs under circumstances in which the parent, guardian or custodian knows such display is likely to be observed by others who would be affronted or alarmed.
"Sexual intercourse" means sexual intercourse as that term is defined in section one, article eight-b, chapter sixty-one of this code.

"Sexual intrusion" means sexual intrusion as that term is defined in section one, article eight-b, chapter sixty-one of this code.

ARTICLE 6. PROCEDURE IN CASES OF CHILD NEGLECT AND ABUSE.

§49-6-2. Same—Right to counsel; improvement period; hearing; priority of proceeding; transcript.
§49-6-3. Same—Temporary custody.
§49-6-4. Medical and mental examinations.
§49-6-5. Disposition of neglected or abused children.
§49-6-8. Foster care review; annual reports to the court.
§49-6-10. Duties of prosecuting attorney.

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

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

(b) In any proceeding under this article, the parents or custodians may, prior to final hearing, move to be allowed
an improvement period of three to twelve months in order to
remedy the circumstances or alleged circumstances upon
which the proceeding is based. The court shall allow one
such improvement period unless it finds compelling
circumstances to justify a denial thereof, but may require
temporary custody in the state department or other agency
during the improvement period. An order granting such
improvement period shall require the department to
prepare and submit to the court a family case plan in
accordance with the provisions of section three. article
six-d of this chapter.

(c) In any proceeding under this article, the party or
parties having custody of the child shall be afforded a
meaningful opportunity to be heard, including the
opportunity to testify and to present and cross-examine
witnesses. The petition shall not be taken as confessed. A
transcript or recording shall be made of all proceedings un-
less waived by all parties to the proceeding. The rules of
evidence shall apply. Where relevant, the court shall
consider the efforts of the state department to remedy the
alleged circumstances. At the conclusion of the hearing the
court shall make a determination based upon the evidence
and shall make findings of fact and conclusions of law as to
whether such child is abused or neglected, which shall be
incorporated into the order of the court. The findings must
be based upon conditions existing at the time of the filing of
the petition and proven by clear and convincing proof.

(d) Any petition filed and any proceeding held under the
provisions of this article shall, to the extent practicable, be
given priority over any other civil action before the court,
except proceedings under article two-a, chapter forty-eight
of this code and actions in which trial is in progress. Any
petition filed under the provisions of this article shall be
docketed immediately upon filing. Any hearing to be held at
the end of an improvement period and any other hearing to
be held during any proceedings under the provisions of this
article shall be held as nearly as practicable on successive
days and, with respect to said hearing to be held at the end
of an improvement period, shall be held as close in time as
possible after the end of said improvement period.
(c) Following the court's determination, it shall be inquired of the parents or custodians whether or not appeal is desired and the response transcribed. A negative response shall not be construed as a waiver. The evidence shall be transcribed and made available to the parties or their counsel as soon as practicable, if the same is required for purposes of further proceedings. If an indigent person intends to pursue further proceedings, the court reporter shall furnish a transcript of the hearing without cost to the indigent person if an affidavit is filed stating that he cannot pay therefor.

§49-6-3. Same — Temporary custody.

(a) Upon the filing of a petition, the court may order that a child alleged to be an abused or neglected child be delivered for not more than ten days into the custody of the state department or a responsible relative, pending a preliminary hearing, if it finds that: (1) There exists imminent danger to the physical well-being of the child, and (2) there are no reasonably available alternatives to removal of the child, including, but not limited to, the provision of medical, psychiatric, psychological or homemaking services in the child's present custody. In a case where there is more than one child in the home, the petition shall so state, and notwithstanding the fact that the allegations of abuse or neglect may pertain to less than all of such children, each child in the home for whom relief is sought shall be made a party to the proceeding. Even though the acts of abuse or neglect alleged in the petition were not directed against a specific child who is named in the petition, the court shall order the removal of such child, pending final disposition, if it finds that there exists imminent danger to the physical well-being of the child and a lack of reasonably available alternatives to removal. The initial order directing such custody shall contain an order appointing counsel and scheduling the preliminary hearing, and upon its service shall require the immediate transfer of custody of such child or children to the state department or a responsible relative.

(b) Whether or not the court orders immediate transfer of custody as provided in subsection (a) of this section, if the
facts alleged in the petition demonstrate to the court that there exists imminent danger to the child, the court may schedule a preliminary hearing giving the respondents at least five days' actual notice. If the court finds at the preliminary hearing that there are no alternatives less drastic than removal of the child and that a hearing on the petition cannot be scheduled in the interim period, the court may order that the child be delivered into the temporary custody of the state department or an appropriate person or agency for a period not exceeding sixty days: Provided, That if the court grants an improvement period as provided in subsection (b), section two of this article, the sixty-day limit upon temporary custody may be waived.

(c) If a child or children shall, in the presence of a child protective service worker of the department of human services, be in an emergency situation which constitutes an imminent danger to the physical well-being of the child or children, as that phrase is defined in section three, article one of this chapter, and if such worker has probable cause to believe that the child or children will suffer additional child abuse or neglect or will be removed from the county before a petition can be filed and temporary custody can be ordered, the worker may, prior to the filing of a petition, take the child or children into his or her custody without a court order: Provided, That after taking custody of such child or children prior to the filing of a petition, the worker shall forthwith appear before a circuit judge or a juvenile referee of the county wherein custody was taken, or if no such judge or referee be available, before a circuit judge or a juvenile referee of an adjoining county, and shall immediately apply for an order ratifying the emergency custody of the child pending the filing of a petition. The circuit court of every county in the state shall appoint at least one of the magistrates of the county to act as a juvenile referee, who shall serve at the will and pleasure of the appointing court, and who shall perform the functions prescribed for such position by the provisions of this subsection. The parents, guardians or custodians of the child or children may be present at the time and place of application for an order ratifying custody, and if at the time the child or children are taken into custody by the worker, the worker knows which
judge or referee is to receive the application, the worker
shall so inform the parents, guardians or custodians. The
application for emergency custody may be on forms
prescribed by the supreme court of appeals or prepared by
the prosecuting attorney or the applicant, and shall set
forth facts from which it may be determined that the
probable cause described above in this subsection exists.
Upon such sworn testimony or other evidence as the judge
or referee deems sufficient, the judge or referee may order
the emergency taking by the worker to be ratified. If
appropriate under the circumstances, the order may
include authorization for an examination as provided for in
subsection (b), section four of this article. If a referee issues
such an order the referee shall by telephonic
communication have such order orally confirmed by a
circuit judge of the circuit or an adjoining circuit who shall
on the next judicial day enter an order of confirmation. If
the emergency taking is ratified by the judge or referee,
emergency custody of the child or children shall be vested in
the state department until the end of the next judicial day,
at which time any such child taken into emergency custody
shall be returned to the custody of his or her parent,
guardian or custodian unless a petition has been filed and
custody of the child has been transferred under the
provisions of section three of this article.

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

(a) At any time during proceedings under this article the
court may, upon its own motion or upon motion of the child
or other parties, order the child or other parties to be
examined by a physician, psychologist or psychiatrist, and
may require testimony from such expert, subject to cross-
examination and the rules of evidence: Provided, That the
court shall not terminate parental or custodial rights of a
party solely because the party refuses to submit to the
examination, nor shall the court hold such party in
contempt for refusing to submit to an examination. The
physician, psychologist or psychiatrist shall be allowed to
testify as to the conclusions reached from hospital, medical,
psychological or laboratory records provided the same are
produced at the hearing. The court by order shall provide
15 for the payment of all such expert witnesses. If the child, 
16 parent or custodian is indigent, such witnesses shall be 
17 compensated out of the treasury of the state, upon 
18 certificate of the court wherein the case is pending. No 
19 evidence acquired as a result of any such examination of the 
20 parent or any other person having custody of the child may 
21 be used against such person in any subsequent criminal 
22 proceedings against such person.

23 (b) If a person with authority to file a petition under the 
24 provisions of this article shall have probable cause to 
25 believe that evidence exists that a child has been abused or 
26 neglected and that such evidence may be found by a medical 
27 examination, the person may apply to a circuit judge or 
28 juvenile referee for an order to take such child into custody 
29 for delivery to a physician or hospital for examination. The 
30 application may be on forms prescribed by the supreme 
31 court of appeals or prepared by the prosecuting attorney or 
32 the applicant, and shall set forth facts from which it may be 
33 determined that probable cause exists for such belief. Upon 
34 such sworn testimony or other evidence as the judge or 
35 referee deems sufficient, the judge or referee may order any 
36 law-enforcement officer to take the child into custody and 
37 deliver the child to a physician or hospital for examination. 
38 If a referee issues such an order the referee shall by 
39 telephonic communication have such order orally 
40 confirmed by a circuit judge of the circuit or an adjoining 
41 circuit who shall on the next judicial day enter an order of 
42 confirmation. Any child welfare worker and the child's 
43 parents, guardians or custodians may accompany the 
44 officer for such examination. After the examination, the 
45 officer may return the child to the custody of his parent, 
46 guardian or custodian, retain custody of the child or deliver 
47 custody to the state department until the end of the next 
48 judicial day, at which time the child shall be returned to the 
49 custody of his or her parent, guardian or custodian unless a 
50 petition has been filed and custody of the child has been 
51 transferred to the department under the provisions of 
52 section three of this article.

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

1 (a) Following a determination pursuant to section two
of this article wherein the court finds a child to be abused or
neglected, the court may request from the state department
information about the history, physical and emotional
condition and present situation of the child. The court shall
forthwith proceed to disposition giving both the petitioner
and respondents an opportunity to be heard. The court shall
give precedence to dispositions in the following sequence:

(1) Dismiss the petition;

(2) Refer the child, the abusing parent or other family
members to a community agency for needed assistance and
dismiss the petition;

(3) Return the child to his or her own home under
supervision of the state department;

(4) Order terms of supervision calculated to assist the
child and the abusing parent or parents which prescribe the
manner of supervision and care of the child and which are
within the ability of the parent or custodian to perform;

(5) Upon a finding that the abusing parent or parents
are presently unwilling or unable to provide adequately for
the child's needs, commit the child temporarily to the
custody of the state department, a licensed private child
welfare agency or a suitable person who may be appointed
guardian by the court;

(6) Upon a finding that there is no reasonable likelihood
that the conditions of neglect or abuse can be substantially
corrected in the near future, and when necessary for the
welfare of the child, terminate the parental or custodial
rights and responsibilities and commit the child to the
permanent guardianship of the state department or a
licensed child welfare agency. If the court shall so find, then
in fixing its dispositional order, the court shall consider the
following factors: (1) The child's need for continuity of care
and caretakers; (2) the amount of time required for the child
to be integrated into a stable and permanent home
environment; and (3) other factors as the court considers
necessary and proper. Notwithstanding any other
provisions of this article, the permanent parental rights
shall not be terminated if a child fourteen years of age or
older or otherwise of an age of discretion as determined by the court, objects to such termination. No adoption of a child shall take place until all proceedings for termination of parental rights under this article and appeals thereof are final.

(b) As used in this section, "no reasonable likelihood that conditions of neglect or abuse can be substantially corrected" shall mean that, based upon the evidence before the court, the abusing adult or adults have demonstrated an inadequate capacity to solve the problems of abuse or neglect, on their own or with help. Such conditions shall be deemed to exist in the following circumstances, which shall not be exclusive:

(1) The abusing parent or parents have habitually abused or are addicted to alcohol, controlled substances or drugs, to the extent that proper parenting skills have been seriously impaired and such abusing parent or parents have not responded to or followed through the recommended and appropriate treatment which could have improved the capacity for adequate parental functioning;

(2) The abusing parent or parents have willfully refused or are presently unwilling to cooperate in the development of a reasonable family case plan designed to lead to the child's return to their care, custody and control;

(3) The abusing parent or parents have not responded to or followed through with a reasonable family case plan or other rehabilitative efforts of social, medical, mental health or other rehabilitative agencies designed to reduce or prevent the abuse or neglect of the child, as evidenced by the continuation or insubstantial diminution of conditions which threatened the health, welfare or life of the child;

(4) The abusing parent or parents have abandoned the child;

(5) The abusing parent or parents have repeatedly or seriously injured the child physically or emotionally, or have sexually abused or sexually exploited the child, and; the degree of family stress and the potential for further abuse and neglect are so great as to preclude the use of resources to mitigate or resolve family problems or assist
§49-6-8. Foster care review; annual reports to the court.

(a) If, twelve months after receipt of physical or legal custody of a child, the state department has not placed a child in permanent foster care or an adoptive home or placed the child with a natural parent, the state department shall file with the court a petition stating the child's situation, the efforts that have been made to place the child in a permanent situation, the present foster care arrangements and the plan for pursuing permanent arrangements. "Permanent foster care" shall mean a written arrangement with an adult or adults following a six-month trial period whereby the state department places the care, custody and control of a child until the child's emancipation with such adult or adults. The court may schedule a hearing in chambers, giving notice and the right to be present to: The child, if twelve years of age or older; the child's parents; the child's guardians; the child's foster parents; and such other persons as the court may in its discretion direct. At the conclusion of the proceeding the
court shall in accordance with the best interests of the child enter an appropriate order of disposition. The court shall possess continuing jurisdiction over cases reviewed under this section for so long as a child remains in temporary foster care, or, when a child is returned to his natural parents subject to conditions imposed by the court, for so long as the conditions are effective. If the child remains in the physical or legal custody of the state department, the state department shall file a supplementary petition with the court within eighteen months and every eighteen months thereafter until the child is placed in an adoptive home or permanent foster care or returned to his or her parents.

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

§49-6-10. Duties of prosecuting attorney.

It shall be the duty of every prosecuting attorney to fully and promptly cooperate with persons seeking to apply for relief under the provisions of this article in all cases of suspected child abuse and neglect, to promptly prepare applications and petitions for relief requested by such persons, to investigate reported cases of suspected child abuse and neglect for possible criminal activity and to report at least annually to the grand jury regarding the discharge of his or her duties with respect thereto.

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

§49-6A-5. Reporting procedures.

§49-6A-8. Failure to report; penalty.

§49-6A-5. Reporting procedures.

Reports of child abuse and neglect pursuant to this article shall be made immediately by telephone to the local state department child protective service agency and shall be followed by a written report within forty-eight hours if so requested by the receiving agency. The state department shall establish and maintain a twenty-four hour, seven-
day-a-week telephone number to receive such calls reporting suspected or known child abuse or neglect.

A copy of any report of serious injury shall be forwarded by the department to the appropriate law-enforcement agency, the prosecuting attorney or the coroner or medical examiner's office. All reports under this article shall be confidential, and unless there are pending proceedings with regard thereto, shall be destroyed six years following their preparation. Reports of known or suspected institutional child abuse or neglect shall be made and received as all other reports made pursuant to this article.

§49-6A-8. Failure to report; penalty.

Any person, official or institution required by this article to report a case involving a child known or suspected to be abused or neglected, or required by section five of this article to forward a copy of a report of serious injury, who knowingly fails to do so or knowingly prevents another person acting reasonably from doing so, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be confined in the county jail not more than ten days or fined not more than one hundred dollars, or both.

ARTICLE 6C. CHILDREN'S TRUST FUND FOR CHILD ABUSE AND NEGLECT PREVENTION.

§49-6C-1. Legislative findings and intent.
§49-6C-2. Definitions.
§49-6C-3. Establishment of children's trust fund; federal funds, gifts, bequests and donations; administration of fund.
§49-6C-4. Disbursements from children's trust fund.
§49-6C-5. Contribution of portion of income tax refund to children's trust fund.
§49-6C-6. Commission on children and youth established; composition; duties and responsibilities.
§49-6C-8. Recommendations to governor and Legislature.

§49-6C-1. Legislative findings and intent.

The Legislature finds that child abuse and neglect are threats to the family unit and impose major expenses on society. The Legislature further finds that there is a need to assist private and public agencies in identifying and establishing community-based educational and service programs for the prevention of child abuse and neglect. It is
the intent of the Legislature that an increase in prevention
programs will help reduce the breakdown in families and
thus reduce the need for state intervention and state
expense. It is further the intent of the Legislature that child
abuse and neglect prevention programs be partnerships
between communities, citizens and the state.

§49-6C-2. Definitions.

For the purposes of this article:

(a) "Commission" or "commission on children and
youth" means the commission on children and youth as
heretofore established under the provisions of executive
order no. 1—79 within the department of human services;

(b) "Trust fund" means the children's trust fund for the
prevention of child abuse and neglect as hereinafter
established in this article.

§49-6C-3. Establishment of children's trust fund; federal
funds, gifts, bequests and donations; administration of fund.

There is established the children's trust fund for the
purpose of preventing child abuse and neglect. The trust
fund shall consist of federal funds granted by Congress or
executive order for the purposes of this article as well as
gifts, bequests and donations from individuals, private
organizations or foundations. Each state taxpayer may
voluntarily contribute a portion of his state income tax
refund to the children's trust fund by following the
procedures designated in section five of this article. All
funds received in the manner provided herein shall be
transmitted to the state treasurer for deposit in the trust
fund. All interest accruing from investment of moneys in
the trust fund shall be credited to the fund. The legislative
auditor shall conduct an annual audit of the trust fund.

§49-6C-4. Disbursements from children's trust fund.

(a) The commission on children and youth, upon a
majority vote of the members appointed and then serving,
may determine the manner in which moneys credited to the
children's trust fund shall be expended, and shall direct the
commissioner of the department of human services to
transmit to the auditor his requisition drawn to the order of a governmental agency, nonprofit private organization or combinations thereof, as the case may be, for the following purposes:

(1) Establishing and maintaining programs for the prevention of child abuse and neglect. Such programs may include, but are not limited to, community-based programs related to crisis care, aid to parents, child abuse counseling, support groups for abusive or potentially abusive parents and their children and early identification of families where the potential for child abuse and neglect exists;

(2) Providing educational programs directed toward the prevention of child abuse and neglect. Such programs may include, but are not limited to, community-based educational programs on prenatal care, perinatal bonding, child development, basic child care, care of children with special needs, coping with family stress and safety skills for children in self care;

(3) Establishing and maintaining a continuing program of community relations aimed at (A) interpreting child protective services to the community, (B) promoting the identification of children in need of protection, and (C) maintaining clear lines of responsibility with hospital, education, law-enforcement, juvenile court and other publicly and privately employed personnel providing child neglect and abuse services;

(4) Establishing and maintaining local, county or multicounty child abuse prevention organizations, including child abuse prevention chapters that comply with the regulations of the national committee for prevention of child abuse;

(5) Assisting public agencies or nonprofit private organizations or combinations thereof in making applications for grants from, or in entering into contracts with, the secretary of the federal department of health and human services for demonstration programs and projects designed to prevent child abuse and neglect;

(6) Matching federal moneys to provide increased
(7) Research for, and evaluation of, educational programs and services related to the prevention of child abuse and neglect.

(b) For each year that the trust fund exists, the commission may authorize the expenditure of no more than one half of the income of the trust fund for that year for the aforesaid purposes. No less than one half of the annual income of the trust fund shall be invested, with the interest thereon being returned to the fund.

§49-6C-5. Contribution of portion of income tax refund to children's trust fund.

(a) Contributions to the children's trust fund will be derived, in part, from voluntary contributions of a portion of refunds due to taxpayers, as designated by taxpayers on state personal income tax return forms.

(b) Each West Virginia individual income tax return shall contain a designation as follows:

"WEST VIRGINIA CHILDREN'S TRUST FUND CONTRIBUTION PROGRAM

Check if you wish to designate a portion of your tax refund to this trust fund, which is established to fund programs and services to prevent child abuse and neglect:

$2 ( ) $5 ( ) $10 ( ) Other $_______ ( )

If joint return, check if spouse wishes to designate a portion of tax refund:

$2 ( ) $5 ( ) $10 ( ) Other $_______ ( )"

(c) Each individual taxpayer desiring to voluntarily contribute to the trust fund may so indicate by placing an "X" in the appropriate box on the state income tax return form. His or her contribution shall be credited to the trust fund.

The tax department shall determine by the first day of July of each year the total amount designated pursuant to this section and shall report that amount to the state
23 treasurer who shall credit that amount to the children's
24 trust fund.

25 (d) The trust fund will collect moneys until the amount
26 of five million dollars is reached.

27 (e) The provisions of this section shall apply to tax
28 return forms filed after the first day of January, one
29 thousand nine hundred eighty-five.

§49-6C-6. Commission on children and youth established;
composition; duties and responsibilities.

1 (a) The commission on children and youth as heretofore
2 established is continued, and is hereby established as a
3 statutory body within the department of human services:
4 Until the first day of July, one thousand nine hundred
5 eighty-four, the commission shall be composed of at least
6 twenty and no more than thirty citizen members appointed
7 by the governor to serve at his will and pleasure, and shall
8 be generally representative of the state’s citizens. In
9 addition, the director of health, the superintendent of
10 schools, the commissioner of corrections, the commissioner
11 of the department of human services and the director of the
12 governor’s office of economic and community development
13 or their designated representatives shall serve as voting ex
14 officio members of the commission. After the first day of
15 July, one thousand nine hundred eighty-four, the
16 commission shall be composed of twenty citizen members to
17 be appointed by the governor. In addition, the director of
18 health, the superintendent of schools, the commissioner of
19 corrections, the commissioner of the department of human
20 services and the director of the governor’s office of
21 economic and community development or their designated
22 representatives shall serve as voting ex officio members of
23 the commission. Of the twenty initial members appointed
24 by the governor, ten shall be appointed for a term of two
25 years, and ten shall be appointed for a term of four years.
26 Upon the expiration of the initial terms, the governor shall
27 make appointments of members to the board to serve for
28 terms of four years each. Any vacancy in the board shall be
29 filled by appointment by the governor, with such newly
30 appointed member to serve for the remainder of the
31 unexpired term. No citizen member shall be appointed to
serve more than two consecutive four year terms. Members
of the commission may receive no compensation, but shall
be entitled to reimbursement for actual and necessary
expenses incurred in the performance of their duties. All
funding for administrative purposes, and all staff for the
commission shall be provided by the department of human
services.

(b) The commission, in carrying out its duties under the
provisions of this article, shall do all of the following:

(1) Develop a state plan for distribution of available
moneys from the children's trust fund;

(2) Develop criteria for and determine the maximum
size of grants for disbursement from the trust fund;

(3) Award grants in accordance with established
criteria;

(4) Monitor disbursements from the trust fund;

(5) Provide for the exchange of information regarding
programs funded by moneys from the trust fund;

(6) Prepare an annual report describing the financial
status of the trust fund, criteria established for the
awarding of grants and the grants awarded; and

(7) Report before the regular session of the Legislature
in the year one thousand nine hundred eighty-five, and
before each regular legislative session thereafter, to the
governor and the Legislature concerning the commission's
activities and the effectiveness of those activities in
fostering the prevention of child abuse and neglect.

(c) In addition to the duties imposed by the provisions of
this section, the commission shall also continue the
following responsibilities formerly imposed by executive
order:

(1) To advocate generally the interests of children and
youth in this state;

(2) To assist in developing cooperation among public
and private agencies engaged in the delivery of services to
children and youth in this state;
(3) To research the specific needs of children and youth, to assess current and proposed programs to meet these needs and to make findings and recommendations to the Governor and the Legislature annually;

(4) To serve as the liaison for West Virginia with the White House Conference on Children and Youth and with any other national or international conferences or committees when representation of West Virginia's interest would bring benefit to its children and youth; and

(5) To perform such other functions as may be directed by the Governor.

§49-6C-7. Recommendations to governor and Legislature.
1 The commission shall recommend to the governor and the Legislature such changes in state programs, statutes, policies, budgets and standards as they believe will reduce the problem of child abuse and neglect, improve coordination among state agencies that provide prevention services and improve the condition of children and parents or guardians who are in need of child abuse and neglect services.

ARTICLE 6D. WEST VIRGINIA CHILD PROTECTIVE SERVICES ACT.

§49-6D-1. Short title
§49-6D-2. Purpose and intent.
§49-6D-3. Family case plans for parents of abused or neglected children.

§49-6D-1. Short title.

1 This article shall be known and cited as the "West Virginia Child Protective Services Act."

§49-6D-2. Purpose and Intent.

1 (a) In pursuit of the purposes of this chapter to provide a comprehensive system of child welfare throughout the state which will (1) assure to each child such care and guidance, preferably in the child's home, as will serve the spiritual, emotional, mental and physical welfare of the child, and (2) preserve and strengthen the family ties wherever possible, while recognizing both the fundamental rights of parenthood and the state's responsibility to assist the family in providing the necessary training and education of
all children, the Legislature enacts this article to provide
for the protection of the children of this state from abuse
and neglect and to provide direction to responsible state
officers. This article is enacted in pursuit of the purpose of
this chapter and the heretofore expressed intention of the
Legislature to provide for the removal of a child from the
custody of the child's parents only when the child's welfare
cannot be otherwise adequately safeguarded, and is
enacted to secure to a child removed from the family a
degree of custody, care and control consistent with the
child's best interests and the other goals of this chapter, as
expressed in section one, article one of this chapter.

(b) In light of this purpose, the Legislature intends to
provide for:

(1) The acceptance by the department of referrals or
reports of abuse or neglect, both judicial and extrajudicial,
voluntary or involuntary, and the offering of opportuni-
ties by the department whereby parents, guardians or
custodians and their children may avail themselves of
public and private resources offering programs and services
which are primarily preventive and nonpunitive and
grounded toward a rehabilitation of the home and a treatment
of the underlying factors which cause or tend to cause abuse
and neglect;

(2) The vigorous and fair assessment and investigation
of alleged cases of child abuse or neglect to the end that no
child subjected to abuse or neglect shall be left without
assistance consistent in all respects with the purposes and
goals of this chapter and article;

(3) The thorough and professional diagnosis of cases to
determine whether child abuse or neglect exists, whether
court action is appropriate, or whether a high risk or danger
to children requires emergency services or the initiation of
an immediate response;

(4) An assessment of the family, family members and
family problems in each case, to identify strengths as well as
areas for improvement, and to determine how best to
augment the protective services functions of the
department with community resources available to and
needed by the family, to the end that a plan can be
implemented whereby every abused or neglected child in
the state will be provided an environment for his or her
custody, care and control which offers as normal a family
life as practicable, free of abuse or neglect, preferably in the
child's own home;

(5) In cases where removal of a child is required, but a
termination of parental rights is not ordered, the
opportunity for the family to visit and maintain family ties
in the family home or in home-like and other conducive
surroundings, avoiding, wherever possible, the austere
surroundings of a public or private agency with limited
time and lack of privacy;

(6) The fulfillment of the state's responsibility to assist
the family in a manner consonant with the purposes of this
article, even in cases requiring temporary removal of the
child, without fear by the citizens that the state's exercise of
that responsibility will be unfairly used as a means of
terminating family ties;

(7) The prompt and effective termination of parental
rights in cases where there is an abject failure of the parents
or custodians to reasonably utilize fair, professionally
developed and communicated opportunities to end the
abuse or neglect.

§49-6D-3. Family case plans for parents of abused or neglected
children.

(a) Within the limits of funds available, the department
of human services shall develop a family case plan for every
family wherein a person has been referred to the
department after being allowed an improvement period
under the provisions of subsection (b), section two, or
subsection (c), section five, article six of this chapter, and
for each family referred to the department for supervision
and treatment following a determination by a court that a
parent, guardian or custodian in such family has abused or
neglected a child. The department may also prepare a
family case plan for any person who voluntarily seeks child
abuse and neglect services from the department, or who is
referred to the department by another public agency or
private organization. The family case plan is to clearly set
forth an organized, realistic method of identifying family problems and the logical steps to be used in resolving or lessening those problems. Every family case plan prepared by the department shall contain the following:

1. A listing of specific, measurable, realistic goals to be achieved;
2. An arrangement of goals into an order of priority;
3. A listing of the problems that will be addressed by each goal;
4. A specific description of how the assigned caseworker or caseworkers and the abusing parent, guardian or custodian will achieve each goal;
5. A description of the departmental and community resources to be used in implementing the proposed actions and services;
6. A list of the services which will be provided;
7. Time targets for the achievement of goals or portions of goals;
8. An assignment of tasks to the abusing or neglecting parent, guardian or custodian, to the caseworker or caseworkers, and to other participants in the planning process; and
9. A designation of when and how often tasks will be performed.

(b) In cases where the family has been referred to the department by a court under the provisions of this chapter, and further action before the court is pending, the family case plan described in subsection (a) of this section shall be furnished to the court within thirty days after the entry of the order referring the case to the department, and shall be available to counsel for the parent, guardian or custodian and counsel for the child or children. The department shall encourage participation in the development of the family case plan by the parent, guardian or custodian, and, if the child is above the age of twelve years and the child's participation is otherwise appropriate, by the child. It shall be the duty of counsel for the participants to participate in
the development of the family case plan. The family case plan may be modified from time to time by the department to allow for flexibility in goal development, and in each such case the modifications shall be submitted to the court in writing. The court shall examine the proposed family case plan or any modification thereof, and upon a finding by the court that the plan or modified plan can be easily communicated, explained and discussed so as to make the participants accountable and able to understand the reasons for any success or failure under the plan, the court shall inform the participants of the probable action of the court if goals are met or not met.

(c) (1) In addition to the family case plan provided for under the provisions of subsection (b) of this section, the department shall prepare, as an appendix to the family case plan, an expanded "worker's case plan." As utilized by the department under the provisions of this section, the worker's case plan shall consist of the following:

(A) All of the information contained in the family case plan described in subsection (c) of this section;

(B) A prognosis for each of the goals projected in the family case plan, assessing the capacity of the parent, guardian or custodian to achieve the goal and whether available treatment services are likely to have the desired outcome;

(C) A listing of the criteria to be used to assess the degree to which each goal is attained;

(D) A description of when and how the department will decide when and how well each goal has been attained;

(E) If possible, a listing of alternative methods and specific services which the caseworker or caseworkers may consider using if the original plan does not work; and

(F) A listing of criteria to be used in determining when the family case plan should be terminated.

(2) Because the nature of the information contained in the worker's case plan described in subdivision (1) of this subsection may, in some cases, be construed to be negative with respect to the probability of change, or may be viewed
as a caseworker's attempt to impose personal values into the situation, or may raise barriers of hostility and resistance between the caseworker and the family members, the worker's case plan shall not be made available to the court or to persons outside of the department, but shall be used by the department for the purpose of confirming the effectiveness of the family case plan or for determining that changes in the family case plan need to be made.

(d) In furtherance of the provisions of this article, the commissioner of the department of human services shall, within the limits of available funds, establish programs and services for the following purposes:

(1) For the development and establishment of training programs for professional and paraprofessional personnel in the fields of medicine, law, education, social work and other relevant fields who are engaged in, or intend to work in, the field of the prevention, identification and treatment of child abuse and neglect; and training programs for children, and for persons responsible for the welfare of children, in methods of protecting children from child abuse and neglect;

(2) For the establishment and maintenance of centers, serving defined geographic areas, staffed by multidisciplinary teams and community teams of personnel trained in the prevention, identification and treatment of child abuse and neglect cases, to provide a broad range of services related to child abuse and neglect, including direct support and supervision of satellite centers and attention homes, as well as providing advice and consultation to individuals, agencies and organizations which request such services;

(3) For furnishing services of multidisciplinary teams and community teams, trained in the prevention, identification and treatment of child abuse and neglect cases, on a consulting basis to small communities where such services are not available;

(4) For other innovative programs and projects that show promise of successfully identifying, preventing or
remedy the causes of child abuse and neglect, including, but not limited to, programs and services designed to improve and maintain parenting skills, programs and projects for parent self-help, and for prevention and treatment of drug-related child abuse and neglect; and

(5) Assisting public agencies or nonprofit private organizations or combinations thereof in making applications for grants from, or in entering into contracts with, the secretary of the federal department of health and human services for demonstration programs and projects designed to identify, prevent and treat child abuse and neglect.

(e) Agencies, organizations and programs funded to carry out the purposes of this section shall be structured so as to comply with any applicable federal law, any regulation of the federal department of health and human services or the secretary thereof, and any final comprehensive plan of the federal advisory board on child abuse and neglect. In funding organizations, the department shall, to the extent feasible, ensure that parental organizations combating child abuse and neglect receive preferential treatment.

CHAPTER 28

(Com. Sub. for H. B. 1558—By Delegate Sluss and Delegate Casey)

[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five, chapter forty-nine 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 after-care plans for children committed to certain institutions and facilities; providing for preparation and submission of a plan to the committing court forty-five days prior to the child’s discharge; specifying contents of plan; requiring comments by probation officers or community mental health facility personnel within twenty-one days receipt of the
plan and providing for comments by interested persons within twenty-one days; providing a hearing and waiver thereof and an order adopting the plan as submitted or as modified; and imposing additional duties and responsibilities upon probation officers and other persons.

Be it enacted by the Legislature of West Virginia:

That article five, chapter forty-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 eighteen, to read as follows:

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-18. After-care plans; submission to the court; comments to be submitted; hearing on the plan and adoption thereof.

(a) Forty-five days prior to the discharge of a child from any institution or facility pursuant to subdivision five, six or seven, subsection (b), section thirteen of this article, the director of such institution or facility shall have prepared and shall forward to the committing court a copy of the child's proposed after-care plan. Copies of the plan shall also be sent to: (1) The child's parents, if any, or legal guardian if the child is not living with his parents, (2) the child's lawyer, (3) the child's probation officer or community mental health center professional, and (4) the prosecuting attorney of the county in which the original commitment proceedings were held.

(b) The after-care plan shall contain a detailed description of the training, schooling, counseling and treatment received while at the institution or facility and the same proposed for the child upon his discharge. The plan shall describe any problems the child may have, the source of those problems and describe how those problems will be addressed by the after-care plan. Attached to the plan shall be a list of the persons who are to receive copies of this plan.

(c) Within twenty-one days of the receipt of the plan, the child's probation officer or community mental health center
professional shall, and any other person who received a copy of
the plan pursuant to subsection (a) of this section may, submit
written comments concerning the plan to the court: *Provided,*
That if any person does submit comments upon the plan, he
shall also send copies of those comments to every other per-
son who received a copy of the plan pursuant to subsection (a)
of this section from the director.

(d) Within the twenty-one days provided in subsection (c)
of this section it shall be the responsibility and duty of the
child's probation officer or the community mental health
center professional who receives a copy of the after-care plan
to contact all other persons, organizations and agencies to be
involved in executing the plan and to determine whether such
persons, organizations and agencies are capable of and will be
adequately prepared to execute the provisions of the plan:
*Provided,* That if a hearing is held to discuss the plan as
provided in subsection (e) of this section, representatives of
such persons, organizations or agencies may be required to
appear unless excused by the court.

(e) The judge to whom the plan was sent shall within
forty-five days of receipt of the plan schedule and hold a
hearing to consider the plan, including any comments or ob-
jections submitted in response thereto: *Provided,* That if no
adverse comments or objections are submitted, a hearing
need not be held. The court shall consider the after-care plan as
submitted and shall within five days of the hearing or within
forty-five days of the receipt of the plan if no hearing is held
issue an order which adopts the plan as submitted or as
modified in response to comments and objections: *Provided,*
howerver, That the plan as adopted by order of the court shall
be in the best interests of the child and be in conformity with
the state's interest in youth as embodied in subsection (b),
section thirteen of this article: *Provided further,* That the
court shall appoint either the child's probation officer or a
community health center professional to act as supervisor
of the plan, which supervisor shall make a report commenting
on the progress of the child to the court every sixty days or
until the court shall determine that no such report is necessary
or that after-care is no longer needed.
CHAPTER 29

(H. B. 1187—By Delegate Chambers)

[Passed March 9, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six-a, article five-a, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to eliminating the development of the position of youth services coordinators in the comprehensive plan for a unified state system of predispositional detention of juveniles.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5A. JUVENILE REFEREE SYSTEM.

§49-5A-6a. State plan for predisposition detention of juveniles; responsibilities of commissioner of human services until development of state plan.

(a) The commissioner of the department of human services and the legislative commission on juvenile law shall develop a comprehensive plan to establish a unified state system of predispositional detention for juveniles to be submitted to the West Virginia Legislature no later than the first day of January, one thousand nine hundred eighty-five. The plan shall be developed with input from the department of corrections, the governor’s task force on crime, delinquency and correction and judicial and law-enforcement officials from throughout the state.

The plan shall include, but not be limited to, the following:

(1) The development of a coordinated plan for the effective and efficient use of juvenile detention facilities operated by local units of government and the state, including those operated regionally by the department of human services. Standards and criteria shall be established for the use
of detention. Priorities for the utilization of available space and transportation of juveniles to and from detention facilities shall also be established.

(2) Recommendations on the use of regional detention centers for detention hearings.

(3) Recommendations regarding the use of emergency home shelters and foster homes for temporary detention.

(4) Recommendations regarding the use of regional detention facilities and charges to counties for such services.

(5) An evaluation of the personnel needs and cost of maintaining all facilities and services recommended in the plan.

(b) Until the development and implementation of the plan set forth in subsection (a) of this section, the commissioner of the department of human services shall do the following:

(1) Identify and coordinate all programs currently available in local communities for children in need of detention. These programs shall be listed in a central resource directory available for local authorities. This directory shall identify which juveniles are acceptable to each program and the cost of each program. Any program listed which is operated by a county or community must conform to guidelines established by the department of human services.

(2) Develop additional emergency shelters in those communities where no such facilities are now in existence, and where there is a demonstrable need for them.

(3) Coordinate a transportation assistance program for counties which have significant difficulty transporting youth to detention facilities. Grants will be made on the basis of proposals submitted to the department by local government units demonstrating special needs based on travel distance, youth detention need and lack of local resources despite good faith attempts to establish or utilize local programs. Reimbursement grants will not exceed forty thousand dollars for fiscal year one thousand nine hundred eighty-two.
CHAPTER 30
(Com. Sub. for H. B. 1157—By Delegate Steploe and Delegate Williams)

[Passed March 9, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article seven, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to contributing to the delinquency or neglect of a child; clarifying that the provisions of said section apply in the case of certain status offenses; and providing for penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. GENERAL PROVISIONS.

§49-7-7. Contributing to delinquency or neglect of a child.

A person who by any act or omission contributes to, encourages or tends to cause the delinquency or neglect of any child, including, but not limited to, aiding or encouraging any such child to habitually or continually refuse to respond, without just cause, to the lawful supervision of such child's parents, guardian or custodian or to be habitually absent from school without just cause, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not to exceed five hundred dollars, or imprisoned in the county jail for a period not exceeding one year, or both such fine and imprisonment.

CHAPTER 31
(Com. Sub. for H. B. 1802—By Delegate Moore)

[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article six, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as
amended, by adding thereto a new section, designated section twenty-four, relating to the civil service system; posting of job openings; where posted; and contents of notice.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. CIVIL SERVICE SYSTEM.

§29-6-24. Posting of job openings.

Whenever a job opening occurs within the classified service, the appointing authority shall, in addition to any other requirement of law or regulation for the posting of job opening notices, at least five days before making an appointment to fill the job opening, post a notice within the building or facility where the duties of the job will be performed and throughout the agency, which notice states that a job opening has occurred and describes the duties to be performed by a person employed in that position.

CHAPTER 32

(H. B. 1437—By Delegate Starcher and Delegate Faircloth)

[Passed March 5, 1984; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article two, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the appointment of deputy clerks by the court.

Be it enacted by the Legislature of West Virginia:

That section five, article two, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 2. CLAIMS AGAINST THE STATE.

§14-2-5. Court clerk and other personnel.

The court shall have the authority to appoint a clerk and deputy clerks. The salaries of the clerk and the deputy clerks shall be fixed by the joint committee on government and finance, and shall be paid out of the regular appropriation for the court. The clerk shall have custody of all records and proceedings of the court, shall attend meetings and hearings of the court, shall administer oaths and affirmations, and shall issue all official summonses, subpoenas, orders, statements and awards. A deputy clerk shall act in the place and stead of the clerk in the clerk's absence.

The joint committee on government and finance may employ other persons whose services shall be necessary to the orderly transaction of the business of the court and fix their compensation.

CHAPTER 33

(S. B. 497—By Mr. McGraw, Mr. President and Senator White)

[Passed March 10, 1984; to take effect July 1, 1984. Approved by the Governor.]

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. CLAIMS AGAINST THE STATE.


Each judge of the court shall receive one hundred forty dollars for each day actually served, and actual expenses
incurred in the performance of his duties. The number of days served by each judge shall not exceed one hundred in any fiscal year, except by authority of the joint committee on government and finance: Provided, That in computing the number of days served, days utilized solely for the exercise of duties assigned to judges and commissioners by the provisions of article two-a of this chapter shall be disregarded. Requisitions for compensation and expenses shall be accompanied by sworn and itemized statements, which shall be filed with the auditor and preserved as public records. For the purpose of this section, time served shall include time spent in the hearing of claims, in the consideration of the record, in the preparation of opinions and in necessary travel.

CHAPTER 34

(H.B. 2070—By Delegate Casey and Delegate Whitlow)

[Passed March 10, 1984; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, nine, ten, eleven and twelve, article two-a, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article two-a by adding thereto a new section, designated section twenty-eight, relating to reparations awards to victims of crimes generally; redefining the term “claimant” to include nonresidents of this state; authorizing the payment of reparations for prospective expenses and losses; increasing the amount which may be paid for expenses related to funeral, cremation and burial; authorizing the employment of not more than two reparations investigators; eliminating the filing fee for filing an application for an award of reparations; requiring law-enforcement officers and prosecuting attorneys to furnish certain reports, information, witness statements and other data to the reparations investigator and granting to such persons immunity from civil liability; establishing a procedure for obtaining protective orders when the reparations investigator requests reports, information, witness statements and other data; describing the contents of a find-
ing of fact prepared by the reparations investigator; fixing a
time for the filing of the reparations investigator's finding of
fact and recommendation; and providing for the retroactive
effect of amendments to said article two-a.

Be it enacted by the Legislature of West Virginia:

That sections three, nine, ten, eleven and twelve, article two-a,
chapter fourteen of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, be amended; and that said article
two-a be further amended by adding thereto a new section, design-
nated section twenty-eight, all to read as follows:

ARTICLE 2A. REPARATION AWARDS TO VICTIMS OF CRIMES.

§14-2A-10. Filing of application for reparation award; contents.
§14-2A-12. Investigation and recommendations by reparations investigator.


As used in this article, the term:

(a) "Claimant" means any of the following persons, whether
residents or nonresidents of this state, who claim an award
of reparations under this article:

(1) A victim;
(2) A dependent of a deceased victim;
(3) A third person other than a collateral source;
(4) A person who is authorized to act on behalf of a victim,
dependent or a third person who is not a collateral source.

(b) "Collateral source" means a source of benefits or ad-
vantages for economic loss otherwise reparable that the victim
or claimant has received, or that is readily available to him,
from any of the following sources:

(1) The offender;
(2) The government of the United States or any of its
agencies, a state or any of its political subdivisions, or an
instrumentality of two or more states;
(3) Social security, medicare and medicaid;

(4) State-required, temporary, nonoccupational disability insurance;

(5) Workers’ compensation;

(6) Wage continuation programs of any employer;

(7) Proceeds of a contract of insurance payable to the victim or claimant for loss that was sustained because of the criminally injurious conduct;

(8) A contract providing prepaid hospital and other health care services or benefits for disability.

(c) “Criminally injurious conduct” means conduct that occurs or is attempted in this state which by its nature poses a substantial threat of personal injury or death, and is punishable by fine or imprisonment or death, or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state. Criminally injurious conduct does not include conduct arising out of the ownership, maintenance or use of a motor vehicle, except when the person engaging in the conduct intended to cause personal injury or death, or except when the person engaging in the conduct is shown under this article to have committed negligent homicide, driving under the influence of alcohol, controlled substances or drugs or reckless driving.

(d) “Dependent” means an individual wholly or partially dependent upon the victim for care and support, and includes a child of the victim born after his death.

(e) “Economic loss” means economic detriment consisting only of allowable expense, work loss and replacement services loss. If criminally injurious conduct causes death, economic loss includes a dependent’s economic loss and a dependent’s replacement services loss. Noneconomic detriment is not economic loss; however, economic loss may be caused by pain and suffering or physical impairment.

(f) “Allowable expense” means reasonable charges incurred or to be incurred for reasonably needed products, services and accommodations, including those for medical care, rehabilitation and other remedial treatment and care.
Allowable expense includes a total charge not in excess of one thousand two hundred fifty dollars for expenses in any way related to funeral, cremation and burial. It does not include that portion of a charge for a room in a hospital, clinic, convalescent home, nursing home or any other institution engaged in providing nursing care and related services in excess of a reasonable and customary charge for semiprivate accommodations, unless accommodations other than semiprivate accommodations are medically required.

(g) "Work loss" means loss of income from work that the injured person would have performed if he had not been injured and expenses reasonably incurred or to be incurred by him to obtain services in lieu of those he would have performed for income, reduced by any income from substitute work actually performed or to be performed by him, or by income he would have earned in available appropriate substitute work that he was capable of performing but unreasonably failed to undertake.

(h) "Replacement services loss" means expenses reasonably incurred or to be incurred in obtaining ordinary and necessary services in lieu of those the injured person would have performed, not for income but for the benefit of himself or his family, if he had not been injured.

(i) "Dependent's economic loss" means loss after a victim's death of contributions of things of economic value to his dependents, not including services they would have received from the victim if he had not suffered the fatal injury, less expenses of the dependents avoided by reason of the victim's death.

(j) "Dependent's replacement service loss" means loss reasonably incurred or to be incurred by dependents after a victim's death in obtaining ordinary and necessary services in lieu of those the victim would have performed for their benefit if he had not suffered the fatal injury, less expenses of the dependents avoided by reason of the victim's death and not subtracted in calculating dependent's economic loss.

(k) "Noneconomic detriment" means pain, suffering, in-
convenience, physical impairment or other nonpecuniary damage.

(1) "Victim" means a person who suffers personal injury or death as a result of criminally injurious conduct.


The court of claims is hereby authorized to hire not more than two reparations investigators to be employed within the office of the clerk of the court of claims, who shall carry out the functions and duties set forth in section twelve of this article. Reparations investigators 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 reparations investigators 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 a 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; 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. The application shall be in a form prescribed by the clerk of the court of claims and shall contain the following information:

(1) The name and address of the victim of the criminally injurious conduct, the name and address of the claimant and the relationship of the claimant to the victim;

(2) If the victim is deceased, the name and address of each dependent of the victim and the extent to which each is dependent upon the victim for care and support;

(3) The nature of the criminally injurious conduct that is the basis for the claim and the date on which the conduct occurred;

(4) The law-enforcement agency or officer to whom the criminally injurious conduct was reported and the date on which it was reported;
(5) The nature and extent of the injuries that the victim sustained from the criminally injurious conduct for which reparations are sought, the name and address of any person who gave medical treatment to the victim for the injuries, the name and address of any hospital or similar institution where the victim received medical treatment for the injuries and whether the victim died as a result of the injuries;

(6) The total amount of the economic loss that the victim, a dependent or the claimant sustained or will sustain 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 a 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.


The clerk of the court of claims shall establish a procedure for the filing, recording and processing of applications for an award of reparations.

§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: Provided, That the reparations investigator shall not file information or documents which have been the subject of a protective order entered under the provisions of subsection (c) of this section.

(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.

The reparations investigator while investigating the claim,
may also require law-enforcement officers and prosecuting attorneys employed by the state or any political subdivision thereof, to provide him with reports, information, witness statements or other data gathered in the investigation of the criminally injurious conduct that is the basis of any claim to enable him to determine whether, and the extent to which, a claimant qualifies for an award of reparations. The prosecuting attorney and any officer or employee of the prosecuting attorney or of the law-enforcement agency shall be immune from any civil liability that might otherwise be incurred as the result of providing such reports, information, witness statements or other data relating to the criminally injurious conduct to the reparations investigator.

Upon motion of any party from whom such reports, information, witness statements or other data is sought, and for good cause shown, the court may make any order which justice requires to protect a witness or other person, including, but not limited to, the following: (1) That the reports, information, witness statements or other data not be made available; (2) that the reports, information, witness statements or other data may be made available only on specified terms and conditions, including a designation of time and place; (3) that the reports, information, witness statements or other data be made available only by a different method than that selected by the reparations investigator; (4) that certain matters not be inquired into, or that the scope of the reparations investigator's request be limited to certain matters; (5) that the reports, information, witness statements or other data be examined only by certain persons designated by the court; (6) that the reports, information, witness statements or other data, after being sealed, be opened only by order of the court; (7) that confidential information, or the identity of confidential witnesses or informers not be disclosed, or disclosed only in a designated manner.

However, 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 shall apply to the court of claims or a judge or commissioner thereof for an order grant-
(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) If the reparations investigator is recommending that an award be made, 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) If the reparations investigator is recommending that an award be made, 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 information which might be a basis for a reasonable reduction or denial of a claim because of contributory misconduct of the claimant or of a victim through whom he or she claims;
(8) 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 six months after the filing of the application: Provided, That where there is active criminal prosecution of the person or persons alleged to have committed the criminally injurious conduct which is the basis for the claimant's claim, the reparations investigator shall file his finding of fact and recommendation within six months after the first of any final convictions or other final determinations as to innocence or guilt, or any other final disposition of criminal proceedings. In any case, an additional time period may be provided by order of any court of claims judge or commissioner upon good cause shown.


Amendments made to the provisions of this article during the regular session of the Legislature in the year one thousand nine hundred eighty-four, shall be of retroactive effect to the extent that such amended provisions shall apply to all cases pending before the court of claims on the effective date of the act of the Legislature which effects such amendment.

CHAPTER 35

(Com. Sub. for H. P. 1406—By Delegate Starcher and Delegate Faircloth)

[Passed March 5, 1984; in effect July 1, 1984. 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 department of health; the farm management commission; and the public employees insurance board, 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 department of health, the farm management commission, and the public employees insurance board, agencies thereof, which have arisen due to overexpenditures of the departmental appropriations by officers of such state spending unit, such claims having been previously considered by the court of claims which also found that the state has received the benefit of the commodities and services rendered by each claimant, but were denied by the court of claims on the purely statutory grounds that to allow such claims would be condoning illegal acts contrary to the laws of the state. The Legislature pursuant to its findings of fact and also by the adoption of the findings of fact by the court of claims as its own, and, while not condoning such illegal acts, hereby declares it to be the moral obligation of the state to pay each such claim in the amount specified below, and directs the auditor to issue warrants upon receipt of a properly executed requisition supported by an itemized invoice, statement or other satisfactory document as required by section ten, article three, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, for the payment thereof out of any fund appropriated and available for the purpose.

(a) Claims against the Department of Corrections:

(to be paid from general revenue fund)

(1) Appalachian Power Company .................. $ 28,029.79
(2) Bluefield Community Hospital .................. $ 275.00
(3) General Telephone Company of the SE .. $ 1,264.30
AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state and directing the auditor to issue warrants for the payments thereof.

Be it enacted by the Legislature of West Virginia:
CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the alcohol beverage control commissioner; attorney general; Blennerhassett historical park commission; board of regents; department of agriculture; department of corrections; department of finance and administration; department of health; department of highways; department of human services; department of motor vehicles; department of natural resources; department of public safety; division of vocational rehabilitation; human rights commission; public employees insurance board; public legal services; secretary of state; state auditor; state tax department; supreme court of appeals; and West Virginia radiologic technology board of examiners, 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 warrants for the payment thereof out of any fund appropriated and available for the purpose.

(a) Claim against the Alcohol Beverage Control Commissioner:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Pauline G. Malcomb ________________________ $ 3,000.00

(b) Claim against the Attorney General:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Phyllis Jean Cole, Clerk of the Circuit Court of Kanawha County ________________ $ 15.00

(c) Claim against the Blennerhassett Historical Park Commission:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Kanawha River Docking and Marine, Inc. ________________________________ $ 983.40
### Claims against the Board of Regents:

<table>
<thead>
<tr>
<th></th>
<th>Name</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Bailey, Incorporated</td>
<td>$131.01</td>
</tr>
<tr>
<td>2</td>
<td>Donald F. Udell</td>
<td>$102.00</td>
</tr>
</tbody>
</table>

(To be paid from General Revenue Fund)

<table>
<thead>
<tr>
<th></th>
<th>Name</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Appalachian Engineers, Inc.</td>
<td>$9,434.53</td>
</tr>
<tr>
<td>2</td>
<td>Bethany L. Browning</td>
<td>$75.72</td>
</tr>
<tr>
<td>3</td>
<td>Judith Ann Hall</td>
<td>$469.41</td>
</tr>
<tr>
<td>4</td>
<td>Fannie Lee Malone</td>
<td>$656.00</td>
</tr>
<tr>
<td>5</td>
<td>Andrew S. McGalla</td>
<td>$610.00</td>
</tr>
<tr>
<td>6</td>
<td>Nora A. Miller</td>
<td>$225.00</td>
</tr>
<tr>
<td>7</td>
<td>New River Building Company</td>
<td>$40,779.08</td>
</tr>
<tr>
<td>8</td>
<td>S. S. Logan Packing Company</td>
<td>$819.86</td>
</tr>
<tr>
<td>9</td>
<td>Edward Sowell</td>
<td>$456.00</td>
</tr>
<tr>
<td>10</td>
<td>Elaine B. Stemple</td>
<td>$150.00</td>
</tr>
<tr>
<td>11</td>
<td>Bobbie E. Stevens</td>
<td>$467.04</td>
</tr>
<tr>
<td>12</td>
<td>Whitten Corporation</td>
<td>$18,627.20</td>
</tr>
</tbody>
</table>

(To be paid from Special Revenue Fund)

### Claim against the Department of Agriculture:

<table>
<thead>
<tr>
<th></th>
<th>Name</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Goodyear Tire and Rubber Company</td>
<td>$174.54</td>
</tr>
</tbody>
</table>

(To be paid from General Revenue Fund)

### Claims against the Department of Corrections:
### Claims

<table>
<thead>
<tr>
<th>Claim No.</th>
<th>Name</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>59</td>
<td>(TO BE PAID FROM GENERAL REVENUE FUND)</td>
<td></td>
</tr>
<tr>
<td>60 (1)</td>
<td>Zeik Auvil</td>
<td>$519.00</td>
</tr>
<tr>
<td>61 (2)</td>
<td>C. W. Lewis, Inc.</td>
<td>$410.20</td>
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</table>

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

<table>
<thead>
<tr>
<th>Claim No.</th>
<th>Name</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>62 (1)</td>
<td>Avery Label, Div. of Avery</td>
<td></td>
</tr>
<tr>
<td>63 (2)</td>
<td>Consolidated Rail Corporation</td>
<td>$1,950.00</td>
</tr>
<tr>
<td>64 (3)</td>
<td>Johnson Controls, Inc.</td>
<td>$6,676.63</td>
</tr>
<tr>
<td>65 (4)</td>
<td>Sperry Univac</td>
<td>$3,057.00</td>
</tr>
</tbody>
</table>

#### (h) Claims against the Department of Health:

<table>
<thead>
<tr>
<th>Claim No.</th>
<th>Name</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>66 (1)</td>
<td>A. H. Robins Company</td>
<td>$208.68</td>
</tr>
<tr>
<td>67 (2)</td>
<td>Beckman Instruments, Inc.</td>
<td>$198.50</td>
</tr>
<tr>
<td>68 (3)</td>
<td>Aaron D. Cottle</td>
<td>$45.00</td>
</tr>
<tr>
<td>69 (4)</td>
<td>Goodwin Drug Company</td>
<td>$47.39</td>
</tr>
<tr>
<td>70 (5)</td>
<td>Holzer Medical Center</td>
<td>$99.00</td>
</tr>
<tr>
<td>71 (6)</td>
<td>Kramer's Photo Supply, Inc.</td>
<td>$31.79</td>
</tr>
<tr>
<td>72 (7)</td>
<td>Randy Paul Lowe</td>
<td>$15.00</td>
</tr>
<tr>
<td>73 (8)</td>
<td>Michie Company (The)</td>
<td>$163.31</td>
</tr>
<tr>
<td>74 (9)</td>
<td>Miller's Implement, Inc.</td>
<td>$92.65</td>
</tr>
<tr>
<td>75 (10)</td>
<td>Francis L. Parker</td>
<td>$8,000.00</td>
</tr>
<tr>
<td>76 (11)</td>
<td>Roane General Hospital</td>
<td>$1,020.03</td>
</tr>
<tr>
<td>77 (12)</td>
<td>Lillian Rose</td>
<td>$10.50</td>
</tr>
<tr>
<td>78 (13)</td>
<td>Edwin O. Walker</td>
<td>$30.00</td>
</tr>
<tr>
<td>79 (14)</td>
<td>Pearl Patsy Webb</td>
<td>$36.00</td>
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<tr>
<td>80 (15)</td>
<td>West Virginia Telephone Company</td>
<td>$274.64</td>
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</tbody>
</table>

#### (i) Claims against the Department of Highways:

<table>
<thead>
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<th>Claim No.</th>
<th>Name</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>81 (1)</td>
<td>Terry Ahalt</td>
<td>$172.46</td>
</tr>
<tr>
<td>82 (2)</td>
<td>Wayne K. Baker, d/b/a Baker Coal Company</td>
<td>$9,000.00</td>
</tr>
<tr>
<td>83 (3)</td>
<td>James Burcham and Patricia</td>
<td></td>
</tr>
<tr>
<td>84 (4)</td>
<td>J. Burcham</td>
<td>$1,605.33</td>
</tr>
<tr>
<td>No.</td>
<td>Claimant</td>
<td>Claim Description</td>
</tr>
<tr>
<td>-----</td>
<td>---------------------------------------------------</td>
<td>--------------------------------------------------------</td>
</tr>
<tr>
<td>94</td>
<td>Armeda Jean Bush</td>
<td>$1,050.00</td>
</tr>
<tr>
<td>95</td>
<td>Butler Corporation</td>
<td>$752.00</td>
</tr>
<tr>
<td>96</td>
<td>Stella Cecil, Admin. of the Estate of O'Dell M. Cecil, deceased</td>
<td>$137,328.25</td>
</tr>
<tr>
<td>97</td>
<td>City of Shinnston</td>
<td>$801.50</td>
</tr>
<tr>
<td>98</td>
<td>Betty Cook</td>
<td>$18,910.00</td>
</tr>
<tr>
<td>99</td>
<td>Larry R. Dexter &amp; Sharon K. Dexter</td>
<td>$375.61</td>
</tr>
<tr>
<td>100</td>
<td>Dial-Page</td>
<td>$250.00</td>
</tr>
<tr>
<td>101</td>
<td>Foster &amp; Creighton Company and Vecellio &amp; Grogan, Inc.</td>
<td>$2,499.74</td>
</tr>
<tr>
<td>102</td>
<td>Millard A. Harmon</td>
<td>$14,805.79</td>
</tr>
<tr>
<td>103</td>
<td>U. G. Harrison and Edna Harrison</td>
<td>$8,800.00</td>
</tr>
<tr>
<td>104</td>
<td>Lois V. Haynes and E. Robert Haynes</td>
<td>$50,000.00</td>
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<tr>
<td>105</td>
<td>High Voltage Systems, Inc.</td>
<td>$59,415.88</td>
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<tr>
<td>106</td>
<td>George B. Hissom</td>
<td>$106.91</td>
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<tr>
<td>107</td>
<td>Clyde Holloway, as next friend of Kay Lee Holloway</td>
<td>$1,252.57</td>
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<tr>
<td>108</td>
<td>Interstate Equipment Sales, Inc.</td>
<td>$10,100.00</td>
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<tr>
<td>109</td>
<td>James C. Dawes Company, Inc.</td>
<td>$912.00</td>
</tr>
<tr>
<td>110</td>
<td>James E. Jones and Ruth Jones</td>
<td>$5,000.00</td>
</tr>
<tr>
<td>111</td>
<td>Mr. and Mrs. David Leadman</td>
<td>$1,500.00</td>
</tr>
<tr>
<td>112</td>
<td>Norman Lewis</td>
<td>$3,000.00</td>
</tr>
<tr>
<td>113</td>
<td>Logan Corporation</td>
<td>$1,089.50</td>
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<tr>
<td>114</td>
<td>Mabscott Supply Company</td>
<td>$529.00</td>
</tr>
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<td>115</td>
<td>Fred Marcum</td>
<td>$275.92</td>
</tr>
<tr>
<td>116</td>
<td>Robert Marcum and Loretta Marcum</td>
<td>$10,799.00</td>
</tr>
<tr>
<td>117</td>
<td>Elsie Mast</td>
<td>$20,700.62</td>
</tr>
<tr>
<td>118</td>
<td>Willis Mast Livestock Trucking</td>
<td>$1,000.00</td>
</tr>
<tr>
<td>119</td>
<td>Elliott E. Maynard, III</td>
<td>$4,953.00</td>
</tr>
<tr>
<td>120</td>
<td>Lillian Akers Meade, Admin. of the Estate of Gary Wayne Akers, deceased</td>
<td>$44,050.34</td>
</tr>
<tr>
<td>121</td>
<td>Lillian Akers Meade, as guardian for and on behalf of Christopher</td>
<td>$38,061.33</td>
</tr>
<tr>
<td>122</td>
<td>Lewis Akers</td>
<td>$38,061.33</td>
</tr>
<tr>
<td>123</td>
<td>Lillian Akers Meade, as guardian for and on behalf of Steven</td>
<td>$38,061.33</td>
</tr>
<tr>
<td>124</td>
<td>Paul E. Miller</td>
<td>$39,000.00</td>
</tr>
<tr>
<td>125</td>
<td>Marguerite Miller</td>
<td>$39,000.00</td>
</tr>
</tbody>
</table>
134  (34)  William G. Poling and  
135  Delores J. Poling ________________________ __ $ 500.00 
136  (35)  Brenda Ann Poole and  
137  Michael Ray Poole ________________________ __ $ 125.50 
138  (36)  Shelly & Sands, Inc. ________________________ __ $ 50,665.56 
139  (37)  Melvin Sickles ________________________ __ $ 444.00 
140  (38)  Sandra Stiltner ________________________ __ $ 453.11 
141  (39)  Charles D. Stout and Joyce L. Stout __ $ 1,000.00 
142  (40)  Harold C. Swiger ________________________ __ $ 292.01 
143  (41)  Vecellio & Grogan, Inc. ________________________ __ $ 14,842.20 
144  (42)  Wayne Concrete Company ________________________ __ $ 13,477.88 
145  (43)  John J. Wright ________________________ __ $ 1,350.00 
146  (44)  Peter Yerkovich, Jr. ________________________ __ $ 84.62 
147  (j)  Claim against the Department of Human Services:  
148  (TO BE PAID FROM GENERAL REVENUE FUND)  
149  (1)  John Casey Peters ________________________ __ $ 2,040.03 
150  (k)  Claims against the Department of Motor Vehicles:  
151  (TO BE PAID FROM STATE ROAD FUND)  
152  (1)  Moore Business Forms, Inc. ________________________ __ $ 763.92 
153  (2)  Pendleton County Bank ________________________ __ $ 274.67 
154  (3)  3M Company ________________________ __ $ 3,828.00 
155  (l)  Claim against the Department of Natural Resources:  
156  (TO BE PAID FROM GENERAL REVENUE FUND)  
157  (1)  Lawhead Press, Inc. (The) ________________________ __ $ 561.05 
158  (m)  Claims against the Department of Public Safety:  
159  (TO BE PAID FROM GENERAL REVENUE FUND)  
160  (1)  Appalachian Power Company ________________________ __ $ 136.16 
161  (2)  Eagle Coal and Dock Company, Inc. ________________________ __ $ 5,950.00 
162  (3)  Greenbrier Valley Soil Conservation District ________________________ __ $ 338.10 
163  (4)  Hanover Shoe, Inc. (The) ________________________ __ $ 1,511.40
168  (5) Machinery & Systems Division, a Division of Carrier Corp. $ 833.00
169  (6) Pagano Industries, Inc. $ 1,560.00
170  (7) Thompson's of Morgantown, Inc. $ 295.32
171
172  (n) Claim against the Division of Vocational Rehabilitation:
173    (TO BE PAID FROM SPECIAL REVENUE FUND)
174  (1) Roentgen Diagnostics, Inc. $ 75.00
175
176  (o) Claim against the Human Rights Commission:
177    (TO BE PAID FROM GENERAL REVENUE FUND)
178  (1) Janet T. Surface $ 46.09
179
180  (p) Claim against Public Employees Insurance Board:
181    (TO BE PAID FROM GENERAL REVENUE FUND)
182  (1) Vera B. Ramsey $ 332.76
183
184  (q) Claim against Public Legal Services:
185    (TO BE PAID FROM GENERAL REVENUE FUND)
186  (1) John R. Lukens $ 441.15
187
188  (r) Claims against the Secretary of State:
189    (TO BE PAID FROM GENERAL REVENUE FUND)
190  (1) Moore Business Forms, Inc. $ 774.55
191  (2) Simplex Time Recorder Co. $ 505.76
192
193  (s) Claim against the State Auditor:
194    (TO BE PAID FROM GENERAL REVENUE FUND)
195  (1) Department of Employment Security $ 168,881.28
196
197  (t) Claim against the State Tax Department:
198    (TO BE PAID FROM GENERAL REVENUE FUND)
199  (1) Standard Publishing $ 1,304.00
200
201  (u) Claims against the Supreme Court of Appeals:
(TO BE PAID FROM GENERAL REVENUE FUND)

1. Judy W. Chontos $56.80
2. Lawyers Co-Operative Publishing Company $6,865.65

Claim against the West Virginia Radiologic Technology Board of Examiners:

(TO BE PAID FROM SPECIAL REVENUE FUND)

1. Elvin D. Slater $109.20

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

CHAPTER 37

(Com. Sub. for H. B. 1407—By Delegate Starcher and Delegate Faircloth)

[Passed March 5, 1984; 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 reparation to be moral obligations of the state and directing payment thereof.
The Legislature has duly considered the findings of fact and recommendations for awards reported to it by the court of claims in respect to the following named claimants, citizens of West Virginia, who were innocent victims of crime within this state and entitled to reparations; and in respect to each of such named claims the Legislature adopts those findings of fact as its own, hereby declares it to be the moral obligation of the state to pay each such claimant in the amount specified below, and directs the auditor to issue warrants for the payment thereof out of any fund appropriated and available for the purpose.

**Claims for crime victims reparation awards:**

<table>
<thead>
<tr>
<th>(TO BE PAID FROM CRIME VICTIMS REPARATION FUND)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Herbert K. Ashworth</td>
<td>$ 500.00</td>
</tr>
<tr>
<td>(2) Herbert K. Ashworth, as guardian</td>
<td>$ 6,500.00</td>
</tr>
<tr>
<td>of Kenneth Scott Ashworth</td>
<td></td>
</tr>
<tr>
<td>(3) Herbert K. Ashworth, as guardian</td>
<td>$ 6,500.00</td>
</tr>
<tr>
<td>of Kevin Duane Ashworth</td>
<td></td>
</tr>
<tr>
<td>(4) Herbert K. Ashworth, as guardian</td>
<td>$ 6,500.00</td>
</tr>
<tr>
<td>of Patricia Lynn Ashworth</td>
<td></td>
</tr>
<tr>
<td>(5) Deno Biondillo</td>
<td>$ 7,846.95</td>
</tr>
<tr>
<td>(6) Elsie M. Cook</td>
<td>$ 1,024.09</td>
</tr>
<tr>
<td>(7) Joseph H. Cooper</td>
<td>$ 9,040.41</td>
</tr>
<tr>
<td>(8) Linda R. Cottrell</td>
<td>$ 678.12</td>
</tr>
<tr>
<td>(9) Ray F. Dodd</td>
<td>$ 1,466.07</td>
</tr>
<tr>
<td>(10) Mary Jeraldine Fletcher</td>
<td>$ 4,765.35</td>
</tr>
<tr>
<td>(11) Josephine E. Ganoe</td>
<td>$ 500.00</td>
</tr>
<tr>
<td>(12) Jessie M. Lambert</td>
<td>$ 8,364.22</td>
</tr>
<tr>
<td>(13) James R. Lawhon</td>
<td>$ 5,343.60</td>
</tr>
<tr>
<td>(14) Glenna M. Miller</td>
<td>$ 75.57</td>
</tr>
<tr>
<td>(15) Rodney A. Miller</td>
<td>$ 27.61</td>
</tr>
<tr>
<td>(16) Harry A. Neider, Jr., executor of the</td>
<td>$ 3,553.99</td>
</tr>
<tr>
<td>estate of Harry A. Neider, Sr.</td>
<td></td>
</tr>
<tr>
<td>(17) Mary Helen Peters, administratrix</td>
<td>$ 490.00</td>
</tr>
<tr>
<td>of the estate of Candace Leigh Henline</td>
<td></td>
</tr>
<tr>
<td>(18) Mary Helen Peters, guardian of</td>
<td>$ 9,750.00</td>
</tr>
<tr>
<td>Jamie Lynn Henline</td>
<td></td>
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<tr>
<td>(19) Mary Helen Peters, guardian of</td>
<td>$ 9,750.00</td>
</tr>
<tr>
<td>Jodie Lee Henline</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Name</td>
</tr>
<tr>
<td>---</td>
<td>----------------------------------------------</td>
</tr>
<tr>
<td>20</td>
<td>Brian K. Price</td>
</tr>
<tr>
<td>21</td>
<td>Gregory D. Roberts</td>
</tr>
<tr>
<td>22</td>
<td>Guardian of Jeffrey Wayne Roberts</td>
</tr>
<tr>
<td>23</td>
<td>James J. Seidl</td>
</tr>
<tr>
<td>24</td>
<td>George M. Stathakis, administrator of</td>
</tr>
<tr>
<td></td>
<td>the estate of Frances Urania Metzdorf</td>
</tr>
<tr>
<td>25</td>
<td>Gary R. Stevens</td>
</tr>
<tr>
<td>26</td>
<td>James V. Vizzari</td>
</tr>
<tr>
<td>27</td>
<td>Paul E. White</td>
</tr>
<tr>
<td>48</td>
<td>Total</td>
</tr>
</tbody>
</table>

The Legislature finds that the above moral obligations and the appropriations made in satisfaction thereof shall be the full compensation for all claimants herein; provided that any claimant herein who, subsequent to the payment of an award, receives or recovers benefits or advantages for the economic loss not prior considered by the court of claims in the course of and in reduction of the award of reparations, shall inform the court of claims and crime victims reparation fund of such recovery for determination of the amounts thereof and requirement for the deposit thereof in the crime victims reparation fund.

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**CHAPTER 38**

(S. B. 171—By Senator Palumbo and Senator Harman)

[Passed March 7, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact chapter thirty-six-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the uniform condominium act; short title; applicability; definitions; variation by agreement; separate titles and taxation; applicability of local ordinances, regulations and building codes; eminent domain; supplemental general principles of law applicable; construction against implicit repeal; uniformity of application and construction; severability; unconscionable agreement or term of contract; obligation of good faith;
remedies to be liberally administered; creation of condominium; unit boundaries; construction and validity of declaration and bylaws; description of units; contents of declaration; leasehold condominiums; allocation of common element interests, votes and common expense liabilities; limited common elements; plats and plans; exercise of development rights; alterations of units; relocation of boundaries between adjoining units; subdivision or conversion of units; monuments as boundaries; use of condominium for sales purposes; easement rights; amendment of declaration; termination of condominium; rights of secured lenders; master associations; merger or consolidation of condominiums; organization of unit owners' association; powers of unit owners' association; executive board members and officers; transfer of special declarant rights; termination of contracts and leases of declarant; bylaws; upkeep of the condominium; meetings; quorums; voting; proxies; tort and contract liability; conveyance or encumbrance of common elements; insurance; surplus funds; assessments for common expenses; lien for assessments; other liens affecting condominium; association records; association as trustee; applicability; waiver; liability for public offering statement requirements; public offering statement for condominiums subject to development rights; time shares; conversion condominiums; condominium securities; purchaser's right to cancel; resales of units; escrow of deposits; release of liens; conversion buildings; warranties; effect of violation on rights of action; attorney's fees; labeling of promotional material; declarant's obligation to complete and restore; and substantial completion of units.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 36B. UNIFORM CONDOMINIUM ACT.

Article
2. Creation, Alterations and Termination of Condominiums.
4. Protection of Condominium Purchasers.
ARTICLE 1. GENERAL PROVISIONS.


§36B-1-102. Applicability.

§36B-1-103. Definitions.

§36B-1-104. Variation by agreement.

§36B-1-105. Separate titles and taxation.

§36B-1-106. Applicability of local ordinances, regulations and building codes.

§36B-1-107. Eminent domain.

§36B-1-108. Supplemental general principles of law applicable.

§36B-1-109. Construction against implicit repeal.

§36B-1-110. Uniformity of application and construction.

§36B-1-111. Severability.

§36B-1-112. Unconscionable agreement or term of contract.

§36B-1-113. Obligation of good faith.

§36B-1-114. Remedies to be liberally administered.


1 This chapter shall be known and may be cited as the
2 "Uniform Condominium Act."

§36B-1-102. Applicability.

1 (a) This chapter applies to all condominiums created
2 within this state after the effective date of this chapter.
3 Sections 1-105 (separate titles and taxation), 1-106
4 (applicability of local ordinances, regulations and building
5 codes), 1-107 (eminent domain), 2-103 (construction and
6 validity of declaration and bylaws), 2-104 (description of
7 units), 3-102(a) (1) through (6) and (11) through (16) (powers
8 of unit owners' association), 3-111 (tort and contract
9 liability),3-116 (lien for assessments), 3-118 (association
10 records), 4-109 (resales of units) and 4-115 (effect of
11 violation on rights of action; attorney's fees), and section 1-
12 103 (definitions) to the extent necessary in construing any of
13 those sections, apply to all condominiums created in this
14 state before the effective date of this chapter; but those
15 sections apply only with respect to events and circumstances
16 occurring after the effective date of this chapter and do not
17 invalidate existing provisions of the declaration, bylaws, or
18 plats or plans of those condominiums.

19 (b) The provisions of chapter one hundred fifty-three,
20 acts of the Legislature, one thousand nine hundred sixty-
21 three, do not apply to condominiums created after the
effective date of this chapter and do not invalidate any amendment to the declaration, rules, bylaws, plats and plans and code of regulations of any condominium created before the effective date of this chapter if the amendment would be permitted by this chapter. The amendment must be adopted in conformity with the procedures and requirements specified by those instruments and by chapter one hundred fifty-three, acts of the Legislature, one thousand nine hundred sixty-three. If the amendment grants to any person any rights, powers or privileges permitted by this chapter, all correlative obligations, liabilities and restrictions in this chapter also apply to that person.

(c) This chapter does not apply to condominiums or units located outside this state, but the public offering statement provisions (sections 4-102 through 4-108) apply to all contracts for the disposition thereof signed in this state by any party unless exempt under section 4-101(b).

(d) The provisions of this chapter shall apply to all condominiums to the extent such provisions conflict or are inconsistent with the provisions of chapter one hundred fifty-three, acts of the Legislature, one thousand nine hundred sixty-three: Provided, That the provisions of this chapter shall not modify, limit or nullify any rights, duties, or obligations created or existing under any declaration, bylaws or plats or plans of condominiums created in this state before the effective date of this chapter.

§36B-1-103. Definitions.

In the declaration and bylaws, unless specifically provided otherwise or the context otherwise requires, and in this chapter:

(1) “Affiliate of a declarant” means any person who controls, is controlled by, or is under common control with a declarant. A person “controls” a declarant if the person (i) is a general partner, officer, director or employer of the declarant, (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent of the voting interests in the declarant, (iii) controls in any manner
the election of a majority of the directors of the declarant, or (iv) has contributed more than twenty percent of the capital of the declarant. A person "is controlled by" a declarant if the declarant (i) is a general partner, officer, director or employer of the person, (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent of the voting interests in the person, (iii) controls in any manner the election of a majority of the directors of the person, or (iv) has contributed more than twenty percent of the capital of the person. Control does not exist if the powers described in this paragraph are held solely as security for an obligation and are not exercised.

(2) "Allocated interests" means the undivided interest in the common elements, the common expense liability and votes in the association allocated to each unit.

(3) "Association" or "unit owners' association" means the unit owners' association organized under section 3-101.

(4) "Common elements" means all portions of a condominium other than the units.

(5) "Common expenses" means expenditures made by or financial liabilities of the association, together with any allocations to reserves.

(6) "Common expense liability" means the liability for common expenses allocated to each unit pursuant to section 2-107.

(7) "Condominium" means real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners.

(8) "Conversion building" means a building that at any time before creation of the condominium was occupied wholly or partially by persons other than purchasers and persons who occupy with the consent of purchasers.
"Declarant" means any person or group of persons acting in concert who (i) as part of a common promotional plan, offers to dispose of his or its interest in a unit not previously disposed of, or (ii) reserves or succeeds to any special declarant right.

"Declaration" means any instruments, however denominated, that create a condominium and any amendments to those instruments.

"Development rights" means any right or combination of rights reserved by a declarant in the declaration to (i) add real estate to a condominium; (ii) create units, common elements or limited common elements within a condominium; (iii) subdivide units or convert units into common elements; or (iv) withdraw real estate from a condominium.

"Dispose" or "disposition" means a voluntary transfer to a purchaser of any legal or equitable interest in a unit, but does not include the transfer or release of a security interest.

"Executive board" means the body, regardless of name, designated in the declaration to act on behalf of the association.

"Identifying number" means a symbol or address that identifies only one unit in a condominium.

"Leasehold condominium" means a condominium in which all or a portion of the real estate is subject to a lease, the expiration or termination of which will terminate the condominium or reduce its size.

"Limited common element" means a portion of the common elements allocated by the declaration or by operation of section 2-102(2) or (4) for the exclusive use of one or more but fewer than all the units.

"Master association" means an organization described in section 2-120, whether or not it is also an association described in section 3-101.

"Mortgage" means either a mortgage or a deed of trust.
(19) "Offering" means any advertisement, inducement, solicitation or attempt to encourage any person to acquire any interest in a unit, other than as security for an obligation. An advertisement in a newspaper or other periodical of general circulation, or in any broadcast medium to the general public, of a condominium not located in this state, is not an offering if the advertisement states that an offering may be made only in compliance with the law of the jurisdiction in which the condominium is located.

(20) "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity. (In the case of a land trust, however, "person" means the beneficiary of the trust rather than the trust or the trustee.)

(21) "Purchaser" means any person, other than a declarant or a person in the business of selling real estate for his own account, who by means of a voluntary transfer acquires a legal or equitable interest in a unit, other than (i) a leasehold interest (including renewal options) of less than twenty years, or (ii) as security for an obligation.

(22) "Real estate" means any leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements and interests which by custom, usage or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. "Real estate" includes parcels with or without upper or lower boundaries, and spaces that may be filled with air or water.

(23) "Residential purposes" means use for dwelling or recreational purposes, or both.

(24) "Special declarant rights" means rights reserved for the benefit of a declarant to (i) complete improvements indicated on plats and plans filed with the declaration (section 2-109); (ii) exercise any development right (section 2-110); (iii) maintain sales offices, management offices, signs advertising the condominium, and models (section 2-115); (iv) use easements through the common elements for the purpose of making improvements within the
condominium or within real estate which may be added to the condominium (section 2-116); (v) make the condominium part of a larger condominium or a planned community (section 2-121); (vi) make the condominium subject to a master association (section 2-120); or (vii) appoint or remove any officer of the association or any master association or any executive board member during any period of declarant control (section 3-103)(c).

(25) "Time share" means a right to occupy a unit or any of several units during five or more separated time periods over a period of at least five years, including renewal options, whether or not coupled with an estate or interest in a condominium or a specified portion thereof.

(26) "Unit" means a physical portion of the condominium designated for separate ownership or occupancy, the boundaries of which are described pursuant to section 2-105(a) (5).

(27) "Unit owner" means a declarant or other person who owns a unit, or a lessee of a unit in a leasehold condominium whose lease expires simultaneously with any lease the expiration or termination of which will remove the unit from the condominium, but does not include a person having an interest in a unit solely as security for an obligation.

§36B-1-104. Variation by agreement.

Except as expressly provided in this chapter, provisions of this chapter may not be varied by agreement, and rights conferred by this chapter may not be waived. A declarant may not act under a power of attorney, or use any other device, to evade the limitations or prohibitions of this chapter or the declaration.

§36B-1-105. Separate titles and taxation.

(a) If there is any unit owner other than a declarant, each unit that has been created, together with its interest in the common elements, constitutes for all purposes a separate parcel of real estate.

(b) If there is any unit owner other than a declarant,
each unit must be separately taxed and assessed, and no separate tax or assessment may be rendered against any common elements for which a declarant has reserved no development rights.

(c) Any portion of the common elements for which the declarant has reserved any development right must be separately taxed and assessed against the declarant, and the declarant alone is liable for payment of those taxes.

(d) If there is no unit owner other than a declarant, the real estate comprising the condominium may be taxed and assessed in any manner provided by law.

§36B-1-106. Applicability of local ordinances, regulations and building codes.

A zoning, subdivision, building code or other real estate use law, ordinance or regulation may not prohibit the condominium form of ownership or impose any requirement upon a condominium which it would not impose upon a physically identical development under a different form of ownership. Otherwise, no provision of this chapter invalidates or modifies any provision of any zoning, subdivision, building code, or other real estate use law, ordinance or regulation.

§36B-1-107. Eminent domain.

(a) If a unit is acquired by eminent domain, or if part of a unit is acquired by eminent domain leaving the unit owner with a remnant which may not practically or lawfully be used for any purpose permitted by the declaration, the award must compensate the unit owner for his unit and its interest in the common elements whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides, that unit’s allocated interests are automatically reallocated to the remaining units in proportion to the respective allocated interests of those units before the taking, and the association shall promptly prepare, execute and record an amendment to the declaration reflecting the reallocations. Any remnant of a unit remaining after part of a unit is taken under this subsection is thereafter a common element.
(b) Except as provided in subsection (a), if part of a unit is acquired by eminent domain, the award must compensate the unit owner for the reduction in value of the unit and its interest in the common elements, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides, (1) that unit's allocated interests are reduced in proportion to the reduction in the size of the unit, or on any other basis specified in the declaration, and (2) the portion of the allocated interests divested from the partially acquired unit are automatically reallocated to that unit and the remaining units in proportion to the respective allocated interest of those units before the taking, with the partially acquired unit participating in the reallocation on the basis of its reduced allocated interest.

(c) If part of the common elements is acquired by eminent domain, the portion of the award attributable to the common elements taken must be paid to the association. Unless the declaration provides otherwise, any portion of the award attributable to the acquisition of a limited common element must be equally divided among the owners of the units to which that limited common element was allocated at the time of acquisition.

(d) If the acquisition of common elements or the acquisition of certain units decreases the value of the remaining units by more than a de minimus amount, the award must include an amount to all remaining unit owners sufficient to compensate them for that decrease in value. For purposes of this subsection the entity authorized to exercise the right of eminent domain must give notice to all unit owners and holders of liens on units in the manner set forth in section three, article two, chapter fifty-four of this code or by certified or registered mail, return receipt requested.

(e) The court decree shall be recorded in every county in which any portion of the condominium is located.

§36B-1-108. Supplemental general principles of law applicable.

The principles of law and equity, including the law of
§36B-1-109. Construction against implicit repeal.

This chapter being a general act intended as a unified coverage of its subject matter, no part of it shall be construed to be impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

§36B-1-110. Uniformity of application and construction.

This chapter shall be applied and construed so as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

§36B-1-111. Severability.

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provisions or application, and to this end the provisions of this chapter are severable.

§36B-1-112. Unconscionable agreement or term of contract.

(a) The court, upon finding as a matter of law that a contract or contract clause was unconscionable at the time the contract was made, may refuse to enforce the contract, enforce the remainder of the contract without the unconscionable clause, or limit the application of any unconscionable clause in order to avoid an unconscionable result.

(b) Whenever it is claimed, or appears to the court, that a contract or any contract clause is or may be unconscionable, the parties, in order to aid the court in making the determination, shall be afforded a reasonable opportunity to present evidence as to:
13 (1) The commercial setting of the negotiations;

14 (2) Whether a party has knowingly taken advantage of
15 the inability of the other party reasonably to protect his
16 interests by reason of physical or mental infirmity,
17 illiteracy, or inability to understand the language of the
18 agreement or similar factors;

19 (3) The effect and purpose of the contract or clause; and

20 (4) If a sale, any gross disparity, at the time of
21 contracting, between the amount charged for the real estate
22 and the value of the real estate measured by the price at
23 which similar real estate was readily obtainable in similar
24 transactions, but a disparity between the contract price and
25 the value of the real estate measured by the price at which
26 similar real estate was readily obtainable in similar
27 transactions does not, of itself, render the contract
28 unconscionable.

§36B-1-113. Obligation of good faith.

1 Every contract or duty governed by this chapter imposes
2 an obligation of good faith in its performance or
3 enforcement.

§36B-1-114. Remedies to be liberally administered.

1 (a) The remedies provided by this chapter shall be
2 liberally administered to the end that the aggrieved party is
3 put in as good a position as if the other party had fully
4 performed. However, consequential, special or punitive
5 damages may not be awarded except as specifically
6 provided in this chapter or by other rule of law.

7 (b) Any right or obligation declared by this chapter is
8 enforceable by judicial proceeding.

ARTICLE 2. CREATION, ALTERATIONS AND TERMINATION OF
CONDOMINIUMS.

§36B-2-102. Unit boundaries.
§36B-2-103. Construction and validity of declaration and bylaws.
§36B-2-104. Description of units.
§36B-2-105. Contents of declaration.
§36B-2-106. Leasehold condominiums.
§36B-2-107. Allocation of common element interests, votes and common
expense liabilities.

(a) A condominium may be created pursuant to this chapter only by recording a declaration executed in the same manner as a deed. The declaration must be recorded in every county in which any portion of the condominium is located, and must be indexed in the Grantee's index in the name of the condominium and the association and in the Grantor's index in the name of each person executing the declaration.

(b) A declaration or an amendment to a declaration adding units to a condominium, may not be recorded unless all structural components and mechanical systems of all buildings containing or comprising any units thereby created are substantially completed in accordance with the plans, as evidenced by a recorded certificate of completion executed by an independent engineer, surveyor or architect.

§ 36B-2-102. Unit boundaries.

Except as provided by the declaration:

(1) If walls, floors or ceilings are designated as boundaries of a unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces thereof are a part of the unit, and all other portions of the walls, floors or ceilings are a part of the common elements.
(2) If any chute, flue, duct, wire, conduit, bearing wall, bearing column or any other fixture lies partially within and partially outside the designated boundaries of a unit, any portion thereof serving only that unit is a limited common element allocated solely to that unit, and any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements.

(3) Subject to the provisions of subdivision (2), all spaces, interior partitions, and other fixtures and improvements within the boundaries of a unit are a part of the unit.

(4) Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, and all exterior doors and windows or other fixtures designed to serve a single unit, but located outside the unit's boundaries, are limited common elements allocated exclusively to that unit.

§36B-2-103. Construction and validity of declaration and bylaws.

(a) All provisions of the declaration and bylaws are severable.

(b) The rule against perpetuities may not be applied to defeat any provision of the declaration, bylaws, rules or regulations adopted pursuant to section 3-102 (a) (1).

(c) In the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with this chapter.

(d) Title to a unit and common elements is not rendered unmarketable or otherwise affected by reason of an insubstantial failure of the declaration to comply with this chapter. Whether a substantial failure impairs marketability is not affected by this chapter.

§36B-2-104. Description of units.

A description of a unit which sets forth the name of the condominium, the recording data for the declaration, the county in which the condominium is located, and the identifying number of the unit, is a sufficient legal description of that unit and all rights, obligations and
interests appurtenant to that unit which were created by

§36B-2-105. Contents of declaration.
(a) The declaration for a condominium must contain:

(1) The name of the condominium, which must include
the word "condominium" or be followed by the words "a
condominium," and the association;

(2) The name of every county in which any part of the
condominium is situated;

(3) A legally sufficient description of the real estate
included in the condominium;

(4) A statement of the maximum number of units which
the declarant reserves the right to create;

(5) A description of the boundaries of each unit created
by the declaration, including the unit's identifying number;

(6) A description of any limited common elements, other
than those specified in section 2-102(2) and (4), as provided
in section 2-109 (b) (10);

(7) A description of any real estate, except real estate
subject to development rights, which may be allocated
subsequently as limited common elements, other than
limited common elements specified in section 2-102 (2) and
(4), together with a statement that they may be so allocated;

(8) A description of any development rights and other
special declarant rights (section 1-103 (23)) reserved by the
declarant, together with a legally sufficient description of
the real estate to which each of those rights applies, and a
time limit within which each of those rights must be
exercised;

(9) If any development right may be exercised with
respect to different parcels of real estate at different times,
a statement to that effect together with (i) either a statement
fixing the boundaries of those portions and regulating the
order in which those portions may be subjected to the
exercise of each development right, or a statement that no
assurances are made in those regards, and (ii) a statement as to whether, if any development right is exercised in any portion of the real estate subject to that development right, that development right must be exercised in all or in any other portion of the remainder of that real estate;

(10) Any other conditions or limitations under which the rights described in subdivision (8) may be exercised or will lapse;

(11) An allocation to each unit of the allocated interests in the manner described in (section 2-107);

(12) Any restrictions on use, occupancy and alienation of the units;

(13) The recording data for recorded easements and licenses appurtenant to or included in the condominium or to which any portion of the condominium is or may become subject by virtue of a reservation in the declaration; and

(14) All matters required by sections 2-106, 2-107, 2-108, 2-109, 2-115, 2-116 and 3-103 (d).

(b) The declaration may contain any other matters the declarant deems appropriate.

§36B-2-106. Leasehold condominiums.

(a) Any lease the expiration or termination of which may terminate the condominium or reduce its size, or a memorandum thereof, shall be recorded. Every lessor of those leases must sign the declaration, and the declaration shall state:

(1) The recording data for the lease or a statement of where the complete lease may be inspected;

(2) The date on which the lease is scheduled to expire;

(3) A legally sufficient description of the real estate subject to the lease;

(4) Any right of the unit owners to redeem the reversion and the manner whereby those rights may be exercised, or a statement that they do not have those rights;
(5) Any right of the unit owners to remove any improvements within a reasonable time after the expiration or termination of the lease, or a statement that they do not have those rights; and

(6) Any rights of the unit owners to renew the lease and the conditions of any renewal, or a statement that they do not have those rights.

(b) After the declaration for a leasehold condominium is recorded, neither the lessor nor his successor in interest may terminate the leasehold interest of a unit owner who makes timely payment of his share of the rent and otherwise complies with all covenants which, if violated, would entitle the lessor to terminate the lease. A unit owner's leasehold interest is not affected by failure of any other person to pay rent or fulfill any other covenant.

(c) Acquisition of the leasehold interest of any unit owner by the owner of the reversion or remainder does not merge the leasehold and fee simple interests unless the leasehold interests of all unit owners subject to that reversion or remainder are acquired.

(d) If the expiration or termination of a lease decreases the number of units in a condominium, the allocated interests shall be reallocated in accordance with section 1-107(a) as though those units had been taken by eminent domain. Reallocations shall be confirmed by an amendment to the declaration prepared, executed and recorded by the association.


(a) The declaration shall allocate a fraction or percentage of undivided interests in the common elements and in the common expenses of the association, and a portion of the votes in the association, to each unit and state the formulas used to establish those allocations. Those allocations may not discriminate in favor of units owned by the declarant.

(b) If units may be added to or withdrawn from the condominium, the declaration must state the formulas to be
used to reallocate the allocated interests among all units included in the condominium after the addition or withdrawal.

(c) The declaration may provide: (i) That different allocations of votes shall be made to the units on particular matters specified in the declaration; (ii) for cumulative voting only for the purpose of electing members of the executive board; and (iii) for class voting on specified issues affecting the class if necessary to protect valid interests of the class. A declarant may not utilize cumulative or class voting for the purpose of evading any limitation imposed on declarants by this chapter, nor may units constitute a class because they are owned by a declarant.

(d) Except for minor variations due to rounding, the sums of the undivided interests in the common elements and common expense liabilities allocated at any time to all the units must each equal one if stated as fractions or one hundred percent if stated as percentages. In the event of discrepancy between an allocated interest and the result derived from application of the pertinent formulas, the allocated interest prevails.

(e) The common elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the common elements made without the unit to which that interest is allocated, is void.

§36B-2-108. Limited common elements.

(a) Except for the limited common elements described in section 2-102(2) and (4), the declaration shall specify to which unit or units each limited common element is allocated. That allocation may not be altered without the consent of the unit owners whose units are affected.

(b) Except as the declaration otherwise provides, a limited common element may be reallocated by an amendment to the declaration executed by the unit owners between or among whose units the reallocation is made. The persons executing the amendment shall provide a copy thereof to the association, which shall record it. The amendment shall be recorded in the names of the parties and the condominium.
14 (c) A common element not previously allocated as a limited common element may not be so allocated except pursuant to provisions in the declaration made in accordance with section 2-105(a) (7). The allocations shall be made by amendments to the declaration.

§36B-2-109. Plats and plans.

(a) Plats and plans are a part of the declaration. Separate plats and plans are not required by this chapter if all the information required by this section is contained in either a plat or plan. Each plat and plan must be clear and legible and contain a certification that the plat or plan contains all information required by this section.

(b) Each plat must show:

(1) The name and a survey or general schematic map of the entire condominium;

(2) The location and dimensions of all real estate not subject to development rights, or subject only to the development right to withdraw, and the location and dimensions of all existing improvements within that real estate;

(3) A legally sufficient description of any real estate subject to development rights, labeled to identify the rights applicable to each parcel;

(4) The extent of any encroachments by or upon any portion of the condominium;

(5) To the extent feasible, a legally sufficient description of all easements serving or burdening any portion of the condominium;

(6) The location and dimensions of any vertical unit boundaries not shown or projected on plans recorded pursuant to subsection (d) and that unit’s identifying number;

(7) The location with reference to an established datum of any horizontal unit boundaries not shown or projected on plans recorded pursuant to subsection (d) and that unit’s identifying number;
A legally sufficient description of any real estate in which the unit owners will own only an estate for years, labeled as “leasehold real estate”;

The distance between noncontiguous parcels of real estate comprising the condominium;

The location and dimensions of limited common elements, including porches, balconies and patios, other than parking spaces and the other limited common elements described in sections 2-102 (2) and (4);

In the case of real estate not subject to development rights, all other matters customarily shown on land surveys.

A plat may also show the intended location and dimensions of any contemplated improvement to be constructed anywhere within the condominium. Any contemplated improvement shown must be labeled either “MUST BE BUILT” or “NEED NOT BE BUILT.”

development
To the extent not shown or projected on the plats, plans of the units must show or project:

The location and dimensions of the vertical boundaries of each unit, and that unit’s identifying number;

Any horizontal unit boundaries, with reference to an established datum, and that unit’s identifying number; and

Any units in which the declarant has reserved the right to create additional units or common elements (section 2-110 (d)), identified appropriately.

Unless the declaration provides otherwise, the horizontal boundaries of part of a unit located outside of a building have the same elevation as the horizontal boundaries of the inside part, and need not be depicted on the plats and plans.

Upon exercising any development right, the declarant shall record either new plats and plans necessary to conform to the requirements of subsections (a), (b) and (d), or new certifications of plats and plans previously recorded if those plats and plans otherwise conform to the requirements of those subsections.
(g) Any certification of a plat or plan required by this section or section 2-101 (b) must be made by an independent surveyor, architect or engineer.

§36B-2-110. Exercise of development rights.

(a) To exercise any development right reserved under section 2-105(a) (8), the declarant shall prepare, execute and record an amendment to the declaration (section 2-117) and comply with section 2-109. The declarant is the unit owner of any units thereby created. The amendment to the declaration must assign an identifying number to each new unit created, and, except in the case of subdivision or conversion of units described in subsection (b), reallocate the allocated interests among all units. The amendment must describe any common elements and any limited common elements thereby created and, in the case of limited common elements, designate the unit to which each is allocated to the extent required by section 2-108.

(b) Development rights may be reserved within any real estate added to the condominium if the amendment adding that real estate includes all matters required by section 2-105 or 2-106, as the case may be, and the plats and plans include all matters required by section 2-109. This provision does not extend the time limit on the exercise of development rights imposed by the declaration pursuant to section 2-105(a) (8).

(c) Whenever a declarant exercises a development right to subdivide or convert a unit previously created into additional units, common elements, or both:

(1) If the declarant converts the unit entirely to common elements, the amendment to the declaration must reallocate all the allocated interests of that unit among the other units as if that unit had been taken by eminent domain (section 1-107).

(2) If the declarant subdivides the unit into two or more units, whether or not any part of the unit is converted into common elements, the amendment to the declaration must reallocate all the allocated interests of the unit among the units created by the subdivision in any reasonable manner prescribed by the declarant.
36  (d) If the declaration provides, pursuant to section 37 2-105(a)(8), that all or a portion of the real estate is subject 38 to the development right of withdrawal:

39  (1) If all the real estate is subject to withdrawal, and the 40 declaration does not describe separate portions of real 41 estate subject to that right, none of the real estate may be 42 withdrawn after a unit has been conveyed to a purchaser; 43 and

44  (2) If a portion or portions are subject to withdrawal, no 45 portion may be withdrawn after a unit in that portion has 46 been conveyed to a purchaser.

§36B-2-111. Alterations of units.

1 Subject to the provisions of the declaration and other 2 provisions of law, a unit owner:

3  (1) May make any improvements or alterations to his 4 unit that do not impair the structural integrity or 5 mechanical systems or lessen the support of any portion of 6 the condominium;

7  (2) May not change the appearance of the common 8 elements, or the exterior appearance of a unit or any other 9 portion of the condominium, without permission of the 10 association;

11  (3) After acquiring an adjoining unit or an adjoining 12 part of an adjoining unit, may remove or alter any 13 intervening partition or create apertures therein, even if the 14 partition in whole or in part is a common element, if those 15 acts do not impair the structural integrity or mechanical 16 systems or lessen the support of any portion of the 17 condominium. Removal of partitions or creation of 18 apertures under this subdivision is not an alteration of 19 boundaries.

§36B-2-112. Relocation of boundaries between adjoining 20 units.

1  (a) Subject to the provisions of the declaration and 2 other provisions of law, the boundaries between adjoining 3 units may be relocated by an amendment to the declaration 4 upon application to the association by the owners of those
units. If the owners of the adjoining units have specified a reallocation between their units of their allocated interests, the application must state the proposed reallocations. Unless the executive board determines, within thirty days, that the reallocations are unreasonable, the association shall prepare an amendment that identifies the units involved, states the reallocations, is executed by those unit owners, contains words of conveyance between them, and, upon recordation, is indexed in the name of the grantor and the grantee.

(b) The association shall prepare and record plats or plans necessary to show the altered boundaries between adjoining units, and their dimensions and identifying numbers.

§36B-2-113. Subdivision of units.

(a) If the declaration expressly so permits, a unit may be subdivided into two or more units. Subject to the provisions of the declaration and other provisions of law, upon application of a unit owner to subdivide a unit, the association shall prepare, execute and record an amendment to the declaration, including the plats and plans, subdividing that unit.

(b) The amendment to the declaration must be executed by the owner of the unit to be subdivided, assign an identifying number to each unit created, and reallocate the allocated interests formerly allocated to the subdivided unit to the new units in any reasonable manner prescribed by the owner of the subdivided unit.

§36B-2-114. Monuments as boundaries.

The existing physical boundaries of a unit or the physical boundaries of a unit reconstructed in substantial accordance with the original plats and plans thereof become its boundaries rather than the metes and bounds expressed in the deed or plat or plan, regardless of settling or lateral movement of the building, or minor variance between boundaries shown on the plats or plans or in the deed and those of the building. This section does not relieve a unit owner of liability in case of his willful misconduct nor
relieve a declarant or any other person of liability for failure to adhere to the plats and plans.

§36B-2-115. Use for sales purposes.

A declarant may maintain sales offices, management offices and models in units or on common elements in the condominium only if the declaration so provides and specifies the rights of a declarant with regard to the number, size, location and relocation thereof. Any sales office, management office or model not designated a unit by the declaration is a common element, and if a declarant ceases to be a unit owner, he ceases to have any rights with regard thereto unless it is removed promptly from the condominium in accordance with a right to remove reserved in the declaration. Subject to any limitations in the declaration, a declarant may maintain signs on the common elements advertising the condominium. The provisions of this section are subject to the provisions of other state law and to local ordinances.


Subject to the provisions of the declaration, a declarant has an easement through the common elements as may be reasonably necessary for the purpose of discharging a declarant’s obligations or exercising special declarant rights, whether arising under this chapter or reserved in the declaration.

§36B-2-117. Amendment of declaration.

(a) Except in cases of amendments that may be executed by a declarant under section 2-109(f) or 2-110, the association under section 1-107, 2-106(d), 2-108(c), 2-112(a) or 2-113; or certain unit owners under section 2-108(b), 2-112(a), 2-113(b) or 2-118(b), and, except as limited by subsection (d), the declaration, including the plats and plans, may be amended only by vote or agreement of unit owners of units to which at least sixty-seven percent of the votes in the association are allocated, or any larger majority the declaration specifies. The declaration may specify a smaller number only if all of the units are restricted exclusively to nonresidential use.
(b) No action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than one year after the amendment is recorded.

(c) Every amendment to the declaration must be recorded in every county in which any portion of the condominium is located, and is effective only upon recordation. An amendment shall be indexed in the grantee’s index in the name of the condominium and the association and in the grantor’s index in the name of the parties executing the amendment.

(d) Except to the extent expressly permitted or required by other provisions of this chapter, no amendment may create or increase special declarant rights, increase the number of units, change the boundaries of any unit, the allocated interests of a unit, or the uses to which any unit is restricted, in the absence of unanimous consent of the unit owners.

(e) Amendments to the declaration required by this chapter to be recorded by the association shall be prepared, executed, recorded and certified on behalf of the association by any officer of the association designated for that purpose or, in the absence of designation, by the president of the association.

§36B-2-118. Termination of condominium.

(a) Except in the case of a taking of all the units by eminent domain (section 1-107), a condominium may be terminated only by agreement of unit owners of units to which at least eighty percent of the votes in the association are allocated, or any larger percentage the declaration specifies. The declaration may specify a smaller percentage only if all of the units in the condominium are restricted exclusively to nonresidential use.

(b) An agreement to terminate must be evidenced by the execution of a termination agreement or ratifications thereof, in the same manner as a deed, by the requisite number of unit owners. The termination agreement must specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement and
all ratifications thereof must be recorded in every county in
which a portion of the condominium is situated, and is
effective only upon recordation.

(c) In the case of a condominium containing only units
having horizontal boundaries described in the declaration,
a termination agreement may provide that all the common
elements and units of the condominium shall be sold
following termination. If pursuant to the agreement, any
real estate in the condominium is to be sold following
termination, the termination agreement must set forth the
minimum terms of the sale.

(d) In the case of a condominium containing any units
not having horizontal boundaries described in the
declaration, a termination agreement may provide for sale
of the common elements, but may not require that the units
be sold following termination, unless the declaration as
originally recorded provided otherwise or unless all the unit
owners consent to the sale.

(e) The association, on behalf of the unit owners, may
contract for the sale of real estate in the condominium, but
the contract is not binding on the unit owners until
approved pursuant to subsections (a) and (b). If any real
estate in the condominium is to be sold following
termination, title to that real estate, upon termination, vests
in the association as trustee for the holders of all interest in
the units. Thereafter, the association has all powers
necessary and appropriate to effect the sale. Until the sale
has been concluded and the proceeds thereof distributed,
the association continues in existence with all powers it had
before termination. Proceeds of the sale must be distributed
to unit owners and lienholders as their interests may
appear, in proportion to the respective interests of unit
owners as provided in subsection (h). Unless otherwise
specified in the termination agreement, as long as the
association holds title to the real estate, each unit owner
and his successors in interest have an exclusive right to
occupancy of the portion of the real estate that formerly
constituted his unit. During the period of that occupancy,
each unit owner and his successors in interest remain liable
for all assessments and other obligations imposed on unit
owners by this chapter or the declaration.
(f) If the real estate constituting the condominium is not to be sold following termination, title to the common elements and, in a condominium containing only units having horizontal boundaries described in the declaration, title to all the real estate in the condominium, vests in the unit owners upon termination as tenants in common in proportion to their respective interests as provided in subsection (h), and liens on the units shift accordingly. While the tenancy in common exists, each unit owner and his successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted his unit.

(g) Following termination of the condominium, the proceeds of any sale of real estate, together with the assets of the association, are held by the association as trustee for unit owners and holders of liens on the units as their interests may appear. Following termination, creditors of the association holding liens on the units, which were docketed before termination, may enforce those liens in the same manner as any lienholder. All other creditors of the association are to be treated as if they had perfected liens on the units immediately before termination.

(h) The respective interests of unit owners referred to in subsections (e), (f) and (g) are as follows:

(1) Except as provided in subdivision (2), the respective interests of unit owners are the fair market values of their units, limited common elements and common element interests immediately before the termination, as determined by one or more independent appraisers selected by the association. The decision of the independent appraisers shall be distributed to the unit owners and becomes final unless disapproved within thirty days after distribution by unit owners of units to which twenty-five percent of the votes in the association are allocated. The proportion of any unit owner's interest to that of all unit owners is determined by dividing the fair market value of that unit owner's unit and common element interest by the total fair market values of all the units and common elements.
(2) If any unit or any limited common element is destroyed to the extent that an appraisal of the fair market value thereof before destruction cannot be made, the interests of all unit owners are their respective common element interests immediately before the termination.

(i) Except as provided in subsection (j), foreclosure or enforcement of a lien or encumbrance against the entire condominium does not of itself terminate the condominium, and foreclosure or enforcement of a lien, or encumbrance against a portion of the condominium, other than withdrawable real estate, does not withdraw that portion from the condominium. Foreclosure or enforcement of a lien or encumbrance against withdrawable real estate does not of itself withdraw that real estate from the condominium, but the person taking title thereto has the right to require from the association, upon request, an amendment excluding the real estate from the condominium.

(j) If a lien or encumbrance against a portion of the real estate comprising the condominium has priority over the declaration, and the lien or encumbrance has not been partially released, the parties foreclosing the lien or encumbrance may upon foreclosure, record an instrument excluding the real estate subject to that lien or encumbrance from the condominium.

§36B-2-119. Rights of secured lenders.

The declaration may require that all or a specified number or percentage of the mortgagees or beneficiaries of deeds of trust encumbering the units approve specified actions of the unit owners or the association as a condition to the effectiveness of those actions, but no requirement for approval may operate to (1) deny or delegate control over the general administrative affairs of the association by the unit owners or the executive board, or (2) prevent the association or the executive board from commencing, intervening in, or settling any litigation or proceeding, or receiving and distributing any insurance proceeds except pursuant to section 3-113.
§36B-2-120. Master associations.

(a) If the declaration for a condominium provides that any of the powers described in section 3-102 are to be exercised by or may be delegated to a profit or nonprofit corporation (or unincorporated association) which exercises those or other powers on behalf of one or more condominiums or for the benefit of the unit owners of one or more condominiums, all provisions of this chapter applicable to unit owners' associations apply to any such corporation (or unincorporated association), except as modified by this section.

(b) Unless a master association is acting in the capacity of an association described in section 3-101, it may exercise the powers set forth in section 3-102(a)(2) only to the extent expressly permitted in the declarations of condominiums which are part of the master association or expressly described in the delegations of power from those condominiums to the master association.

(c) If the declaration of any condominium provides that the executive board may delegate certain powers to a master association, the members of the executive board have no liability for the acts or omissions of the master association with respect to those powers following delegation.

(d) The rights and responsibilities of unit owners with respect to the unit owners' association set forth in sections 3-103, 3-108, 3-109, 3-110 and 3-112 apply in the conduct of the affairs of a master association only to those persons who elect the board of a master association, whether or not those persons are otherwise unit owners within the meaning of this chapter.

(e) Notwithstanding the provisions of section 3-103(f) with respect to the election of the executive board of an association by all unit owners after the period of declarant control ends, and even if a master association is also an association described in section 3-101, the certificate of incorporation or other instrument creating the master association and the declaration of each condominium the powers of which are assigned by the declaration or
delegated to the master association may provide that the
executive board of the master association must be elected
after the period of declarant control in any of the following
ways:

(1) All unit owners of all condominiums subject to the
master association may elect all members of that executive
board.

(2) All members of the executive boards of all
condominiums subject to the master association may elect
all members of that executive board.

(3) All unit owners of each condominium subject to the
master association may elect specified members of that
executive board.

(4) All members of the executive board of each
condominium subject to the master association may elect
specified members of that executive board.

§36B-2-121. Merger or consolidation of condominiums.

(a) Any two or more condominiums, by agreement of the
unit owners as provided in subsection (b), may be merged or
consolidated into a single condominium. In the event of a
merger or consolidation, unless the agreement otherwise
provides, the resultant condominium is, for all purposes,
the legal successor of all of the preexisting condominiums
and the operations and activities of all associations of the
preexisting condominiums shall be merged or consolidated
into a single association which shall hold all powers, rights,
obligations, assets and liabilities of all preexisting
associations.

(b) An agreement of two or more condominiums to
merge or consolidate pursuant to subsection (a) must be
evidenced by an agreement prepared, executed, recorded
and certified by the president of the association of each of
the preexisting condominiums following approval by
owners of units to which are allocated the percentage of
votes in each condominium required to terminate that
condominium. Any such agreement must be recorded in
every county in which a portion of the condominium is
located and is not effective until recorded.

(c) Every merger or consolidation agreement must
provide for the reallocation of the allocated interests in the
new association among the units of the resultant
condominium either (i) by stating the reallocations or the
formulas upon which they are based or (ii) by stating the
percentage of overall allocated interests of the new
condominium which are allocated to all of the units
comprising each of the preexisting condominiums, and
providing that the portion of the percentages allocated to
each unit formerly comprising a part of the preexisting
condominium must be equal to the percentages of allocated
interests allocated to that unit by the declaration of the
preexisting condominium.

ARTICLE 3. MANAGEMENT OF CONDOMINIUM.
§36B-3-101. Organization of unit owners' association.
§36B-3-102. Powers of unit owners' association.
§36B-3-103. Executive board members and officers.
§36B-3-104. Transfer of special declarant rights.
§36B-3-105. Termination of contracts and leases of declarant.
§36B-3-106. Bylaws.
§36B-3-107. Upkeep of condominium.
§36B-3-108. Meetings.
§36B-3-109. Quorums.
§36B-3-110. Voting; proxies.
§36B-3-111. Tort and contract liability.
§36B-3-112. Conveyance or encumbrance of common elements.
§36B-3-113. Insurance.
§36B-3-114. Surplus funds.
§36B-3-115. Assessments for common expenses.
§36B-3-116. Lien for assessments.
§36B-3-117. Other liens affecting the condominium.
§36B-3-118. Association records.
§36B-3-119. Association as trustee.

§36B-3-101. Organization of unit owners' association.

1 A unit owners' association must be organized no later
2 than the date the first unit in the condominium is conveyed.
3 The membership of the association at all times shall consist
4 exclusively of all the unit owners or, following termination
5 of the condominium, of all former unit owners entitled to
6 distributions of proceeds under section 2-118, or their heirs,
7 successors or assigns. The association shall be organized as
8 a profit or nonprofit corporation or as an unincorporated
9 association.

§36B-3-102. Powers of unit owners' association.

1 (a) Except as provided in subsection (b), and subject to
the provisions of the declaration, the association, even if
unincorporated, may:

(1) Adopt and amend bylaws and rules and regulations;

(2) Adopt and amend budgets for revenues, ex-
penditures and reserves and collect assessments for com-
mon expenses from unit owners;

(3) Hire and discharge managing agents and other
employees, agents and independent contractors;

(4) Institute, defend or intervene in litigation or
administrative proceeding in its own name on behalf of
itself or two or more unit owners on matters affecting the
condominium;

(5) Make contracts and incur liabilities;

(6) Regulate the use, maintenance, repair, replacement
and modification of common elements;

(7) Cause additional improvements to be made as a part
of the common elements;

(8) Acquire, hold, encumber and convey in its own
name any right, title or interest to real or personal
property, but common elements may be conveyed or
subjected to a security interest only pursuant to section
3-112;

(9) Grant easements, leases, licenses and concessions
through or over the common elements;

(10) Impose and receive any payments, fees or charges
for the use, rental or operation of the common elements
other than limited common elements described in sections
2-102(2) and (4) and for services provided to unit owners;

(11) Impose charges for late payment of assessments
and, after notice and an opportunity to be heard, levy
reasonable fines for violations of the declaration, bylaws
and rules and regulations of the association;

(12) Impose reasonable charges for the preparation and
recording of amendments to the declaration, resale
certificates required by section 4-109, or statements of
unpaid assessments;
(13) Provide for the indemnification of its officers and executive board and maintain directors' and officers' liability insurance;

(14) Assign its right to future income, including the right to receive common expense assessments, but only to the extent the declaration expressly so provides;

(15) Exercise any other powers conferred by the declaration or bylaws;

(16) Exercise all other powers that may be exercised in this state by legal entities of the same type as the association; and

(17) Exercise any other powers necessary and proper for the governance and operation of the association.

(b) The declaration may not impose limitations on the power of the association to deal with the declarant which are more restrictive than the limitations imposed on the power of the association to deal with other persons.

§36B-3-103. Executive board members and officers.

(a) Except as provided in the declaration, the bylaws, in subsection (b), or other provisions of this chapter, the executive board may act in all instances on behalf of the association. In the performance of their duties, the officers and members of the executive board are required to exercise (i) if appointed by the declarant, the care required of fiduciaries of the unit owners and (ii) if elected by the unit owners, ordinary and reasonable care.

(b) The executive board may not act on behalf of the association to amend the declaration (section 2-117), to terminate the condominium (section 2-118), or to elect members of the executive board or determine the qualifications, powers and duties, or terms of office of executive board members (section 3-103(f)), but the executive board may fill vacancies in its membership for the unexpired portion of any term.

(c) Within thirty days after adoption of any proposed budget for the condominium, the executive board shall provide a summary of the budget to all the unit owners and
shall set a date for a meeting of the unit owners to consider ratification of the budget not less than fourteen nor more than thirty days after mailing of the summary. Unless at that meeting a majority of all the unit owners or any larger vote specified in the declaration reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected, the periodic budget last ratified by the unit owners shall be continued until such time as the unit owners ratify a subsequent budget proposed by the executive board.

(d) Subject to subsection (e), the declaration may provide for a period of declarant control of the association, during which period a declarant, or persons designated by him, may appoint and remove the officers and members of the executive board. Regardless of the period provided in the declaration, a period of declarant control terminates no later than the earlier of: (i) Sixty days after conveyance of seventy-five percent of the units which may be created to unit owners other than a declarant; (ii) two years after all declarants have ceased to offer units for sale in the ordinary course of business; or (iii) two years after any development right to add new units was last exercised. A declarant may voluntarily surrender the right to appoint and remove officers and members of the executive board before termination of that period, but in that event he may require, for the duration of the period of declarant control, that specified actions of the association or executive board, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective.

(e) Not later than sixty days after conveyance of twenty-five percent of the units which may be created to unit owners other than a declarant, at least one member and not less than twenty-five percent of the members of the executive board must be elected by unit owners other than the declarant. Not later than sixty days after conveyance of fifty percent of the units which may be created to unit owners other than a declarant, not less than thirty-three and one-third percent of the members of the executive board must be elected by unit owners other than the declarant.
(f) Not later than the termination of any period of declarant control, the unit owners shall elect an executive board of at least three members, at least a majority of whom must be unit owners. The executive board shall elect the officers. The executive board members and officers shall take office upon election.

(g) Notwithstanding any provision of the declaration or bylaws to the contrary, the unit owners, by a two-thirds vote of all persons present and entitled to vote at any meeting of the unit owners at which a quorum is present, may remove any member of the executive board with or without cause, other than a member appointed by the declarant.

§36B-3-104. Transfer of special declarant rights.

(a) No special declarant rights (section 1-103(23)) created or reserved under this chapter may be transferred except by an instrument evidencing the transfer recorded in every county in which any portion of the condominium is located. The instrument is not effective unless executed by the transferee.

(b) Upon transfer of any special declarant right, the liability of a transferor declarant is as follows:

(1) A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for warranty obligations imposed upon him by this chapter. Lack of privity does not deprive any unit owner of standing to maintain an action to enforce any obligation of the transferor.

(2) If a successor to any special declarant right is an affiliate of a declarant (section 1-103(1)), the transferor is jointly and severally liable with the successor for any obligations and liabilities of the successor relating to the condominium.

(3) If a transferor retains any special declarant right, but transfers other special declarant rights to a successor who is not an affiliate of the declarant, the transferor is liable for any obligations or liabilities imposed on a declarant by this chapter or by the declaration relating to
the retained special declarant rights and arising after the transfer.

(4) A transferor has no liability for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor.

(c) Unless otherwise provided in a mortgage instrument or deed of trust, in case of foreclosure of a mortgage, tax sale, judicial sale, sale by a trustee under a deed of trust, or sale under bankruptcy code or receivership proceedings, of any units owned by a declarant or real estate in a condominium subject to development rights, a person acquiring title to all the real estate being foreclosed or sold, but only upon his request, succeeds to all special declarant rights related to that real estate held by that declarant, or only to any rights reserved in the declaration pursuant to section 2-115 and held by that declarant to maintain models, sales offices and signs. The judgment or instrument conveying title shall provide for transfer of only the special declarant rights requested.

(d) Upon foreclosure, tax sale, judicial sale, sale by a trustee under a deed of trust, or sale under bankruptcy code or receivership proceedings, of all units and other real estate in a condominium owned by a declarant:

(1) The declarant ceases to have any special declarant rights, and

(2) The period of declarant control (section 3-103(d)) terminates unless the judgment or instrument conveying title provides for transfer of all special declarant rights held by that declarant to a successor declarant.

(e) The liabilities and obligations of persons who succeed to special declarant rights are as follows:

(1) A successor to any special declarant right who is an affiliate of a declarant is subject to all obligations and liabilities imposed on the transferor by this chapter or by the declaration.

(2) A successor to any special declarant right, other than a successor described in subdivision (3) or (4), who is not an
affiliate of a declarant, is subject to all obligations and liabilities imposed by this chapter or the declaration:

(i) On a declarant which relate to his exercise or nonexercise of special declarant rights; or

(ii) On his transferor, other than:

(A) Misrepresentations by any previous declarant;

(B) Warranty obligations on improvements made by any previous declarant, or made before the condominium was created;

(C) Breach of any fiduciary obligation by any previous declarant or his appointees to the executive board; or

(D) Any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer.

(3) A successor to only a right reserved in the declaration to maintain models, sales offices and signs (section 2-115), if he is not an affiliate of a declarant, may not exercise any other special declarant right, and is not subject to any liability or obligation as a declarant, except the obligation to provide a public offering statement, and any liability arising as a result thereof.

(4) A successor to all special declarant rights held by his transferor who is not an affiliate of that declarant and who succeeded to those rights pursuant to a deed in lieu of foreclosure or a judgment or instrument conveying title to units under subsection (c), may declare his intention in a recorded instrument to hold those rights solely for transfer to another person. Thereafter, until transferring all special declarant rights to any person acquiring title to any unit owned by the successor, or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than any right held by his transferor to control the executive board in accordance with the provisions of section 3-103(d) for the duration of any period of declarant control, and any attempted exercise of those rights is void. So long as a successor declarant may not exercise special declarant rights under this subsection, he is not subject to any liability or obligation as a declarant.
other than liability for his acts and omissions under section 3-103(d).

Nothing in this section subjects any successor to a special declarant right to any claims against or other obligations of a transferor declarant, other than claims and obligations arising under this chapter or the declaration.

**§36B-3-105. Termination of contracts and leases of declarant.**

If entered into before the executive board elected by the unit owners pursuant to section 3-103(f) takes office, (i) any management contract, employment contract, or lease of recreational or parking areas or facilities, (ii) any other contract or lease between the association and a declarant or an affiliate of a declarant, or (iii) any contract or lease that is not bona fide or was unconscionable to the unit owners at the time entered into under the circumstances then prevailing, may be terminated without penalty by the association at any time after the executive board elected by the unit owners pursuant to section 3-103(f) takes office upon not less than ninety days' notice to the other party. This subsection does not apply to any lease the termination of which would terminate the condominium or reduce its size, unless the real estate subject to that lease was included in the condominium for the purpose of avoiding the right of the association to terminate a lease under this section.

**§36B-3-106. Bylaws.**

(a) The bylaws of the association must provide for:

(1) The number of members of the executive board and the titles of the officers of the association;

(2) Election by the executive board of a president, treasurer, secretary, and any other officers of the association the bylaws specify;

(3) The qualifications, powers and duties, terms of office, and manner of electing and removing executive board members and officers and filling vacancies;

(4) Which, if any, of its powers the executive board or officers may delegate to other persons or to a managing agent;
(5) Which of its officers may prepare, execute, certify and record amendments to the declaration on behalf of the association; and

(6) The method of amending the bylaws.

(b) Subject to the provisions of the declaration, the bylaws may provide for any other matters the association deems necessary and appropriate.

§36B-3-107. Upkeep of condominium.

(a) Except to the extent provided by the declaration, subsection (b), or section 3-113(h), the association is responsible for maintenance, repair and replacement of the common elements, and each unit owner is responsible for maintenance, repair and replacement of his unit. Each unit owner shall afford to the association and the other unit owners, and to their agents or employees, access through his unit reasonably necessary for those purposes. If damage is inflicted on the common elements or any unit through which access is taken, the unit owner responsible for the damage, or the association if it is responsible, is liable for the prompt repair thereof.

(b) In addition to the liability that a declarant as a unit owner has under this chapter, the declarant alone is liable for all expenses in connection with real estate subject to development rights. No other unit owner and no other portion of the condominium is subject to a claim for payment of those expenses. Unless the declaration provides otherwise, any income or proceeds from real estate subject to development rights inures to the declarant.

§36B-3-108. Meetings.

A meeting of the association must be held at least once each year. Special meetings of the association may be called by the president or by twenty percent or any lower percentage specified in the bylaws of either the executive board or the unit owners. Not less than ten nor more than sixty days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address
designated in writing by the unit owner. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes and any proposal to remove a director or office.

§36B-3-109. Quorums.

(a) Unless the bylaws provide otherwise, a quorum is present throughout any meeting of the association if persons entitled to cast twenty percent of the votes which may be cast for election of the executive board are present in person or by proxy at the beginning of the meeting.

(b) Unless the bylaws specify a larger percentage, a quorum is deemed present throughout any meeting of the executive board if persons entitled to cast fifty percent of the votes on that board are present at the beginning of the meeting.

§36B-3-110. Voting; proxies.

(a) If only one of the multiple owners of a unit is present at a meeting of the association, he is entitled to cast all the votes allocated to that unit. If more than one of the multiple owners are present, the votes allocated to that unit may be cast only in accordance with the agreement of a majority in interest of the multiple owners, unless the declaration expressly provides otherwise. There is majority agreement if any one of the multiple owners casts the votes allocated to that unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the unit.

(b) Votes allocated to a unit may be cast pursuant to a proxy duly executed by a unit owner. If a unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a duly executed proxy. A unit owner may not revoke a proxy given pursuant to this section except by actual notice of revocation to the person presiding over a meeting of the association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy
21 terminates one year after its date, unless it specifies a shorter term.

23 (c) If the declaration requires that votes on specified matters affecting the condominium be cast by lessees rather than unit owners of leased units: (i) The provisions of subsections (a) and (b) apply to lessees as if they were unit owners; (ii) unit owners who have leased their units to other persons may not cast votes on those specified matters; and (iii) lessees are entitled to notice of meetings, access to records and other rights respecting those matters as if they were unit owners. Unit owners must also be given notice, in the manner provided in section 3-108, of all meetings at which lessees may be entitled to vote.

34 (d) No votes allocated to a unit owned by the association may be cast.

§36B-3-111. Tort and contract liability.

1 Neither the association nor any unit owner except the declarant is liable for that declarant's torts in connection with any part of the condominium which that declarant has the responsibility to maintain. Otherwise, an action alleging a wrong done by the association must be brought against the association and not against any unit owner. If the wrong occurred during any period of declarant control and the association gives the declarant reasonable notice of and an opportunity to defend against the action, the declarant who then controlled the association is liable to the association or to any unit owner: (i) For all tort losses not covered by insurance suffered by the association or that unit owner, and (ii) for all costs which the association would not have incurred but for a breach of contract or other wrongful act or omission. Whenever the declarant is liable to the association under this section, the declarant is also liable for all litigation expenses, including reasonable attorneys' fees, incurred by the association. Any statute of limitation affecting the association's right of action under this section is tolled until the period of declarant control terminates. A unit owner is not precluded from bringing an action contemplated by this subsection because he is a unit owner or a member or officer of the association. Liens
24 resulting from judgments against the association are
governed by section 3-117.

§36B-3-112. Conveyance or encumbrance of common elements.

(a) Portions of the common elements may be conveyed
or subjected to a security interest by the association if
persons entitled to cast at least eighty percent of the votes in
the association, including eighty percent of the votes
allocated to units not owned by a declarant, or any larger
percentage the declaration specifies, agree to that action;
but all the owners of units to which any limited common
element is allocated must agree in order to convey that
limited common element or subject it to a security interest.
The declaration may specify a smaller percentage only if all
of the units are restricted exclusively to nonresidential uses.
Proceeds of the sale are an asset of the association.

(b) An agreement to convey common elements or subject
them to a security interest must be evidenced by the
execution of an agreement, or ratifications thereof, in the
same manner as a deed, by the requisite number of unit
owners. The agreement must specify a date after which the
agreement will be void unless recorded before that date.
The agreement and all ratifications thereof must be
recorded in every county in which a portion of the
condominium is situated and is effective only upon
recording.

(c) The association, on behalf of the unit owners, may
contract to convey common elements, or subject them to a
security interest, but the contract is not enforceable against
the association until approved pursuant to subsections (a)
and (b). Thereafter, the association has all powers necessary
and appropriate to effect the conveyance or encumbrance,
including the power to execute deeds or other instruments.

(d) Any purported conveyance, encumbrance, judicial
sale or other voluntary or involuntary transfer of common
elements, unless made pursuant to this section or pursuant
to section 3-117(b), is void.

(e) A conveyance or encumbrance of common elements
pursuant to this section does not deprive any unit of its rights of access and support.

(f) Unless the declaration otherwise provides, a conveyance or encumbrance of common elements pursuant to this section does not affect the priority or validity of preexisting encumbrances.

§36B-3-113. Insurance.

1 (a) Commencing not later than the time of the first conveyance of a unit to a person other than a declarant, the association shall maintain, to the extent reasonably available:

(1) Property insurance on the common elements insuring against all risks of direct physical loss commonly insured against or, in the case of a conversion building, against fire and extended coverage perils. The total amount of insurance after application of any deductibles shall be not less than eighty percent of the actual cash value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies; and

(2) Liability insurance, including medical payments insurance, in an amount determined by the executive board but not less than any amount specified in the declaration, covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the common elements.

(b) In the case of a building containing units having horizontal boundaries described in the declaration, the insurance maintained under subdivision (1), subsection (a), to the extent reasonably available, shall include the units, but need not include improvements and betterments installed by unit owners.

(c) If the insurance described in subsections (a) and (b) is not reasonably available, the association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all unit owners. The
declaration may require the association to carry any other
insurance, and the association in any event may carry any
other insurance it deems appropriate to protect the
association or the unit owners.

(d) Insurance policies carried pursuant to subsection (a)
must provide that:

(1) Each unit owner is an insured person under the
policy with respect to liability arising out of his interest in
the common elements or membership in the association;

(2) The insurer waives its right to subrogation under the
policy against any unit owner or members of his household;

(3) No act or omission by any unit owner, unless acting
within the scope of his authority on behalf of the
association, will void the policy or be a condition to
recovery under the policy; and

(4) If, at the time of a loss under the policy, there is other
insurance in the name of a unit owner covering the same
risk covered by the policy, the association's policy provides
primary insurance.

(e) Any loss covered by the property policy under
subdivision (1), subsection (a) and subsection (b) must be
adjusted with the association, but the insurance proceeds for
that loss are payable to any insurance trustee designated for
that purpose, or otherwise to the association, and not to any
mortgagee or beneficiary under a deed of trust. The
insurance trustee or the association shall hold any insurance
proceeds in trust for unit owners and lienholders as their
interest may appear. Subject to the provisions of subsection
(h), the proceeds must be disbursed first for the repair or
restoration of the damaged property, and unit owners and
lienholders are not entitled to receive payment of any
portion of the proceeds unless there is a surplus of proceeds
after the property has been completely repaired or restored,
or the condominium is terminated.

(f) An insurance policy issued to the association does
not prevent a unit owner from obtaining insurance for his
own benefit.
(g) An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the association and, upon written request, to any unit owner, mortgagee or beneficiary under a deed of trust. The insurer issuing the policy may not cancel or refuse to renew it until thirty days after notice of the proposed cancellation or nonrenewal has been mailed to the association, each unit owner and each mortgagee or beneficiary under a deed of trust to whom certificates, a certificate or memorandum of insurance has been issued at their respective last known addresses.

(h) Any portion of the condominium for which insurance is required under this section which is damaged or destroyed shall be repaired or replaced promptly by the association unless (i) the condominium is terminated, (ii) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (iii) eighty percent of the unit owners, including every owner of a unit or assigned limited common element which will not be rebuilt, vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. If the entire condominium is not repaired or replaced, (i) the insurance proceeds attributable to the damaged common elements must be used to restore the damaged area to a condition compatible with the remainder of the condominium, (ii) the insurance proceeds attributable to units and limited common elements which are not rebuilt must be distributed to the owners of those units and the owners of the units to which those limited common elements were allocated, or to lienholders, as their interests may appear, and (iii) the remainder of the proceeds must be distributed to all the unit owners or lienholders, as their interests may appear, in proportion to the common element interests of all the units. If the unit owners vote not to rebuild any unit, that unit's allocated interests are automatically reallocated upon the vote as if the unit had been condemned under section 1-107(a), and the association promptly shall prepare, execute and record an amendment to the declaration reflecting the reallocations. Notwithstanding the provisions of this subsection, section
109 2-118 governs the distribution of insurance proceeds if the
110 condominium is terminated.
111 (i) The provisions of this section may be varied or
112 waived in the case of a condominium all of whose units are
113 restricted to nonresidential use.

§36B-3-114. Surplus funds.

1 Unless otherwise provided in the declaration, any surplus
2 funds of the association remaining after payment of or
3 provision for common expenses and any prepayment of
4 reserves must be paid to the unit owners in proportion to
5 their common expense liabilities or credited to them to
6 reduce their future common expense assessments.

§36B-3-115. Assessments for common expenses.

1 (a) Until the association makes a common expense
2 assessment, the declarant shall pay all common expenses.
3 After any assessment has been made by the association,
4 assessments must be made at least annually based on a
5 budget adopted at least annually by the association.

6 (b) Except for assessments under subsections (c), (d) and
7 (e), all common expenses must be assessed against all the
8 units in accordance with the allocations set forth in the
9 declaration pursuant to section 2-107(a). Any past due
10 common expense assessment or installment thereof bears
11 interest at the rate established by the association not
12 exceeding eighteen percent per year.

13 (c) To the extent required by the declaration:
14 (1) Any common expense associated with the
15 maintenance, repair or replacement of a limited common
16 element must be assessed against the units to which that
17 limited common element is assigned equally, or in any other
18 proportion that the declaration provides;

19 (2) Any common expense benefiting fewer than all of
20 the units must be assessed exclusively against the units
21 benefited; and

22 (3) The costs of insurance must be assessed in
23 proportion to risk and the costs of utilities must be assessed
24 in proportion to usage.
(d) Assessments to pay a judgment against the association (section 3-117(a)) may be made only against the units in the condominium at the time the judgment was entered, in proportion to their common expense liabilities.

(e) If any common expense is caused by the misconduct of any unit owner, the association may assess that expense exclusively against his unit.

(f) If common expense liabilities are reallocated, common expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated common expense liabilities.

§36B-3-116. Lien for assessments.

1 (a) The association has a lien on a unit for any assessment levied against that unit or fines imposed against its unit owner from the time the assessment or fine becomes due. The association’s lien may be foreclosed in like manner as a mortgage on real estate or a power of sale under a deed of trust. But the association shall give reasonable notice of its action to all lienholders of the unit whose interest would be affected. Unless the declaration otherwise provides, fees, charges, late charges, fines and interest charged pursuant to section 3-102(a) (10), (11) and (12) are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.

(b) A lien under this section is prior to all other liens and encumbrances on a unit except (i) liens and encumbrances recorded before the recordation of the declaration, (ii) a first mortgage or deed of trust on the unit recorded before the date on which the assessment sought to be enforced became delinquent, and (iii) liens for real estate taxes and other governmental assessments or charges against the unit. The lien is also prior to the mortgages and deeds of trust described in clause (ii) above to the extent of the common expense assessments based on the periodic budget adopted by the association pursuant to section 3-115(a) which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien. This subsection
28 does not affect the priority of mechanics' or materialmen's
29 liens, or the priority of liens for other assessments made by
30 the association.

31 (c) Unless the declaration otherwise provides, if two or
32 more associations have liens for assessments created at any
33 time on the same real estate, those liens have equal priority.

34 (d) For the purpose of perfecting and preserving its lien,
35 the association shall give notice to the unit owner in the
36 manner set forth in section one, article two, chapter fifty-
37 six of this code, or by registered or certified mail, return
38 receipt requested, and in a form reasonably calculated to
39 inform the owner of his liability for payment of the
40 assessment. The lien shall be discharged as to subsequent
41 purchasers for value without notice unless the association
42 shall cause to be recorded a notice of the lien in the office of
43 the clerk of the county commission of any county wherein
44 any part of the condominium is located. The notice shall
45 contain:

46 (1) A legally sufficient description of the unit;
47 (2) The name or names of the owners of the unit;
48 (3) The amount of unpaid assessments due together with
49 the date when each fell due; and

50 (4) The date of recordation.

51 The clerk of the county commission in whose office the
52 notice is recorded shall index the notice in the appropriate
53 deed books and lien books in the name of the unit owners
54 and of the association. The cost of recordation shall be
55 assessed against any unit owner found to be delinquent in a
56 subsequent proceeding to enforce the lien.

57 Upon payment of the assessment, the association shall
58 execute a written release of the lien in the manner set forth
59 in section one, article twelve, chapter thirty-eight of this
60 code. This release shall be recorded, at the expense of the
61 association, in the office of the clerk of the county
62 commission wherein the notice of the lien was filed.

63 (e) A lien for unpaid assessments is extinguished unless
64 proceedings to enforce the lien are instituted within three
65 years after the full amount of the assessments becomes due.
(f) This section does not prohibit actions to recover sums for which subsection (a) creates a lien, or prohibit an association from taking a deed in lieu of foreclosure.

(g) A judgment or decree in any action brought under this section must include costs and reasonable attorney's fees for the prevailing party.

(h) The association upon written request shall furnish to a unit owner a recordable statement setting forth the amount of unpaid assessments against his unit. The statement must be furnished within ten business days after receipt of the request and is binding on the association, the executive board, and every unit owner.

§36B-3-117. Other liens affecting the condominium.

(a) Except as provided in subsection (b), a judgment for money against the association if recorded is not a lien on the common elements but is a lien in favor of the judgment lienholder against all of the units in the condominium at the time the judgment was entered. No other property of a unit owner is subject to the claims of creditors of the association.

(b) If the association has granted a security interest in the common elements to a creditor of the association pursuant to section 3-112, the holder of that security interest shall exercise its right against the common elements before its judgment lien on any unit may be enforced.

(c) Whether perfected before or after the creation of the condominium, if a lien other than a deed of trust or mortgage, including a judgment lien or lien attributable to work performed or materials supplied before creation of the condominium, becomes effective against two or more units, the unit owner of an affected unit may pay to the lienholder the amount of the lien attributable to his unit, and the lienholder, upon receipt of payment, promptly shall deliver a release of the lien covering that unit. The amount of the payment must be proportionate to the ratio which that unit owner's common expense liability bears to the common expense liabilities of all unit owners whose units are subject to the lien. After payment, the association may not assess or have a lien against that unit owner's unit for any portion of the common expenses incurred in connection with that lien.
28 (d) A judgment against the association must be recorded
29 and indexed in the name of the condominium and the
30 association in the office of the clerk of the county
31 commission; and, when so indexed, is notice of the lien
32 against the units.

§36B-3-118. Association records.
1 The association shall keep financial records sufficiently
2 detailed to enable the association to comply with section
3 4-109. All financial and other records shall be made
4 reasonably available for examination by any unit owner
5 and his authorized agents.

§36B-3-119. Association as trustee.
1 With respect to a third person dealing with the
2 association in the association's capacity as a trustee, the
3 existence of trust powers and their proper exercise by the
4 association may be assumed without inquiry. A third
5 person is not bound to inquire whether the association has
6 power to act as trustee or is properly exercising trust
7 powers and a third person, without actual knowledge that
8 the association is exceeding or improperly exercising its
9 powers, is fully protected in dealing with the association as
10 if it possessed and properly exercised the powers it purports
11 to exercise. A third person is not bound to assure the proper
12 application of trust assets paid or delivered to the
13 association in its capacity as trustee.

ARTICLE 4. PROTECTION OF CONDOMINIUM PURCHASERS.
§36B-4-101. Applicability; waiver.
§36B-4-102. Liability for public offering statement requirements.
§36B-4-103. Public offering statement; general provisions.
§36B-4-104. Same—Condominiums subject to development rights.
§36B-4-105. Same—Time shares.
§36B-4-106. Same—Condominiums containing conversion buildings.
§36B-4-107. Condominium securities.
§36B-4-108. Purchaser's right to cancel.
§36B-4-109. Resales of units.
§36B-4-110. Escrow of deposits.
§36B-4-111. Release of liens.
§36B-4-112. Conversion buildings.
§36B-4-113. Warranty against structural defects.
§36B-4-114. Statute of limitations for warranties.
§36B-4-115. Effect of violations on rights of action; attorney's fees.
§36B-4-101. Applicability; waiver.

(a) This article applies to all units subject to this chapter, except as provided in subsection (b) or as modified or waived by agreement of purchasers of units in a condominium in which all units are restricted to nonresidential use.

(b) Neither a public offering statement nor a resale certificate need be prepared or delivered in the case of:

(1) A gratuitous disposition of a unit;

(2) A disposition pursuant to court order;

(3) A disposition by a government or governmental agency;

(4) A disposition by foreclosure or deed in lieu of foreclosure;

(5) A disposition to a person in the business of selling real estate who intends to offer those units to purchasers; or

(6) A disposition that may be canceled at any time and for any reason by the purchaser without penalty.

§36B-4-102. Liability for public offering statement requirements.

(a) Except as provided in subsection (b), a declarant, prior to the offering of any interest in a unit to the public, shall prepare a public offering statement conforming to the requirements of sections 4-103, 4-104, 4-105 and 4-106.

(b) A declarant may transfer responsibility for preparation of all or a part of the public offering statement to a successor declarant (section 3-104) or to a person in the business of selling real estate who intends to offer units in the condominium for his own account. In the event of any such transfer, the transferor shall provide the transferee with any information necessary to enable the transferee to fulfill the requirements of subsection (a).
(c) Any declarant or other person in the business of selling real estate who offers a unit for his own account to a purchaser shall deliver a public offering statement in the manner prescribed in subsection 4-108(a). The person who prepared all or a part of the public offering statement is liable under sections 4-108 and 4-115 for any false or misleading statement set forth therein or for any omission of material fact therefrom with respect to that portion of the public offering statement which he prepared. If a declarant did not prepare any part of a public offering statement that he delivers, he is not liable for any false or misleading statement set forth therein or for any omission of material fact therefrom unless he had actual knowledge of the statement or omission or, in the exercise of reasonable care, should have known of the statement or omission.

(d) If a unit is part of a condominium and is part of any other real estate regime in connection with the sale of which the delivery of a public offering statement is required under the laws of this state, a single public offering statement conforming to the requirements of sections 4-103, 4-104, 4-105 and 4-106 as those requirements relate to all real estate regimes in which the unit is located, and to any other requirements imposed under the laws of this state, may be prepared and delivered in lieu of providing two or more public offering statements.

§36B-4-103. Public offering statement; general provisions.

(a) Except as provided in subsection (b), a public offering statement must contain or fully and accurately disclose:

1. The name and principal address of the declarant and of the condominium;

2. A general description of the condominium, including to the extent possible, the types, number, and declarant’s schedule of commencement and completion of construction of buildings and amenities that declarant anticipates including in the condominium;

3. The number of units in the condominium;

4. Copies and a brief narrative description of the
significant features of the declaration (other than the plats and plans) and any other recorded covenants, conditions, restrictions and reservations affecting the condominium; the bylaws, and any rules or regulations of the association; copies of any contracts and leases to be signed by purchasers at closing, and a brief narrative description of any contracts or leases that will or may be subject to cancellation by the association under section 3-105;

(5) Any current balance sheet and a projected budget for the association, either within or as an exhibit to the public offering statement, for one year after the date of the first conveyance to a purchaser, and thereafter the current budget of the association, a statement of who prepared the budget, and a statement of the budget's assumptions concerning occupancy and inflation factors. The budget must include, without limitation:

(i) A statement of the amount, or a statement that there is no amount, included in the budget as a reserve for repairs and replacement;

(ii) A statement of any other reserves;

(iii) The projected common expense assessment by category of expenditures for the association; and

(iv) The projected monthly common expense assessment for each type of unit;

(6) Any services not reflected in the budget that the declarant provides, or expenses that he pays, and that he expects may become at any subsequent time a common expense of the association and the projected common expense assessment attributable to each of those services or expenses for the association and for each type of unit;

(7) Any initial or special fee due from the purchaser at closing, together with a description of the purpose and method of calculating the fee;

(8) A description of any liens, defects or encumbrances on or affecting the title to the condominium;

(9) A description of any financing offered or arranged by the declarant;
(10) The terms and significant limitations of any warranties provided by the declarant, including statutory warranties and limitations on the enforcement thereof or on damages;

(11) A statement that:

(i) Within fifteen days after receipt of a public offering statement, a purchaser, before conveyance, may cancel any contract for purchase of a unit from a declarant;

(ii) If a declarant fails to provide a public offering statement to a purchaser before conveying a unit, that purchaser may recover from the declarant ten percent of the sales price of the unit; and

(iii) If a purchaser receives the public offering statement more than fifteen days before signing a contract, he cannot cancel the contract;

(12) A statement of any unsatisfied judgments or pending suits against the association, and the status of any pending suits material to the condominium of which a declarant has actual knowledge;

(13) A statement that any deposit made in connection with the purchase of a unit will be held in an escrow account until closing and will be returned to the purchaser if the purchaser cancels the contract pursuant to section 4-108, together with the name and address of the escrow agent;

(14) Any restraints on alienation of any portion of the condominium;

(15) A description of the insurance coverage provided for the benefit of unit owners;

(16) Any current or expected fees or charges to be paid by unit owners for the use of the common elements and other facilities related to the condominium;

(17) The extent to which financial arrangements have been provided for completion of all improvements labeled “MUST BE BUILT” pursuant to section 4-117 (declarant’s obligation to complete and restore);

(18) A brief narrative description of any zoning and other land use requirements affecting the condominium; and
(19) All unusual and material circumstances, features and characteristics of the condominium and the units.

(b) If a condominium composed of not more than twelve units is not subject to any development rights, and no power is reserved to a declarant to make the condominium part of a larger condominium, group of condominiums, or other real estate, a public offering statement may but need not include the information otherwise required by subdivisions (9), (10), (15), (16), (17), (18) and (19), subsection (a) and the narrative descriptions of documents required by subdivision (4), subsection (a).

(c) A declarant promptly shall amend the public offering statement to report any material change in the information required by this section.

§36B-4-104. Same — Condominiums subject to development rights.

If the declaration provides that a condominium is subject to any development rights, the public offering statement must disclose, in addition to the information required by section 4-103:

(1) The maximum number of units, and the maximum number of units per acre, that may be created;

(2) A statement of how many or what percentage of the units which may be created will be restricted exclusively to residential use, or a statement that no representations are made regarding use restrictions;

(3) If any of the units that may be built within real estate subject to development rights are not to be restricted exclusively to residential use, a statement, with respect to each portion of that real estate, of the maximum percentage of the real estate areas, and the maximum percentage of the floor areas of all units that may be created therein, that are not restricted exclusively to residential use;

(4) A brief narrative description of any development rights reserved by a declarant and of any conditions relating to or limitations upon the exercise of development rights;

(5) A statement of the maximum extent to which each
unit's allocated interests may be changed by the exercise of
any development right described in subdivision (3);

(6) A statement of the extent to which any buildings or
other improvements that may be erected pursuant to any
development right in any part of the condominium will be
compatible with existing buildings and improvements in
the condominium in terms of architectural style, quality of
construction, and size, or a statement that no assurances are
made in those regards;

(7) General descriptions of all other improvements that
may be made and limited common elements that may be
created within any part of the condominium pursuant to
any development right reserved by the declarant, or a
statement that no assurances are made in that regard;

(8) A statement of any limitations as to the locations of
any building or other improvement that may be made
within any part of the condominium pursuant to any
development right reserved by the declarant, or a statement
that no assurances are made in that regard;

(9) A statement that any limited common elements
created pursuant to any development right reserved by the
declarant will be of the same general types and sizes as the
limited common elements within other parts of the
condominium, or a statement of the types and sizes planned,
or a statement that no assurances are made in that regard;

(10) A statement that the proportion of limited common
elements to units created pursuant to any development
right reserved by the declarant will be approximately equal
to the proportion existing within other parts of the
condominium, or a statement of any other assurances in
that regard, or a statement that no assurances are made in
that regard;

(11) A statement that all restrictions in the declaration
affecting use, occupancy and alienation of units will apply
to any units created pursuant to any development right
reserved by the declarant, or a statement of any
differentiations that may be made as to those units, or a
statement that no assurances are made in that regard; and
(12) A statement of the extent to which any assurances made pursuant to this section apply or do not apply in the event that any development right is not exercised by the declarant.

§36B-4-105. Same — Time shares.

1 If the declaration provides that ownership or occupancy of any units is or may be in time shares, the public offering statement shall disclose in addition to the information required by section 4-103:

2 (1) The number and identity of units in which time shares may be created;

3 (2) The total number of time shares that may be created;

4 (3) The minimum duration of any time shares that may be created; and

5 (4) The extent to which the creation of time shares will or may affect the enforceability of the association's lien for assessments provided in section 3-116.

§36B-4-106. Same — Condominiums containing conversion buildings.

1 (a) The public offering statement of a condominium containing any conversion building must contain, in addition to the information required by section 4-102:

2 (1) A statement by the declarant, based on a report prepared by an independent architect or engineer, describing the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the building;

3 (2) A statement by the declarant of the expected useful life of each item reported on in subdivision (1), or a statement that no representations are made in that regard; and

4 (3) A list of any outstanding notices of uncured violations of building code or other municipal regulations, together with the estimated cost of curing those violations.

5 (b) This section applies only to buildings containing units that may be occupied for residential use.
§36B-4-107. Same — Condominium securities.

1 If an interest in a condominium is currently registered with the Securities and Exchange Commission of the United States, a declarant satisfies all requirements relating to the preparation of a public offering statement of this chapter if he delivers to the purchaser a copy of the public offering statement filed with the Securities and Exchange Commission.

§36B-4-108. Purchaser’s right to cancel.

1 (a) A person required to deliver a public offering statement pursuant to section 4-102(c) shall provide a purchaser of a unit with a copy of the public offering statement and all amendments thereto before conveyance of that unit, and not later than the date of any contract of sale. Unless a purchaser is given the public offering statement more than fifteen days before execution of a contract for the purchase of a unit, the purchaser, before conveyance, may cancel the contract within fifteen days after first receiving the public offering statement.

11 (b) If a purchaser elects to cancel a contract pursuant to subsection (a), he may do so by hand-delivering notice thereof to the offeror or by mailing notice thereof by prepaid United States mail to the offeror or to his agent for service of process. Cancellation is without penalty, and all payments made by the purchaser before cancellation shall be refunded promptly.

18 (c) If a person required to deliver a public offering statement pursuant to section 4-102(c) fails to provide a purchaser to whom a unit is conveyed with that public offering statement and all amendments thereto as required by subsection (a), the purchaser, in addition to any rights to damages or other relief, is entitled to receive from that person an amount equal to ten percent of the sales price of the unit.

§36B-4-109. Resales of units.

1 (a) Except in the case of a sale where delivery of a public offering statement is required, or unless exempt under
section 4-101(b), a unit owner shall furnish to a purchaser before execution of any contract for sale of a unit, or otherwise before conveyance, a copy of the declaration (other than the plats and plans), the bylaws, the rules or regulations of the association, and a certificate containing:

1. A statement disclosing the effect on the proposed disposition of any right of first refusal or other restraint on the free alienability of the unit;

2. A statement setting forth the amount of the monthly common expense assessment and any unpaid common expense or special assessment currently due and payable from the selling unit owner;

3. A statement of any other fees payable by unit owners;

4. A statement of any capital expenditures anticipated by the association for the current and two next succeeding fiscal years;

5. A statement of the amount of any reserves for capital expenditures and of any portions of those reserves designated by the association for any specified projects;

6. The most recent regularly prepared balance sheet and income and expense statement, if any, of the association;

7. The current operating budget of the association;

8. A statement of any unsatisfied judgments against the association and the status of any pending suits in which the association is a defendant;

9. A statement describing any insurance coverage provided for the benefit of unit owners;

10. A statement as to whether the executive board has knowledge that any alterations or improvements to the unit or to the limited common elements assigned thereto violate any provision of the declaration;

11. A statement as to whether the executive board has knowledge of any violations of the health or building codes with respect to the unit, the limited common elements
assigned thereto, or any other portion of the condominium; and
(12) A statement of the remaining term of any leasehold estate affecting the condominium and the provisions governing any extension or renewal thereof.

(b) The association, within ten days after a request by a unit owner, shall furnish a certificate containing the information necessary to enable the unit owner to comply with this section. A unit owner providing a certificate pursuant to subsection (a) is not liable to the purchaser for any erroneous information provided by the association and included in the certificate.

c) A purchaser is not liable for any unpaid assessment or fee greater than the amount set forth in the certificate prepared by the association. A unit owner is not liable to a purchaser for the failure or delay of the association to provide the certificate in a timely manner, but the purchase contract is voidable by the purchaser until the certificate has been provided and for five days thereafter or until conveyance, whichever first occurs.

§36B-4-110. Escrow of deposits.

Any deposit made in connection with the purchase or reservation of a unit from a person required to deliver a public offering statement pursuant to section 4-102(c) shall be placed in escrow and held either in this state or in the state where the unit is located in an account designated solely for that purpose by an institution whose accounts are insured by a governmental agency or instrumentality until: (1) Delivered to the declarant at closing; (2) delivered to the declarant because of purchaser's default under a contract to purchase the unit; or (3) refunded to the purchaser.

§36B-4-111. Release of liens.

(a) In the case of a sale of a unit where delivery of a public offering statement is required pursuant to section 4-102(c), a seller shall, before conveying a unit, record or furnish to the purchaser, releases of all liens affecting that unit and its common element interest which the purchaser does not expressly agree to take subject to or assume. This
subsection does not apply to any real estate which a declarant has the right to withdraw.

(b) Before conveying real estate to the association, the declarant shall have that real estate released from: (1) All liens the foreclosure of which would deprive unit owners of any right of access to or easement of support of their units, and (2) all other liens on that real estate unless the public offering statement describes certain real estate which may be conveyed subject to liens in specified amounts.

§36B-4-112. Conversion buildings.

(a) A declarant of a condominium containing conversion buildings and any person in the business of selling real estate for his own account who intends to offer units in such a condominium shall give each of the residential tenants and any residential subtenant in possession of a portion of a conversion building notice of the conversion and provide those persons with the public offering statement no later than one hundred twenty days before the tenants and any subtenant in possession are required to vacate. The notice must set forth generally the rights of tenants and subtenants under this section and shall be hand-delivered to the unit or mailed by prepaid United States mail to the tenant and subtenant at the address of the unit or any other mailing address provided by a tenant. No tenant or subtenant may be required to vacate upon less than one hundred twenty days' notice, except by reason of nonpayment of rent, waste, or conduct that disturbs other tenants' peaceful enjoyment of the premises, and the terms of the tenancy may not be altered during that period. Failure to give notice as required by this section is a defense to an action for possession.

(b) For sixty days after delivery or mailing of the notice described in subsection (a), the person required to give the notice shall offer to convey each unit or proposed unit occupied for residential use to the tenant who leases that unit. If a tenant fails to purchase the unit during that sixty-day period, the offeror may not offer to dispose of an interest in that unit during the following one hundred eighty days at a price or on terms more favorable to the
offeree than the price or terms offered to the tenant. This subsection does not apply to any unit in a conversion building if that unit will be restricted exclusively to nonresidential use or the boundaries of the converted unit do not substantially conform to the dimensions of the residential unit before conversion.

(c) If a seller, in violation of subsection (b), conveys a unit to a purchaser for value who has no knowledge of the violation, recordation of the deed conveying the unit extinguishes any right a tenant may have under subsection (b) to purchase any unit if the deed states that the seller has complied with subsection (b), but does not affect the right of a tenant to recover damages from the seller for a violation of subsection (b).

(d) If a notice of conversion specifies a date by which a unit or proposed unit must be vacated and otherwise complies with the provisions of section five, article six, chapter thirty-seven of this code, the notice also constitutes a notice to vacate specified by that section.

(e) Nothing in this section permits termination of a lease by a declarant in violation of its terms.

§36B-4-113. Warranty against structural defects.

(a) Definition.—As used in this section “structural defects” means those defects in components constituting any unit or common element which reduce the stability or safety of the structure below accepted standards or restrict the normal intended use of all or part of the structure and which require repair, renovation, restoration or replacement. Nothing in this section shall be construed to make the declarant responsible for any items of maintenance relating to the units or common elements.

(b) General rule.—A declarant warrants against structural defects in each of the units for two years from the date each is conveyed to a bona fide purchaser, and all of the common elements for two years. The two years shall begin as to each of the common elements whenever the common element has been completed or, if later:

(1) As to any common element within any additional
real estate or portion thereof, at the time the first unit
therein is conveyed to a bona fide purchaser;

(2) As to any common element within any convertible
real estate or portion thereof, at the time the first unit
therein is conveyed to a bona fide purchaser; and

(3) As to any common element within any other portion
of the condominium, at the time the first unit therein is
conveyed to a bona fide purchaser.

(c) Limitation for conversion condominiums.—The
declarant of a conversion condominium may offer the units,
common elements, or both, in "as is" condition in which
event the declarant's warranty against structural defects
applies only to defects in components installed by declarant
or work done by declarant except to the extent that the
declarant gives a more extensive warranty in writing.

(d) Exclusion or modification of warranty.—Except
with respect to a purchaser of a unit for residential use, the
warranty against structural defects:

(1) May be excluded or modified by agreement of the
parties; and

(2) Is excluded by expression of disclaimer, such as "as
is," "with all faults" or other language which in common
understanding calls the buyer's attention to the exclusion of
warranties.

§36B-4-114. Statute of limitations for warranties.

(a) A judicial proceeding for breach of any obligation
arising under this chapter must be commenced within six
years after the cause of action accrues.

(b) Subject to subsection (c), a cause of action for breach
of any express or statutory warranty, regardless of the
purchaser's lack of knowledge of the breach, accrues:

(1) As to a unit, at the time the purchaser to whom the
warranty is first made enters into possession if a possessory
interest was conveyed or at the time of acceptance of the
instrument of conveyance if a nonpossessory interest was
conveyed; and
(2) As to each common element, at the time the common element is completed or, if later, (i) as to a common element that may be added to the condominium or portion thereof, at the time the first unit therein is conveyed to a bona fide purchaser, or (ii) as to a common element within any other portion of the condominium, at the time the first unit in the condominium is conveyed to a bona fide purchaser.

(c) If any express or statutory warranty explicitly extends to future performance or duration of any improvement or component of the condominium, the cause of action accrues at the time the breach is discovered or at the end of the period for which the warranty explicitly extends, whichever is earlier.

§36B-4-115. Effect of violations on rights of action; attorney’s fees.

If a declarant or any other person subject to this chapter fails to comply with any provision thereof or any provision of the declaration or bylaws, any person or class of persons adversely affected by the failure to comply has a claim for appropriate relief. Punitive damages may be awarded for a willful failure to comply with this chapter. The court, in an appropriate case, may award reasonable attorney’s fees.

§36B-4-116. Labeling of promotional material.

If any improvement contemplated in a condominium is labeled “NEED NOT BE BUILT” on a plat or plan, or is to be located within a portion of the condominium with respect to which the declarant has reserved a development right, no promotional material may be displayed or delivered to prospective purchasers which describes or portrays that improvement unless the description or portrayal of the improvement is conspicuously labeled or identified as “NEED NOT BE BUILT.”

§36B-4-117. Declarant’s obligation to complete and restore.

(a) The declarant shall complete all improvements labeled “MUST BE BUILT” on plats or plans prepared pursuant to section 2-109.

(b) The declarant is subject to liability for the prompt repair and restoration, to a condition compatible with the
§36B-4-118. Substantial completion of units.

1 In the case of a sale of a unit where delivery of a public offering statement is required, a contract of sale may be executed, but no interest in that unit may be conveyed until the declaration is recorded and the unit is substantially completed, as evidenced by a recorded certificate of substantial completion executed by an independent registered architect, surveyor or engineer, or by issuance of a certificate of occupancy authorized by law.

CHAPTER 39
(S. B. 188—By Senator Williams)

[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one-b, relating to the certification and appointment of federal law-enforcement officers as special conservation officers; powers and duties of special conservation officers; written agreement between the director of the department of natural resources and a federal agency regarding the appointment of federal employees as special conservation officers; terms, conditions and limitations of the exercise of powers and duties by special conservation officers; qualifications for certification and appointment; and compensation of special conservation officers by the state or its political subdivisions not permitted.

Be it enacted by the Legislature of West Virginia:

That article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended

6 remainder of the condominium, of any portion of the
7 condominium affected by the exercise of rights reserved
8 pursuant to or created by sections 2-110, 2-111, 2-112,
9 2-113, 2-115 and 2-116.
by adding thereto a new section, designated section one-b, to read as follows:

ARTICLE 7. LAW ENFORCEMENT, PROCEDURES AND PENALTIES; MOTORBOATING.

§20-7-1b. Designation of certain federal law-enforcement officers as special conservation officers.

1 The Legislature finds that it is in the mutual interest of the department and certain land management agencies of the United States to cooperate in the enforcement of state statutes and regulations within and adjacent to units of the National Park System, National Forests and U. S. Army Corps of Engineers projects located within the state of West Virginia.

2 Accordingly, the director of the department of natural resources may enter into a written agreement with a federal agency providing for the appointment of employees of the federal agency as special conservation officers and setting forth the terms and conditions within which such federal employees may exercise the powers and duties of special conservation officers. The terms and conditions in the agreement shall grant a special conservation officer appointed pursuant to the agreement the same powers and duties as prescribed for a full-time salaried conservation officer of the department, but shall limit a special conservation officer in the exercise of his or her powers and duties to areas within the boundaries of the federal units to which such officer is assigned in his or her federal employment and to situations outside the boundaries of such federal units where such exercise is for the mutual aid of conservation officers as set forth in the agreement.

25 Any federal employee whose duties involve the enforcement of the criminal laws of the United States and who possesses a valid law-enforcement certification issued by a federal land management agency which certifies the meeting of requirements at least equivalent to the law-enforcement officer training requirements promulgated pursuant to article twenty-nine, chapter thirty of this code, may be certified under the provisions of said article twenty-nine and appointed as a special conservation officer under
the provisions of this section. Any special conservation
officer so appointed may not receive compensation or
benefits from the state or any political subdivisions thereof
for the performance of his or her duties as a special
conservation officer.

CHAPTER 40
(Com. Sub. for H. B. 1183—By Delegate Kelly and Delegate Givens)

[Passed March 10, 1984; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter forty-six-a of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article six-a, relating to new motor vehicle warranties; setting forth legislative declarations; defining words, terms and phrases; establishing manufacturer's duty to repair or replace new motor vehicles; providing for a cause of action by a consumer; setting forth defenses; limitation of action; establishing presumptions; when warranty term deemed extended; requiring that a written statement be furnished to a consumer; setting forth information to be included in such statement; providing for the resale of a returned motor vehicle; requiring that a consumer who purchases a returned motor vehicle be provided a written statement; providing for the contents of such statement; prohibiting the manufacturer from requiring a dealer to accept such vehicle for resale; providing for a third party dispute resolution process; requiring the attorney general to promulgate rules and regulations; setting forth minimum requirements of third party dispute mechanisms; utilization of such mechanisms; extension of limitation of actions; and availability of other remedies.

Be it enacted by the Legislature of West Virginia:

That chapter forty-six-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 six-a, to read as follows:
ARTICLE 6A. CONSUMER PROTECTION—NEW MOTOR VEHICLE WARRANTIES.

§46A-6A-1. Legislative declarations.

(1) The Legislature hereby finds and declares as a matter of public policy that the purpose of this article is to place upon the manufacturers of motor vehicles the duty to meet their obligations and responsibilities under the terms of the express warranties extended to the consumers in this state. The Legislature further finds as a matter of public policy that the manufacturer shall bear the total cost of performing any duty or responsibility imposed by their warranties and the provisions of this article.

(2) The Legislature further finds that any agreement under the provisions of article six-a, chapter seventeen-a of this code, or any agreement hereinafter amended or entered into between a dealer and manufacturer which would transfer to the dealer any duty, or all or any part of the cost of performing any duty imposed on the manufacturer by the provisions of this article, or which would directly or indirectly charge the dealer for or reduce the payment or reimbursement due the dealer for performing work or furnishing parts required by this article to be provided by either the dealer or manufacturer, so as to shift to the dealer all or any part of the cost of the manufacturer's compliance with this article, to be against public policy, void and unenforceable.


When used in this article, the following words, terms and
phrases shall have the meaning ascribed to them, except
where the context indicates a different meaning:

(1) "Consumer" means the purchaser, other than for pur-
poses of resale, of a new motor vehicle purchased in this
state, used primarily for personal, family or household pur-
poses, a person to whom the new motor vehicle is transferred
for the same purposes during the duration of an express war-
 ranty applicable to the motor vehicle and any other person
entitled by the terms of the warranty to enforce the obligations
of the warranty;

(2) "Manufacturer" means a person engaged in the busi-
ness of manufacturing, assembling or distributing motor ve-
hicles, who will, under normal business conditions during the
year, manufacture, assemble or distribute to dealers at least
ten new motor vehicles;

(3) "Manufacturer's express warranty" and "warranty"
mean the written warranty of the manufacturer of a new motor
vehicle of its condition and fitness for use, including any terms
or conditions precedent to the enforcement of obligations
under that warranty; and

(4) "Motor vehicle" means any passenger automobile sold
in this state, including pickup trucks and vans subject to regis-
tration as a Class A motor vehicle under the provisions of
article ten, chapter seventeen-a of this code, and any self-
propelled motor vehicle chassis of motor homes sold in this
state subject to registration as a Class A or Class B motor ve-
hicle under the provisions of article ten, chapter seventeen-a
of this code.

§46A-6A-3. Manufacturer's duty to repair or replace new motor
vehicles.

(a) If a new motor vehicle purchased in this state on or after
the first day of January, one thousand nine hundred eighty-four,
does not conform to all applicable express warranties and the
consumer reports the nonconformity to the manufacturer, its
agent or its authorized dealer during the term of the express
warranties or during the period of one year following the date
of original delivery of the new motor vehicle to a consumer,
whichever is the later date, the manufacturer, its agent or its au-
horized dealer shall make the repairs necessary to conform the
vehicle to the express warranties, notwithstanding the fact that
the repairs are made after the expiration of the warranty term.

(b) If the manufacturer, its agents or its authorized dealer
are unable to conform the new motor vehicle to any applic-
able express warranty by repairing or correcting any defect
or condition which substantially impairs the use or market
value of the motor vehicle to the consumer after a reasonable
number of attempts, the manufacturer shall replace the new
motor vehicle with a comparable new motor vehicle which
does conform to the warranties.

§46A-6A-4. Civil action by consumer.

(a) If the nonconformity results in substantial impairment
to the use or market value of the new motor vehicle and the
manufacturer has not replaced the new motor vehicle pur-
suant to the provisions of section three of this article, or if
the nonconformity exists after a reasonable number of at-
tempts to conform the new motor vehicle to the applicable
express warranties, the consumer shall have a cause of action
against the manufacturer in the circuit court of any county
having venue.

(b) In any action under this section, the consumer may be
awarded all or any portion of the following:

(1) Revocation of acceptance and refund of the purchase
price, including, but not limited to, sales tax, license and
registration fees, and other reasonable expenses incurred for
the purchase of the new motor vehicle, or if there be no such
revocation of acceptance, damages for diminished value of
the motor vehicle;

(2) Damages for the cost of repairs reasonably required to
conform the motor vehicle to the express warranty;

(3) Damages for the loss of use, annoyance or inconve-
nience resulting from the nonconformity, including, but not
limited to, reasonable expenses incurred for replacement
transportation during any period when the vehicle is out of
service by reason of the nonconformity or by reason of re-
pair; and

(4) Reasonable attorney fees.

c) It is an affirmative defense to any claim under this
section (i) that an alleged nonconformity does not substan-
tially impair the use or market value or (ii) that a noncon-
formity is the result of abuse, neglect or unauthorized modi-
fications or alterations of a motor vehicle by anyone other
than the manufacturer, its agent or its authorized dealer.

d) An action brought under this section by the consumer
must be commenced within one year of the expiration of the
express warranty term.

e) The cause of action provided for in this section shall
be available only against the manufacturer.

§46A-6A-5. Presumption of reasonable number of attempts; ex-
tension of warranty term when repair services un-
available.

(a) It is presumed that a reasonable number of attempts
have been undertaken to conform a new motor vehicle to the
applicable express warranties, if the same nonconformity has
been subject to repair three or more times by the manufac-
turer, its agents or its authorized dealers within the express
warranty term or during the period of one year following the
date of original delivery of the motor vehicle to the consumer,
whichever is the earlier date, and the nonconformity con-
tinues to exist, or the vehicle is out of service by reason of
repair for a cumulative total of thirty or more calendar days
during the term or during the one-year period, whichever is
the earlier date.

(b) If the nonconformity results in a condition which is
likely to cause death or serious bodily injury if the vehicle is
driven, it is presumed that a reasonable number of attempts
have been undertaken to conform the vehicle to the applicable
express warranties if the nonconformity has been subject to
repair at least once by the manufacturer within the express
warranty term or during the period of one year following the
date of original delivery of the motor vehicle to a consumer, whichever is the earlier date, and the nonconformity continues to exist.

(c) The presumption that a reasonable number of attempts have been undertaken to conform a new motor vehicle to the applicable express warranties applies against a manufacturer only if the manufacturer has received prior written notification from or on behalf of the consumer and has had at least one opportunity to cure the defect alleged.

(d) The term of an express warranty, the one-year period and the thirty-day period shall be extended by any period of time during which repair services are not available to the consumer because of a war, invasion, strike or fire, flood or other natural disaster.

§46A-6A-6. Written statement to be provided to consumer.

1 At the time of purchase, the manufacturer, either directly or through its agent or its authorized dealer, must provide the consumer a written statement on a separate piece of paper, in ten point all capital type, in substantially the following form: "IMPORTANT: IF THIS VEHICLE IS DEFECTIVE, YOU MAY BE ENTITLED UNDER STATE LAW TO A REPLACEMENT OR TO COMPENSATION. HOWEVER, TO BE ENTITLED TO A REPLACEMENT OR TO COMPENSATION, YOU MUST FIRST NOTIFY THE MANUFACTURER OF THE PROBLEM IN WRITING AND PROVIDE THE MANUFACTURER AN OPPORTUNITY TO REPAIR THE VEHICLE."


1 If a new motor vehicle has been returned under section three of this article or a similar statute of another state, it may not be resold in this state unless the manufacturer corrects the nonconformity and provides the consumer with a written statement on a separate piece of paper in ten point all capital type, in substantially the following form: "IMPORTANT: THIS VEHICLE WAS RETURNED TO THE MANUFACTURER BECAUSE IT DID NOT CONFORM
TO THE MANUFACTURER'S EXPRESS WARRANTY AND THE NONCONFORMITY WAS NOT CURED WITHIN A REASONABLE TIME AS PROVIDED BY WEST VIRGINIA LAW."; Provided, That no manufacturer shall require by agreement or otherwise, either directly or indirectly, that any of its authorized dealers in this state accept such a motor vehicle for resale.

§46A-6A-8. Third party dispute resolution process; attorney general to promulgate rules and regulations.

(a) The attorney general of the state of West Virginia shall promulgate rules and regulations for the establishment and qualification of a third party dispute mechanism or mechanisms for the resolution of warranty disputes between the consumer and the manufacturer, its agent or its authorized dealer. Such mechanisms shall be under the supervision of the division of consumer protection in the office of the attorney general, and shall meet or exceed the minimum requirements of the informal dispute settlement mechanism as provided by the Magnuson-Moss Warranty Federal Trade Commission Improvement Act (Public Law 93-637) and rules and regulations lawfully promulgated thereunder effective the first day of January, one thousand nine hundred eighty-four.

(b) If a qualified third party dispute resolution process exists and the consumer receives timely notification in writing of the availability of the third party process with a description of its operation and effect, the cause of action under section four of this article may not be asserted by the consumer until after the consumer has initially resorted to the third party process. Notification of the availability of the third party process must be timely to the consumer. If a qualified third party dispute resolution process does not exist, or if the consumer is dissatisfied with the third party decision, or if the manufacturer, its agent or its authorized dealer fails to promptly fulfill the terms of the third party decision, the consumer may assert a cause of action under section four of this article.

(c) Any period of limitation of actions under any federal
or West Virginia laws with respect to any consumer shall be tolled for the period between the date a complaint is filed with a third party dispute resolution process and the date of its decision or the date before which the manufacturer, its agent or its authorized dealer is required by the decision to fulfill its terms, whichever occurs later.


Nothing in this article shall be construed to limit any right or remedy which is otherwise available to a consumer or authorized dealer of a manufacturer under any other law.

CHAPTER 41

(P. L. 1984, No. 1479—By Delegate Murensky and Delegate Smith)

[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article one, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section thirteen, article four, chapter thirty-three of said code; to amend and reenact section four, article nine, chapter forty-seven of said code; and to amend and reenact sections thirty-one and thirty-three, article three, chapter fifty-six of said code, all relating to fees charged by the secretary of state for acceptance of service of legal process upon resident corporations, certain nonresident corporations, unlicensed insurers, limited partnerships, nonresident motorists and other nonresidents having certain contacts with this state.

Be it enacted by the Legislature of West Virginia:

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

Chapter 31. Corporations.
33. Insurance.
47. Regulation of Trade.
56. Pleading and Practice.

CHAPTER 31. CORPORATIONS.

ARTICLE 1. BUSINESS AND NONPROFIT CORPORATIONS.

§31-1-15. Secretary of state constituted attorney-in-fact for all corporations; manner of acceptance or service of notices and process upon secretary of state; what constitutes conducting affairs or doing or transacting business in this state for purposes of this section.

The secretary of state is hereby constituted the attorney-in-fact for and on behalf of every corporation created by virtue of the laws of this state and every foreign corporation authorized to conduct affairs or do or transact business herein pursuant to the provisions of this article, with authority to accept service of notice and process on behalf of every such corporation and upon whom service of notice and process may be made in this state for and upon every such corporation. No act of such corporation appointing the secretary of state such attorney-in-fact shall be necessary. Immediately after being served with or accepting any such process or notice, of which process or notice two copies for each defendant shall be furnished the secretary of state with the original notice or process, together with a fee of five dollars, the secretary of state shall file in his office a copy of such process or notice, with a note thereon endorsed of the time of service, or acceptance, as the case may be, and transmit one copy of such process or notice by registered or certified mail, return receipt requested, to the person to whom notice and process shall be sent, whose name and address were last furnished to the state officer at the time authorized by statute to accept service of notice and process and upon whom notice and process may be served; and if no such person has been named, to the principal office of the corporation at the address last furnished to the state officer.
at the time authorized by statute to accept service of process and upon whom process may be served, as required by law. No process or notice shall be served on the secretary of state or accepted by him less than ten days before the return day thereof. Such corporation shall pay the annual fee prescribed by article twelve, chapter eleven of this code for the services of the secretary of state as its attorney-in-fact.

Any foreign corporation which shall conduct affairs or do or transact business in this state without having been authorized so to do pursuant to the provisions of this article shall be conclusively presumed to have appointed the secretary of state as its attorney-in-fact with authority to accept service of notice and process on behalf of such corporation and upon whom service of notice and process may be made in this state for and upon every such corporation in any action or proceeding described in the next following paragraph of this section. No act of such corporation appointing the secretary of state as such attorney-in-fact shall be necessary. Immediately after being served with or accepting any such process or notice, of which process or notice two copies for each defendant shall be furnished the secretary of state with the original notice or process, together with a fee of five dollars, the secretary of state shall file in his office a copy of such process or notice, with a note thereon endorsed of the time of service or acceptance, as the case may be, and transmit one copy of such process or notice by registered or certified mail, return receipt requested, to such corporation at the address of its principal office, which address shall be stated in such process or notice. Such service or acceptance of such process or notice shall be sufficient if such return receipt shall be signed by an agent or employee of such corporation, or the registered or certified mail so sent by the secretary of state is refused by the addressee and the registered or certified mail is returned to the secretary of state, or to his office, showing thereon the stamp of the United States postal service that delivery thereof has been refused, and such return receipt or registered or certified mail is appended to the original process or notice and filed therewith in the clerk's office of the court from which such process or notice was issued. No process or notice shall be served on the secretary of state or accepted by
him less than ten days before the return date thereof. The court may order such continuances as may be reasonable to afford each defendant opportunity to defend the action or proceedings.

For the purpose of this section, a foreign corporation not authorized to conduct affairs or do or transact business in this state pursuant to the provisions of this article shall nevertheless be deemed to be conducting affairs or doing or transacting business herein (a) if such corporation makes a contract to be performed, in whole or in part, by any party thereto, in this state, (b) if such corporation commits a tort in whole or in part in this state, or (c) if such corporation manufactures, sells, offers for sale or supplies any product in a defective condition and such product causes injury to any person or property within this state notwithstanding the fact that such corporation had no agents, servants or employees or contacts within this state at the time of said injury. The making of such contract, the committing of such tort or the manufacture or sale, offer of sale or supply of such defective product as hereinabove described shall be deemed to be the agreement of such corporation that any notice or process served upon, or accepted by, the secretary of state pursuant to the next preceding paragraph of this section in any action or proceeding against such corporation arising from, or growing out of, such contract, tort, or manufacture or sale, offer of sale or supply of such defective product shall be of the same legal force and validity as process duly served on such corporation in this state.

CHAPTER 33. INSURANCE.

ARTICLE 4. GENERAL PROVISIONS.

§33-4-13. Service of process on unlicensed insurers.

(a) The purpose of this section is to subject certain insurers to the jurisdiction of the courts of this state in suits by or on behalf of insureds or beneficiaries under certain insurance contracts and to subject said insurers to the jurisdiction of the courts of this state in suits by or on behalf of the insurance commissioner of West Virginia. The Legislature declares that it is a subject of concern that certain insurers,
while not licensed to transact insurance in this state, are soliciting the sale of insurance and selling insurance to residents of this state, thus presenting the insurance commissioner with the problem of resorting to courts of foreign jurisdictions for the purpose of enforcing the insurance laws of this state for the protection of our citizens. The Legislature declares that it is also a subject of concern that many residents of this state hold policies of insurance issued or delivered in this state by insurers while not licensed to transact insurance in this state, thus presenting to such residents the often insuperable obstacle of resorting to distant fora for the purpose of asserting legal rights under such policies. In furtherance of such state interest, the Legislature herein provides a method of substituted service of process upon such insurers and declares that in so doing it exercises its powers to protect its residents and to define, for the purpose of this section, what constitutes transacting insurance in this state, and also exercises powers and privileges available to the state by virtue of public law number fifteen, seventy-ninth Congress of the United States, chapter twenty, first session, Senate number three hundred forty, as amended, which declares that the business of insurance and every person engaged therein shall be subject to the laws of the several states.

(b) (1) Any of the following acts in this state, effected by mail or otherwise, by an unlicensed foreign or alien insurer:

(i) The issuance or delivery of contracts of insurance to residents of this state or to corporations authorized to do business therein, (ii) the solicitation of applications for such contracts, (iii) the collection of premiums, membership fees, assessments or other considerations for such contracts, or (iv) any other transaction of business, is equivalent to and shall constitute an appointment by such insurer of the secretary of state and his successor in office, to be its true and lawful attorney, upon whom may be served all lawful process in any action, suit or proceeding instituted by or on behalf of an insured or beneficiary arising out of any such contract of insurance, and in any action, suit or proceeding which may be instituted by the insurance commissioner in the name of any such insured or beneficiary or in the name of the state of West Virginia, and any such act shall be signification of its agreement that such
service of process is of the same legal force and validity as personal service of process in this state upon such insurer.

(2) Such service of process upon any such insurer in any such action or proceeding in any court of competent jurisdiction of this state may be made by serving the secretary of state or his chief clerk with two copies and an original thereof and the payment to him of a fee of five dollars. The secretary of state shall forward a copy of such process by registered or certified mail to the defendant at its last-known principal place of business and shall keep a record of all process so served upon him. Such service of process is sufficient, provided notice of such service and a copy of the process are sent within ten days thereafter by or on behalf of the plaintiff to the defendant at its last-known principal place of business by registered or certified mail with return receipt requested. The plaintiff shall file with the clerk of the court in which the action is pending, or with the judge or justice of such court in case there be no clerk, an affidavit of compliance herewith, a copy of the process and either a return receipt purporting to be signed by the defendant or a person qualified to receive its registered or certified mail in accordance with the rules and customs of the post-office department; or, if acceptance was refused by the defendant or its agent, the original envelope bearing a notation by the postal authorities that receipt was refused. Service of process so made shall be deemed to have been made within the territorial jurisdiction of any court in this state.

(3) Service of process in any such action, suit or proceeding shall in addition to the manner provided in subdivision (2) of this subsection (b) be valid if served upon any person within this state who, in this state on behalf of such insurer, is

(A) Soliciting insurance, or

(B) Making, issuing or delivering any contract of insurance, or

(C) Collecting or receiving any premium, membership fee, assessment or other consideration for insurance: Provided, That notice of such service and a copy of such process are sent within ten days thereafter, by or on behalf of the plain-
tiff to the defendant at the last-known principal place of
business of the defendant, by registered or certified mail
with return receipt requested. The plaintiff shall file with the
clerk of the court in which the action is pending, or with the
judge or justice of such court in case there be no clerk, an
affidavit of compliance herewith, a copy of the process and
either a return receipt purporting to be signed by the defen-
dant or a person qualified to receive its registered or certified
mail in accordance with the rules and customs of the post-
office department; or, if acceptance was refused by the defen-
dant or its agent, the original envelope bearing a notation by
the postal authorities that receipt was refused.

(4) The papers referred to in subdivisions (2) and (3) of
this subsection (b) shall be filed within thirty days after the
return receipt or other official proof of delivery or the original
envelope bearing a notation of refusal, as the case may be, is
received by the plaintiff. Service of process shall be complete
ten days after such process and the accompanying papers are
filed in accordance with this section.

(5) Nothing in this section contained shall limit or abridge
the right to serve any process, notice or demand upon any
insurer in any other manner now or hereafter permitted by
law.

(c) (1) Before any unlicensed foreign or alien insurer shall
file or cause to be filed any pleading in any action, suit or
proceeding instituted against it, such unlicensed insurer shall
either (i) deposit with the clerk of the court in which such
action, suit or proceeding is pending, cash or securities or file
with such clerk a bond with good and sufficient sureties, to
be approved by the court, in an amount to be fixed by the
court sufficient to secure the payment of any final judgment
which may be rendered in such action: Provided, That the
court may in its discretion make an order dispensing with
such deposit or bond where the auditor of the state shall have
certified to such court that such insurer maintains within this
state funds or securities in trust or otherwise sufficient and
available to satisfy any final judgment which may be entered
in such action, suit or proceeding; or (ii) procure a license to
transact insurance in this state.
(2) The court in any action, suit or proceeding in which
service is made in the manner provided in subdivision (2) or
(3), subsection (b) of this section may, in its discretion, order
such postponement as may be necessary to afford the defen-
dant reasonable opportunity to comply with the provisions of
subdivision (1) of this subsection (c) and to defend such action.

(3) Nothing in subdivision (1) of this subsection (c) is to
be construed to prevent an unlicensed foreign or alien insurer
from filing a motion to set aside service thereof made in the
manner provided in subdivision (2) or (3), subsection (b) of
this section on the grounds either (i) that such unlicensed in-
surer has not done any of the acts enumerated in subdivision
(1), subsection (b) of this section, or (ii) that the person on
whom service was made pursuant to subdivision (3), sub-
section (b) of this section was not doing any of the acts
therein enumerated.

(d) In any action against an unlicensed foreign or alien
insurer upon a contract of insurance issued or delivered in
this state to a resident thereof or to a corporation authorized to
do business therein, if the insurer has failed for thirty days
after demand prior to the commencement of the action to
make payment in accordance with the terms of the contract,
and it appears to the court that such refusal was vexatious
and without reasonable cause, the court may allow to the
plaintiff a reasonable attorney's fee and include such fee in
any judgment that may be rendered in such action. Such fee
shall not exceed twelve and one-half percent of the amount
which the court finds the plaintiff is entitled to recover against
the insurer, but in no event shall such fee be less than twenty-
five dollars. Failure of an insurer to defend any such action
shall be deemed prima facie evidence that its failure to make
payment was vexatious and without reasonable cause.

(e) The provisions of this section shall not apply to any
suit, action or proceeding against any unlicensed foreign or
alien insurer arising out of any contract of excess line insur-
ance effected in accordance with article twelve of this chapter
where any such contract contains a provision designating the
auditor or secretary of state its true and lawful attorney upon
whom may be served all lawful process in any action, suit or
proceeding instituted by or on behalf of an insured or beneficiary arising out of such contract of insurance.

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 9. UNIFORM LIMITED PARTNERSHIP ACT.

§47-9-4. Secretary of state constituted attorney-in-fact for all limited partnerships; manner of acceptance or service of notice and process upon secretary of state; what constitutes conducting affairs or doing or transacting business in this state for purposes of this section.

The secretary of state is hereby constituted the attorney-in-fact for and on behalf of every limited partnership created by virtue of the laws of this state and every foreign limited partnership authorized to conduct affairs or do or transact business herein pursuant to the provisions of this article, with authority to accept service of notice and process on behalf of every such limited partnership and upon whom service of notice and process may be made in this state for and upon every such limited partnership. No act of such limited partnership appointing the secretary of state such attorney-in-fact shall be necessary. Immediately after being served with or accepting any such process or notice, of which process or notice two copies for each defendant shall be furnished the secretary of state with the original notice or process, together with a fee of five dollars, the secretary of state shall file in his office a copy of such process or notice, with a note thereon endorsed of the time of service or acceptance, as the case may be, and transmit one copy of such process or notice by registered or certified mail, return receipt requested, to the person to whom notice and process shall be sent, whose name and address were last furnished to the state officer at the time authorized by statute to accept service of notice and process and upon whom notice and process may be served; and if no such person has been named, to the principal office of the limited partnership at the address last furnished to the state officer at the time authorized by statute to accept service of process and upon whom process may be served, as required by law. No process or notice shall be served on the secretary of state or accepted by him less than ten days before the
return day thereof. Such limited partnership shall pay the annual fee prescribed by article twelve, chapter eleven of this code for the services of the secretary of state as its attorney-in-fact.

Any foreign limited partnership which shall conduct affairs or do or transact business in this state without having been authorized so to do pursuant to the provisions of this article shall be conclusively presumed to have appointed the secretary of state as its attorney-in-fact with authority to accept service of notice and process on behalf of such limited partnership and upon whom service of notice and process may be made in this state for and upon every such limited partnership in any action or proceeding described in the next following paragraph of this section. No act of such limited partnership appointing the secretary of state as such attorney-in-fact shall be necessary. Immediately after being served with or accepting any such process or notice, of which process or notice two copies for each defendant shall be furnished the secretary of state with the original notice or process, together with a fee of five dollars, the secretary of state shall file in his office a copy of such process or notice, with a note thereon endorsed of the time of service or acceptance, as the case may be, and transmit one copy of such process or notice by registered or certified mail, return receipt requested, to such limited partnership at the address of its principal office, which address shall be stated in such process or notice. Such service or acceptance of such process or notice shall be sufficient if such return receipt shall be signed by an agent or employee of such limited partnership, or the registered or certified mail so sent by the secretary of state is refused by the addressee and the registered or certified mail is returned to the secretary of state, or to his office, showing thereon the stamp of the United States postal service that delivery thereof has been refused, and such return receipt or registered or certified mail is appended to the original process or notice and filed therewith in the clerk's office of the court from which such process or notice was issued. No process or notice shall be served on the secretary of state or accepted by him less than ten days before the return date thereof. The court may order such continuances as
may be reasonable to afford each defendant opportunity to
defend the action or proceedings.

For the purpose of this section, a foreign limited partner-
ship not authorized to conduct affairs or do or transact busi-
ness in this state pursuant to the provisions of this article shall
nevertheless be deemed to be conducting affairs or doing or
transacting business herein (a) if such limited partnership
makes a contract to be performed, in whole or in part, by any
party thereto in this state, (b) if such limited partnership
commits a tort in whole or in part in this state, or (c) if such
limited partnership manufactures, sells, offers for sale or sup-
plies any product in a defective condition and such product
causes injury to any person or property within this state not-
withstanding the fact that such limited partnership had no
agents, servants or employees or contacts within this state at
the time of said injury. The making of such contract, the
committing of such tort or the manufacture or sale, offer of
sale or supply of such defective product as hereinabove de-
dscribed shall be deemed to be the agreement of such limited
partnership that any notice or process served upon, or accepted
by, the secretary of state pursuant to the next preceding para-
graph of this section in any action or proceeding against such
limited partnership arising from or growing out of such con-
tract, tort or manufacture or sale, offer of sale or supply of
such defective product shall be of the same legal force and
validity as process duly served on such limited partnership in
this state.

CHAPTER 56. PLEADING AND PRACTICE.

ARTICLE 3. WRITS, PROCESS AND ORDER OF PUBLICATION.

§56-3-31. Actions by or against nonresident operators of motor vehicles in-
volved in highway accidents or their administrators, etc.

§56-3-33. Actions by or against nonresident persons having certain contracts
with this state; authorizing secretary of state to receive process;
bond and fees; service of process; definitions; retroactive ap-
plication.

§56-3-31. Actions by or against nonresident operators of motor
vehicles involved in highway accidents or their ad-
ministrators, etc.
The operation by a nonresident, or by his duly authorized agent, of a motor vehicle upon a public street, road or highway of this state shall be deemed equivalent to an appointment by such nonresident of the secretary of state, or his successor in office, to be his true and lawful attorney, or the true and lawful attorney of his administrator, administratrix, executor or executrix in the event said nonresident is a natural person and dies, upon whom may be served all lawful process in any action or proceeding against him or if a natural person against his administrator, administratrix, executor or executrix, in any court of record in this state, including an action or proceeding brought by a nonresident plaintiff or plaintiffs, growing out of any accident or collision in which such nonresident may be involved while so operating or so permitting to be operated a motor vehicle on any such street, road or highway, and such operation shall be a signification of his agreement that any such process against him, or if a natural person against his administrator, administratrix, executor or executrix, which is served in the manner hereinafter provided, shall be of the same legal force and validity as though said nonresident or if a natural person his administrator, administratrix, executor or executrix were personally served with a summons and complaint within this state.

Any such action or proceeding may be instituted, continued or maintained on behalf of or against the administrator, administratrix, executor or executrix of said nonresident who dies during or subsequent to said operation of a motor vehicle by such nonresident or his duly authorized agent.

(a) At the time of filing a complaint and before a summons is issued thereon, the plaintiff, or someone for him, shall execute a bond in the sum of one hundred dollars before the clerk of the court, with surety to be approved by said clerk, conditioned that on failure of the plaintiff to prevail in the action that he will reimburse the defendant, or cause him to be reimbursed, the necessary expense incurred by him in and about the defense of the action in this state, and upon the issue of a summons the clerk will certify thereon that said bond has been given and approved. Service shall be made by leaving the original and two copies of both the summons and complaint
with the certificate aforesaid of the clerk thereon, and a fee of
d five dollars with said secretary of state, or in his office, and
said service shall be sufficient upon said nonresident or if a
natural person his administrator, administratrix, executor or
executrix: Provided, That notice of such service and a copy of
the summons and complaint shall forthwith be sent by regis-
tered or certified mail, return receipt requested, by said secre-
tary of state to the defendant, and the defendant's return re-
ceipt signed by himself or his duly authorized agent or the
registered or certified mail so sent by said secretary of state is
refused by the addressee and the registered or certified mail
is returned to said secretary of state, or to his office, showing
thereon the stamp of the post-office department that delivery
has been refused, is appended to the original summons and
complaint and filed therewith in the clerk's office of the court
from which process issued. The court may order such con-
tinuations as may be reasonable to afford the defendant op-
portunity to defend the action.

(b) The fee of five dollars, remitted to the secretary of
state at the time of service, shall be taxed in the costs of the
proceeding and the secretary of state shall pay into the state
treasury all funds so coming into his hands from such service.
The secretary of state shall keep a record in his office of all
such process and the day and hour of service thereof.

(c) The following words and phrases, when used in this
article, shall, for the purpose of this article and unless a dif-
ferent intent on the part of the Legislature be apparent from
the context, have the following meanings:

(1) "Duly authorized agent" means and includes among
others a person who operates a motor vehicle in this state for
a nonresident as defined in this section and chapter, in pur-
suit of business, pleasure or otherwise, or who comes into this
state and operates a motor vehicle therein for, or with the
knowledge or acquiescence of, such nonresident; and includes
among others a member of the family of such nonresident or
a person who, at the residence, place of business or post
office of such nonresident, usually receives and receipts for
mail addressed to such nonresident.
(2) "Motor vehicle" means and includes any self-propelled vehicle, including motorcycle, tractor and trailer, not operated exclusively upon stationary tracks.

(3) "Nonresident" means any person who is not a resident of this state or resident who has moved from the state subsequent to said accident or collision, and among others includes a nonresident firm, partnership, corporation or voluntary association, or a firm, partnership, corporation or voluntary association that has moved from the state subsequent to said accident or collision.

(4) "Nonresident plaintiff or plaintiffs" means a nonresident who institutes an action in a court in this state having jurisdiction against a nonresident in pursuance of the provisions of this article.

(5) "Street," "road" or "highway" means the entire width between property lines of every way or place of whatever nature when any part thereof is open to the use of the public, as a matter of right, for purposes of vehicular traffic.

(d) The provision for service of process herein is cumulative and nothing herein contained shall be construed as a bar to the plaintiff in any action from having process in such action served in any other mode and manner provided by law.

§56-3-33. Actions by or against nonresident persons having certain contracts with this state; authorizing secretary of state to receive process; bond and fees; service of process; definitions; retroactive application.

(a) The engaging by a nonresident, or by his duly authorized agent, in any one or more of the acts specified in subdivisions (1) through (7) of this subsection shall be deemed equivalent to an appointment by such nonresident of the secretary of state, or his successor in office, to be his true and lawful attorney upon whom may be served all lawful process in any action or proceeding against him, in any circuit court in this state, including an action or proceeding brought by a nonresident plaintiff or plaintiffs, for a cause of action arising from or growing out of such act or acts, and the engaging in such act or acts shall be a signification of such nonresident's
agreement that any such process against him, which is served in the manner hereinafter provided, shall be of the same legal force and validity as though such nonresident were personally served with a summons and complaint within this state:

(1) Transacting any business in this state;
(2) Contracting to supply services or things in this state;
(3) Causing tortious injury by an act or omission in this state;
(4) Causing tortious injury in this state by an act or omission outside this state if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this state;
(5) Causing injury in this state to any person by breach of warranty expressly or impliedly made in the sale of goods outside this state when he might reasonably have expected such person to use, consume or be affected by the goods in this state: Provided, That he also regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this state;
(6) Having an interest in, using or possessing real property in this state; or
(7) Contracting to insure any person, property or risk located within this state at the time of contracting.

(b) When jurisdiction over a nonresident is based solely upon the provisions of this section, only a cause of action arising from or growing out of one or more of the acts specified in subdivisions (1) through (7), subsection (a) of this section may be asserted against him.

(c) At the time of filing a complaint and before a summons is issued thereon, the plaintiff, or someone for him, shall execute a bond in the sum of one hundred dollars before the clerk of the court, with surety to be approved by said clerk, conditioned that on failure of the plaintiff to prevail in the action or proceeding that he will reimburse the defendant, or
cause him to be reimbursed, the necessary taxable costs incurred by him in and about the defense of the action or proceeding in this state, and upon the issuance of a summons, the clerk shall certify thereon that such bond has been given and approved. Service shall be made by leaving the original and two copies of both the summons and the complaint with the certificate aforesaid of the clerk thereon, and a fee of five dollars with the secretary of state, or in his office, and such service shall be sufficient upon such nonresident: Provided, That notice of such service and a copy of the summons and complaint shall forthwith be sent by registered or certified mail, return receipt requested, by the secretary of state to the defendant and the defendant's return receipt signed by himself or his duly authorized agent or the registered or certified mail so sent by the secretary of state which is refused by the addressee and which registered or certified mail is returned to the secretary of state, or to his office, showing thereon the stamp of the post-office department that delivery has been refused, shall be appended to the original summons and complaint and filed therewith in the clerk's office of the court from which process issued. If any defendant served with summons and complaint fails to appear and defend within thirty days of service, judgment by default may be rendered against him at any time thereafter. The court may order such continuances as may be reasonable to afford the defendant opportunity to defend the action or proceeding.

(d) The fee of five dollars, remitted to the secretary of state at the time of service, shall be taxed in the costs of the action or proceeding and the secretary of state shall pay into the state treasury all funds so coming into his hands from such service. The secretary of state shall keep a record in his office of all such process and the day and hour of service thereof.

(e) The following words and phrases, when used in this section, shall for the purpose of this section and unless a different intent be apparent from the context, have the following meanings:

(1) "Duly authorized agent" means and includes among others a person who, at the direction of or with the knowledge
or acquiescence of a nonresident, engages in such act or acts
and includes among others a member of the family of such
nonresident or a person who, at the residence, place of busi-
ness or post office of such nonresident, usually receives and
receipts for mail addressed to such nonresident.

(2) “Nonresident” means any person, other than voluntary
unincorporated associations, who is not a resident of this state
or a resident who has moved from this state subsequent to
engaging in such act or acts, and among others includes a
nonresident firm, partnership or corporation or a firm, part-
nership or corporation which has moved from this state sub-
sequent to any of said such act or acts.

(3) “Nonresident plaintiff or plaintiffs” means a nonresident
of this state who institutes an action or proceeding in a circuit
court in this state having jurisdiction against a nonresident of
this state pursuant to the provisions of this section.

(f) The provision for service of process herein is cumula-
tive and nothing herein contained shall be construed as a bar
to the plaintiff in any action or proceeding from having pro-
cess in such action served in any other mode or manner pro-
vided by the law of this state or by the law of the place in
which the service is made for service in that place in an action
in any of its courts of general jurisdiction.

(g) This section shall not be retroactive and the provisions
hereof shall not be available to a plaintiff in a cause of action
arising from or growing out of any of said acts occurring prior
to the effective date of this section.

CHAPTER 42

(H. B. 1631—By Delegate Bird and Delegate Schifano)

[Passed March 8, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article seven, chapter
thirty-one of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to industrial loan
companies; incorporators; corporate structure; stock to be paid in; use of certain words in name.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. INDUSTRIAL BANKS AND INDUSTRIAL LOAN COMPANIES.

§31-7-4. 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 shall be "Industrial Banking 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. The 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.

CHAPTER 43
(S. B. 461—By Senator Nelson)

[Passed March 7, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article eighteen-b, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia economic development authority's making available state mortgage and industrial development investment pool funds for investment in industrial development; changing required security upon certain indebtednesses; amount of funds available; changing minimum interest rate.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 18B. MORTGAGE AND INDUSTRIAL DEVELOPMENT INVESTMENT POOL.

§31-18B-4. West Virginia economic development authority to make available state mortgage and industrial development investment pool funds for investment in industrial development; amount of funds available; interest rate specified.
(a) The West Virginia economic development authority may use for any investments authorized by sections seven and seven-a, article fifteen, chapter thirty-one of this code, up to one half of the funds of the state mortgage and industrial development investment pool: Provided, That the economic development authority shall deposit with the treasurer of the state for the credit of the state mortgage and industrial development pool such notes, security interests or bonds issued by the economic development authority evidencing the indebtedness of the authority to the pool.

(b) Such notes, security interests or bonds issued by the authority shall be secured by security equal to or better than the highest rating of at least two or more nationally recognized rating services such as Standard and Poor's, Dun and Bradstreet or Moody's: Provided, That notes, security interests or bonds evidencing indebtedness of less than two million dollars may be secured by a letter of credit guarantee issued by a bank having an unsecured legal lending limit greater than one million dollars.

(c) The interest rate and the maturity dates of the notes, security interests or bonds held by the treasurer for the state mortgage and industrial development investment pool shall be determined by the economic development authority according to the provisions of section eleven, article fifteen, chapter thirty-one of this code: Provided, That such interest rate shall not be less than the prior four-week auction average for thirteen-week treasury bills as published in the Wall Street Journal and such rate shall be valid for a term of not more than three years: Provided, however, That the economic development authority may determine a variable rate of interest to be adjusted no less frequently than semiannually, and such variable interest rate shall not be less than the prior four-week auction average for thirteen-week treasury bills as published in the Wall Street Journal.
AN ACT to amend article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-b, relating to maintenance of the closed facility formerly known as the West Virginia Industrial home for boys at Grafton and the closed facility formerly known as the Leckie Center at Leckie.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. ORGANIZATION AND INSTITUTIONS.

§25-1-3b. Maintenance of closed facility at Grafton and Leckie.

The facility which has heretofore been known as the West Virginia industrial home for boys at Grafton and the Leckie Center at Leckie and which is no longer used as a state correctional institution and lies idle and unoccupied at the time this section becomes effective shall be maintained on a minimal basis and kept secure from trespass or vandalism by the commissioner of corrections. Such maintenance and security shall be continued by the commissioner of corrections until such time as this property and its appurtenances are sold or transferred to another state, county or municipal agency which assumes responsibility for the maintenance and security of the facility.
AN ACT to amend and reenact section eleven, article four, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections eight, nine, ten, eleven and twelve, article five, chapter sixty-one of said code, all relating to jails and penal, correctional and benevolent institutions and mental health facilities and offenses relating thereto generally; escape and aiding others to escape therefrom and various criminal penalties therefor; permitting persons confined in jails to escape and the criminal penalties therefor; rescue and the criminal penalties therefor; distinguishing between escapes prior to and after sentencing in certain cases and the criminal penalties for each; prohibiting the inducement to escape or the harboring of any inmate or patient of certain institutions or facilities and providing criminal penalties therefor; authorizing the return of such inmates or patients to such institutions or facilities; prohibiting trespassing or loitering upon the grounds of any such institution or facility or communicating with any inmate or patient therein and providing criminal penalties therefor; and prohibiting the purchase or acceptance of gift of certain property from any inmate or patient of any such institution or facility; and providing criminal penalties therefor.

Be it enacted by the Legislature of West Virginia:

That section eleven, article four, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections eight, nine, ten, eleven and twelve, article five, chapter sixty-one of said code be amended and reenacted, all to read as follows:

Chapter
25. Department of Corrections.
61. Crimes and Their Punishment.

CHAPTER 25. DEPARTMENT OF CORRECTIONS.
ARTICLE 4. CENTERS FOR HOUSING YOUTHFUL MALE LAW OFFENDERS.

§25-4-11. Escape; aiding escape.

1 Should any inmate of a center escape therefrom or from the custody of an officer or employee of the center, he shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than one nor more than five years. Any person who knowingly permits or aids any inmate of such center to escape therefrom or conceals him with the intent of enabling him to elude pursuit is guilty of a felony, and, on conviction, shall be punished in a like manner as provided in this section for an inmate who escapes.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

§61-5-8. Aiding adult or juvenile to escape from detention, imprisonment or custody; rescue; penalty.

1 Where any adult or juvenile is lawfully detained in custody or as an inmate or prisoner in any jail or prison or as a resident of any juvenile facility or juvenile detention center, if any other person shall convey anything into the jail, prison, facility or detention center or other place of custody of such adult or juvenile with the intent to aid or facilitate such adult's or juvenile's escape or attempted escape therefrom, or if such other person shall forcibly rescue or attempt to rescue such adult or juvenile therefrom, such other person shall be guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary not less than one nor more than five years.

§61-5-9. Permitting escape; refusal of custody of prisoner; penalties.

1 If a jailer or other officer aid or voluntarily suffer a
prisoner convicted or charged with felony to escape from
his custody, he shall be guilty of a felony, and, upon con-
vation, shall be confined in the penitentiary not less than
one nor more than five years. If any such jailer or other
officer negligently, but not voluntarily, suffer a person con-
ved of or charged with felony, or voluntarily or negligently
suffer a person convicted of or charged with an offense not
a felony, to escape from his custody, or willfully refuse to
receive into his custody any person lawfully committed there-
to, he shall be guilty of a misdemeanor, and, upon convic-
tion, shall be confined in jail not less than six months, or be
fined not exceeding one thousand dollars, or both such fine
and confinement.

§61-5-10. Jail breaking by convicted or unconvicted prisoner; penalties.

(a) Any person confined in jail on conviction of a criminal
offense, who escapes therefrom by force, violence, or by any
subterfuge, device or deception, shall, if previously sentenced
to confinement in the penitentiary, be guilty of a felony,
and, upon conviction, shall be confined in the penitentiary for
not less than one nor more than five years; and if he be
previously sentenced to confinement in jail, he shall be guilty
of a misdemeanor, and, upon conviction, shall be confined
in jail one year.

(b) If any person be lawfully confined in jail and not
sentenced on conviction of a criminal offense, shall escape
therefrom by any means, such person shall, (i) if he be con-
finced upon a charge of a felony, be guilty of an additional
felony, and, upon conviction thereof, shall be confined in the
penitentiary not less than one nor more than five years, or
(ii) if he be confined upon a charge of a misdemeanor, be
guilty of an additional misdemeanor, and, upon conviction
thereof, shall be confined in jail one year.

§61-5-11. Escapes and aiding in escapes; terms of confinement in
addition to previous sentence.

The terms of confinement specified in section eleven, article
four, chapter twenty-five of this code or in sections eight,
nine and ten of this article shall be in addition to the period
or periods of confinement to which any person convicted
under this section may be subject to and shall commence at
the expiration of any such former sentence.

§61-5-12. Escapes from, and other offenses relating to, state benevolent and correctional institutions or mental health facilities; penalties.

Except where otherwise provided, whoever abducts any person who is an inmate or patient of any state benevolent or correctional institution or mental health facility shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary for not less than one nor more than five years. Whoever persuades, induces or entices, or attempts to persuade, induce or entice, any person who is an inmate or patient of any such institution or facility to escape there-from, or whoever conceals or harbors any such person, knowing him or her to have run away from any such institution or facility, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred nor more than one thousand dollars, and in addition thereto, in the discretion of the court, may be imprisoned in the county jail not less than one nor more than six months.

Any fugitive from any state benevolent or correctional institution or mental health facility, may, on the order of the superintendent or other officer of such institution or facility, be arrested and returned to such institution or facility, or to any officer or agent thereof, by any sheriff, police officer or other person, and may also be arrested and returned by any officer or agent of such institution or facility.

Whoever trespasses, idles, lounges or loiters upon the grounds of any other state benevolent or correctional institution or mental health facility or communicates, or attempts to communicate, by signals, signs, writings or otherwise with any inmate or patient of such institution or facility, or conveys or assists in any way in establishing communication between an inmate or patient of such institution or facility and any person or persons outside thereof, except as authorized by the rules or regulations in force by the authority governing the same, shall be guilty of a misdemeanor, and, upon conviction,
shall be fined not less than twenty nor more than five hundred dollars, or imprisoned not less than ten nor more than thirty days in the county jail, or both, in the discretion of the court or magistrate. Whoever, with intent to defraud, purchases, accepts as a gift, or secures by barter or trade, or in any other manner, any article of clothing from an inmate or patient of any state benevolent or correctional institution or mental health facility issued to him or her, by any officer of such institution or facility for his or her use, or, with such intent, secures any other article or articles belonging to any inmate or patient of such institution or facility or to such institution or facility from an inmate or patient thereof, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined a sum not less than double the value of such articles, except that in no case shall the fine be less than one hundred dollars. Magistrates shall have jurisdiction of all misdemeanors included in this paragraph, concurrently with the circuit court.

CHAPTER 46
(Com. Sub. for H. B. 1822—By Delegate Wiedebusch)

[Passed March 10, 1984; in effect from passage. Approved by the Governor.]

AN ACT to repeal sections twenty-seven-a, twenty-seven-b and twenty-eight, article five, chapter twenty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section twenty-seven of said article, relating to commutation of prison sentences for good conduct, hereinafter referred to as "good time"; the manner of computing the time by which sentences are to be reduced or commuted; certain exceptions with respect to persons and types of sentences to which section would not apply; requiring the commissioner of corrections to promulgate disciplinary rules and procedures for determining infractions thereof; requiring that each inmate be given a copy thereof; the forfeiture or revocation of such time and for the reinstatement thereof in cer-
tain cases; requiring that inmates be informed as to their earliest eligible date of discharge pursuant to said section and a revised statement thereof in the case of such forfeiture or revocation; permitting extra good time in certain cases, with the approval of the governor; restoring all good time to inmates which had been previously forfeited or revoked and voiding all previously earned good time and granting such good time to all inmates according to said section; allowing certain previously earned good time to be retained in certain cases; and limiting future good time to be earned only in accordance with said section.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. THE PENITENTIARY.

§28-5-27. Deduction from sentence for good conduct.

1 (a) All adult inmates now in the custody of the commissioner of corrections, or hereafter committed to the custody of the commissioner of corrections, except those committed pursuant to article four, chapter twenty-five of this code, shall be granted commutation from their sentences for good conduct in accordance with this section.

2 (b) Such commutation of sentence, hereinafter called “good time,” shall be deducted from the maximum term of indeterminate sentences or from the fixed term of determinate sentences.

3 (c) Each inmate committed to the custody of the commissioner of corrections and incarcerated in a penal facility pursuant to such commitment shall be granted one day good time for each day he or she is incarcerated, including any and all days in jail awaiting sentence and which is credited by the sentencing court to his or her sentence pursuant to section twenty-four, article eleven, chapter sixty-one of this code or for any other reason relating to such commitment. No in-
mate may be granted any good time for time served either on parole or bond or in any other status whereby he or she is not physically incarcerated.

(d) No inmate sentenced to serve a life sentence shall be eligible to earn or receive any good time pursuant to this section.

(e) An inmate under two or more consecutive sentences shall be allowed good time as if the several sentences, when the maximum terms thereof are added together, were all one sentence.

(f) The commissioner of corrections shall promulgate separate disciplinary rules for each institution under his control in which adult felons are incarcerated, which rules shall describe acts which inmates are prohibited from committing, procedures for charging individual inmates for violation of such rules and for determining the guilt or innocence of inmates charged with such violations and the sanctions which may be imposed for such violations. A copy of such rules shall be given to each inmate. For each such violations, by an inmate so sanctioned, any part or all of the good time which has been granted to such inmate pursuant to this section may be forfeited and revoked by the warden or superintendent of the institution in which the violation occurred. The warden or superintendent, when appropriate and with approval of the commissioner, may restore any good time so forfeited.

(g) Each inmate, upon his or her commitment to and being received into the custody of the commissioner or the department of corrections, or upon his return to custody as the result of violation of parole pursuant to section nineteen, article twelve, chapter sixty-two of this code, shall be given a statement setting forth the term or length of his or her sentence or sentences and the time of his minimum discharge computed according to this section.

(h) Each inmate shall be given a revision of the statement described in subsection (g) if and when any part or all of the good time has been forfeited and revoked or restored pursuant to subsection (f) whereby the time of his or her earliest discharge is changed.
(i) The commissioner of corrections may, with the approval of the governor, allow extra good time for inmates who perform exceptional work or service.

(j) In order to ensure equitable good time for all inmates now in the custody of the commissioner of corrections or hereafter committed to the custody of such commissioner, except as to those persons committed pursuant to article four, chapter twenty-five of this code, all good times shall be computed according to this section and all previous computations of good time under prior statutes or regulations are hereby voided. All inmates who have previously forfeited good time are hereby restored to good time computed according to this section and all inmates will receive a new discharge date computed according to this section. All inmates that have been awarded overtime good time or extra good time pursuant to sections twenty-seven-a and twenty-seven-b of this article which are repealed simultaneously with the amendment to this section during the regular session of the Legislature in the year one thousand nine hundred eighty-four, shall receive such good time in addition to the good time computed according to this section.

(k) There shall be no grants or accumulations of good time or credit to any inmate now or hereafter serving a sentence in the custody of the department of corrections except in the manner provided in this section.

CHAPTER 47

(Com. Sub. for H. B. 1453—By Delegate J. Martin and Delegate Jordan)

[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article five-b, chapter twenty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the sale of prison-made goods; prohibiting such sales; allowing the sale and distribution of goods designed for use by the
blind and handicapped; and allowing the sale of arts and crafts made by individual inmates on a consignment basis.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5B. PRISON-MADE GOODS.

§28-5B-15. Sale of prison-made goods on open market prohibited; penalty; sale of inmate-made arts and crafts permitted.

(a) Subject to the provisions of subsections (b) and (c) of this section, it is unlawful to sell or offer for sale on the open market of this state any articles or products manufactured or produced wholly or in part, in this or any other state, by convicts or prisoners of this state, or any other state, except convicts or prisoners on parole or probation. Any person violating the provisions of this section is guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than two hundred dollars nor more than five thousand dollars, or by imprisonment in jail not less than three months nor more than one year, or by both fine and imprisonment. Each such sale or offer for sale shall constitute a separate offense under this section.

(b) Notwithstanding the provisions of subsection (a) of this section, any articles or products manufactured or produced, wholly, or in part, by inmates of West Virginia penal and correctional institutions and facilities which are designed and intended to be used solely by blind and handicapped persons, including, but not limited to, braille books and reading materials, may be sold or offered for sale or distributed on the open market of this state by the department of corrections or other state department or agency.

(c) Notwithstanding the provisions of subsection (a) of this section, arts and crafts produced by inmates may be sold to the general public by the department of corrections or by such other agencies or departments of state government as the commissioner of corrections may designate. The arts
and crafts shall be sold only on a consignment basis so that inmates whose arts and crafts products are sold shall receive payment for the products. The payments shall be deposited in such accounts or funds and managed in such a manner as provided by section six, article five of this chapter: Provided, That where the state department of corrections or any other agency or department of state government provides any materials used in the production of an arts and crafts product, the fair market value of such materials may be deducted from the account of the individual inmate after the sale of such product.

(d) For purposes of this section, “arts and crafts” means articles produced individually by artistic or craft skill such as, but not limited to, painting, sculpture, pottery and jewelry.

CHAPTER 48

(Com. Sub. for H. B. 1552—By Delegate J. Martin and Delegate I. Damron)

[Passed March 10, 1984; in effect January 1, 1985. Approved by the Governor.]

AN ACT to amend and reenact section five-a, article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section four, article seven of said chapter, all relating to compensation of county commissioners and other county officers; the equalization of compensation of all county commissioners within the same county; certain legislative findings and declarations with respect to the adjustment of such compensation; and county commissioners being excused from voting when having personal or pecuniary interest.

Be it enacted by the Legislature of West Virginia:

That section five-a, 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 four, article seven of said chapter be amended and reenacted, all to read as follows:
Article.
1. County Commissions Generally.
7. Training Programs for County Employees, etc.; Compensation of Elected County Officials; County Assistants, Deputies and Employees, Their Number and Compensation.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-5a. Salaries of county commissioners; excusal of commissioner from voting where conflict of interest involved.

1 All county commissioners shall be paid compensation out of the county treasury in amounts and according to the schedule hereafter set forth for each class of county as determined by the provisions of section three, article seven, chapter seven: Provided, That as to any county having a tribunal in lieu of a county commission, the county commissioners of such county may be paid less than the minimum compensation limits of the county commission for the particular class of such county.

<table>
<thead>
<tr>
<th>Class</th>
<th>Compensation</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>$20,000</td>
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<tr>
<td>II</td>
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<td>V</td>
<td>$7,000</td>
</tr>
<tr>
<td>VI</td>
<td>$4,200</td>
</tr>
</tbody>
</table>

The compensation hereinabove provided shall be paid on and after January one, one thousand nine hundred eighty-five, to each county commissioner. Within each county, every county commissioner whose term of office commenced prior to the first day of January, one thousand nine hundred eighty-five, shall receive the same annual compensation as commissioners commencing a term of office on or after that date by virtue of the new duties imposed upon county commissioners pursuant to the provisions of chapter fifteen, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-three.

27 Each county commissioner present during any county commission meeting when any question is put, shall vote unless he is immediately and particularly interested therein. Before such
30 question is put, any member having a direct personal or pecu-
31 niary interest therein should announce this fact, and request to
32 be excused from voting. The disqualifying interest must be
33 such as affects the member directly, and not as one of a class.

ARTICLE 7. TRAINING PROGRAMS FOR COUNTY EMPLOYEES,
ETC.; COMPENSATION OF ELECTED COUNTY OFFICIALS;
COUNTY ASSISTANTS, DEPUTIES AND EMPLOYEES, THEIR NUMBER AND COMPENSATION.

§7-7-4. Compensation of elected county officials other than county
commissioners for each class of county; effective date.

1 For the purpose of determining the compensation to be
2 paid to the elected county officials of each county, the
3 following compensations for each county office by class are
4 hereby established and shall be used by each county com-
5 mission in determining the compensation of each of their
6 county officials other than compensation of members of the
7 county commission:

<table>
<thead>
<tr>
<th>Class</th>
<th>Sheriff</th>
<th>County Clerk</th>
<th>Circuit Clerk</th>
<th>Assessor</th>
<th>Prosecuting Attorney</th>
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<td>$17,200</td>
<td>$17,200</td>
<td>$17,200</td>
<td>$17,000</td>
</tr>
</tbody>
</table>

16 Any county clerk, circuit clerk, joint clerk of the county
17 commission and circuit court, if any, county assessor, sheriff
18 and prosecuting attorney of a Class I county, any assessor
19 of a Class II and Class III county, any sheriff of a Class II
20 and Class III county, and any prosecuting attorney of a Class
21 II county shall devote full time to his public duties to the
22 exclusion of any other employment: Provided, That any such
23 public official, whose term of office begins when his county's
24 classification imposes no restriction on his outside activities,
25 shall not be restricted on his outside activities during the
26 remainder of the term for which he is elected. The com-
Compensation hereinabove provided shall be paid on and after the first day of January, one thousand nine hundred eighty-five, to each elected county official.

In the case of a county that has a joint clerk of the county commission and circuit court, the compensation of the joint clerk shall be fixed in an amount twenty-five percent higher than the compensation would be fixed for the county clerk if it had separate offices of county clerk and circuit clerk.

The Legislature finds, as a fact, that the duties imposed upon county clerks by the provisions of chapter sixty-four, acts of the Legislature, regular session, one thousand nine hundred eighty-two, and by chapter fifteen, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-three, constitute new and additional duties for county clerks and as such justify the additional compensation provided in this section without violating the provisions of section thirty-eight, article six of the constitution of West Virginia.

The Legislature further finds as a fact that the duties imposed upon circuit clerks by the provisions of chapters sixty-one and one hundred eighty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-one, and by chapter sixty, acts of the Legislature, regular session, one thousand nine hundred eighty-three, constitute new and additional duties for circuit clerks and as such justify the additional compensation provided by this section without violating the provisions of section thirty-eight, article six of the constitution of West Virginia.

CHAPTER 49

(Com. Sub. for H. B. 1199—By Delegate Otte and Delegate Doyle)

[Passed March 10, 1984: 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 seventeen, relating to findings; definitions; county fire association creation; prohibiting a full-time paid fire department located in a municipality from entering the fire association; vesting management and control in the county fire association and providing for appointment; sale or lease of property; reversion of assets upon dissolution; county fire board creation, management, membership, terms of members and vacancies; resident requirement of county fire board members; municipality location; compensation and expenses of county fire board members; providing that board is a public corporation; powers generally; limitations; county fire service fees, petition, election and increase; dedication of fees; incurring indebtedness and rights of creditors; agreements in connection with obtaining funds; providing tax exemptions; appropriations; contributions by county commissions and municipalities; funds and accounts; reports; audits and examination of books, records and accounts; criminal penalties; providing for sale or lease of property and reversion of assets upon dissolution; providing for workers' compensation coverage; and providing for liberal construction.

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 seventeen, to read as follows:

ARTICLE 17. COUNTY FIRE BOARDS.

§7-17-1. Findings.
§7-17-2. Definitions.
§7-17-3. County fire association creation; prohibiting entrance by a municipality maintaining a full time paid fire department.
§7-17-4. Management and control vested in the county fire association; appointment.
§7-17-5. Sale or lease of property; reversion of assets upon dissolution.
§7-17-6. County fire board creation and management; membership; terms of members; vacancies.
§7-17-7. Resident requirement of county fire board members; municipality location.
§7-17-8. Compensation; expenses.
§7-17-9. Board to be a public corporation.
§7-17-10. Powers generally.
§7-17-11. Limitations.
§7-17-12. County fire service fees; petition; election; dedication; increase.
§7-17-1. Findings.

The Legislature finds that fire protection and saving lives and property are important to the health and welfare of the citizens of the state and that it is desirable for county governments to provide fire protection services to county residents.

§7-17-2. Definitions.

As used in this article unless the context clearly indicates otherwise:

1. "User" means any person to whom fire service is made available under the provisions of this article.

2. "County commission" means the county commission or tribunal in lieu thereof of every county within the state of West Virginia as provided in section nine, article nine of the constitution of the state of West Virginia.

3. "County fire association" means an association created in §7-17-3.

4. "County fire board" means that board created in §7-17-6.

5. "Fire service" means an organization that provides fire prevention and fire protection to a community, the members of such an organization or the fire fighting profession as a whole.

§7-17-3. County fire association creation; prohibiting entrance by a municipality maintaining a full time paid fire department.

The fire departments within each county are hereby autho-
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rized to create and establish a county fire association, here-
in after referred to as "fire association." The county fire asso-
ciation is created to discuss fire protection services to address
fire protection problems at the county level.

Upon the creation of a fire association, any full-time paid
fire department located in a municipality, as defined in section
nine, article fifteen, chapter eight of this code is excluded from
the provisions of this article. However, this provision shall not
prohibit the county commission or the fire board with the ap-
proval of the county commission from contracting with any
municipal fire department for fire protection services render-
ed to the county.

§7-17-4. Management and control vested in the county fire asso-
ciation; appointment.

The management and control of the fire association, its prop-
erty, operations, business and affairs shall be lodged with the
representatives from each state fire commission recognized fire
department forming the fire association. For the purpose of
forming the membership of the fire association, each fire de-
partment shall appoint one representative, by a majority vote
of the members of the fire department, to serve on the fire
association: Provided, That in the event three or less fire
departments form the fire association each fire department
shall elect two representatives, by a majority vote of the
members of each fire department, to serve on the fire asso-
ciation: Provided, however, That in the event only one fire
department forms the fire association the members of the fire
department shall conduct the fire association's business. The
members of the fire association shall serve for a term of three
years with the initial appointments beginning on the first day
of July, one thousand nine hundred eighty-four. If a member
resigns or for any other reason his position terminates during
his term of membership, a successor shall be elected by ma-
ajority vote of the members of the represented department to
fill out the remainder of the vacated term. Members in office
at the expiration of their respective terms shall continue to
serve until their successors have been appointed and have
qualified.
§7-17-5. Sale or lease of property; reversion of assets upon dissolution.

The fire association shall fix and determine the terms and conditions of any property or equipment to be leased or sold by the fire association. Upon dissolution of the fire association, all of its assets and property contributed by the county commission shall revert to and become the property of the county for which the board was created.

§7-17-6. County fire board creation and management; membership; terms of members; vacancies.

The county fire association upon two-thirds vote of its membership shall submit an application to the county commission requesting that the county commission create the county fire board. Upon receipt of such application the county commission may by majority vote create such a fire board and if so created the county fire board, if authorized, shall be a corporation. The county fire board shall establish the funding priorities for the fire departments forming the fire association and shall present a list of those priorities to the county commission. However, no fire department or representative of a fire department who is a member of the fire board or fire association may apply for county funding from the county commission except as provided for in subsection seven, section ten of this article. The bylaws of the county fire board and standards of operation of the fire association shall be submitted to, and approved by, the state fire commission and county commission.

The county fire board shall consist of seven members. The initial appointment to the county fire board shall begin on the first day of July, one thousand nine hundred eighty-four. One county commissioner, chosen by the county commission, shall serve on the board. The county commission shall make the initial appointments to the fire board so that one third of the fire association members and the citizen members to be so appointed shall be appointed for a term of one year, one third of the fire association members and the citizen members shall be appointed for a term of two years and one third of the fire association members and the citizen members shall be ap-
pointed for a term of three years. As the term of each such
initial appointee expires, the successor to fill the vacancy
created by such expired term shall be appointed by the county
commission for a term of three years. The county fire asso­
ciation shall submit to the county commission the names of
five members of the fire association, three of whom shall be
appointed by the county commission to serve a term of three
years. Such members are limited to two consecutive terms.
Three citizen members shall be appointed by the county com­
mission to serve on the board. The citizen members may not
be associated with fire service or the county commission. The
citizen members must be residents of the county of which the
county fire board is formed and not more than one citizen
member may be appointed from the same magisterial district
in the county. The citizen members shall serve for a term of
three years but are limited to two consecutive terms. If a
member resigns or for any other reason his membership ter­
minates during his term of office, a successor shall be ap­
pointed from the same representative area to fill out the re­
mainder of his term. Members in office at the expiration of
their respective terms shall continue to serve until their suc­
cessors have been appointed and have qualified.

Annually the board shall elect one of its appointed members
as chairman and another as vice chairman, and shall appoint a
secretary-treasurer. Four members of the board shall consti­
tute a quorum and the affirmative vote of four members shall
be necessary for any action taken by vote of the board. No
vacancy in the membership of the authority shall impair the
rights of a quorum by such vote to exercise all the rights and
perform all duties of the board.

§7-17-7. Resident requirement of county fire board members;
municipality location.

All members of the county fire board shall be residents
of the county in which the county fire board is intended to
operate. If a county boundary line divides a municipality's
city limits, the area of the municipality in which the majority
of the municipality's population resides determines the county
in which the municipality is located for this purpose.
§7-17-8. Compensation; expenses.

No member of the board may receive any compensation in connection with his services as a member. Each member, however, is entitled to reimbursement by the county fire board for any necessary expenses actually incurred in connection with the performance of his duties. However, not more than one percent of the annual appropriations to the board may be used for administrative expenses by the board.

§7-17-9. Board to be a public corporation.

The county fire board shall constitute and if authorized be created as a public corporation under the name provided for in its articles of incorporation and, as such, shall have perpetual succession, may contract with and be contracted with, sue and be sued and have and use a corporate seal.

§7-17-10. Powers generally.

The county fire board may:

1. Make and adopt all necessary bylaws, rules and regulations for its organization and operations not inconsistent with law;

2. Elect its own officers, appoint committees and employ and fix compensation for personnel necessary for its operation;

3. Enter into contracts with any person, agency, governmental department, firm or corporation, including both public and private corporations, and renew, amend or supplement such contracts;

4. Generally do any and all things necessary or convenient for the purpose of improving fire service protection within the area to be served;

5. Borrow money, apply for, receive and use grants-in-aid, donations and contributions from any source or sources and accept and use bequests, devises, gifts and donations from any person, firm or corporation;

6. Raise funds by the issuance and sale of revenue bonds in the manner provided by law;
(7) Formulate and present a petition for funds to the county commission: Provided, That not more than one percent of such funds be used for purposes other than the prioritized needs of the member departments;

(8) Purchase or otherwise acquire, own, hold, sell and dispose of real and personal property; and

(9) Expend its funds in the execution of the powers and authority herein given, which expenditures, by the means authorized herein, are hereby determined and declared as a matter of legislative finding to be for a public purpose and use, in the public interest and for the general welfare of the people of West Virginia.

§7-17-11. Limitations.

1 County fire associations and county fire boards shall be subject to the authority of the governing body in which said association and boards are primarily located.

§7-17-12. County fire service fees; petition; election; dedication; increase.

1 Every county commission which provides fire protection services has plenary power and authority to provide by ordinance for the continuance or improvement of such service, to make regulations with respect thereto and to impose by ordinance, upon the users of such services, reasonable fire service rates, fees and charges to be collected in the manner specified in the ordinance. However, before a county commission can impose by ordinance, upon the users of such service, a reasonable fire service fee, ten percent of the qualified voters shall present a petition duly signed by them in their own handwriting and filed with the clerk of the county commission directing that the county commission impose such a fee. The county commission shall not have a lien on any property as security for payments due under the ordinance. Any ordinance enacted under the provisions of this section shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which the county fire board is located. In the event thirty percent
of the qualified voters of the county by petition duly signed by
them in their own handwriting and filed with the clerk of the
county commission within fifteen days after the expiration of
such publication protest against such ordinance as enacted or
amended, the ordinance may not become effective until it is
ratified by a majority of the legal votes cast thereon by the
qualified voters of such county at any primary, general or
special election as the county commission directs. Voting
thereon may not take place until after notice of the submission
has been given by publication as above provided for the publi-
cation of the ordinance after it is adopted. The powers and
authority hereby granted to county commissions are in addi-
tion to and supplemental to the powers and authority otherwise
granted to them by other provisions of this code.

Any fees imposed under this article are dedicated to the
county fire board for the purposes provided in this article.

In the event the county fire board determines an increase in
any such fee imposed by this section is necessary, it shall by
resolution request the county commission for such an increase.
Procedures set forth in this section for the initial levy of such
a fee shall be followed by the county commission in the event
an increase is sought.

§7-17-13. Incurring indebtedness; rights of creditors.

The county fire board may incur any proper indebtedness
and issue any obligations and give any security therefor which
it considers necessary or advisable in connection with carrying
out its purposes as hereinbefore mentioned. No statutory limi-
tation with respect to the nature, or amount, interest rate or
duration of indebtedness which may be incurred by munici-
palities or other public bodies applies to indebtedness of the
county fire board.

No indebtedness or obligation incurred by the board shall
give any right against any member of the governing body
of any participating government or any member of the board.
Any obligation or indebtedness of any nature of the board
shall never constitute an obligation or indebtedness of any
participating government or the governing body of any partici-
ipating government, within the meaning of any constitutional
provision or statutory limitation and shall never constitute or
give rise to a pecuniary liability of any participating govern-
ment or the governing body of any participating government
or be a charge against the general credit or taxing power of
any participating government or the governing body of any
participating government. The rights of creditors of the board
shall be solely against the board as a corporate body and
shall be satisfied only out of revenues, moneys or property
received or held by it in its corporate capacity.


The county fire board may, in connection with obtaining
funds for its purposes, enter into any agreement with any
person, firm or corporation, including the federal government;
or any agency or subdivision thereof, containing provisions,
covenants, terms and conditions as the county fire board con-
siders advisable.

§7-17-15. Property, bonds and obligations of authority exempt
from taxation.

The county fire board is exempt from the payment of any
taxes or fees to the state or any subdivision thereof or to
any officer or employee of the state or other subdivision there-
of. The property of the county fire board is exempt from all
local and municipal taxes. Bonds, notes, debentures and other
evidence of indebtedness of the county fire board are declared
to be issued for a public purpose and to be public instrumen-
talities and are exempt from taxes.

§7-17-16. Appropriations authorized.

The county commission and any municipality therein, or
any one or more of them, jointly and severally, may contrib-
ute by appropriation from any funds available, to the cost
of the operation and projects of the county fire board.

§7-17-17. Contributions by county commissions, municipalities and
others; funds and accounts; reports; audit and exami-
nation of books, records and accounts; and penalties.

Contributions may be made to the county fire board from
time to time by the county commission of the county or any
municipal corporation therein, and by any persons, firms or
corporations which desire to do so. All such funds and all
other funds received by the county fire board shall be de-
posited in such bank or banks as the county fire board may
direct and shall be withdrawn therefrom in such manner as
the county fire board may direct. The county fire board shall
keep strict account of all its receipts and expenditures and
shall each quarter make a quarterly report to the county com-
mision and municipalities containing an itemized statement
of its receipts and disbursements during the preceding quarter.
Within sixty days after the end of each fiscal year, the county
fire board shall make an annual report containing an itemized
statement of its receipts and disbursements for the preceding
fiscal year. The annual report shall be published as a Class I
legal advertisement in compliance with the provisions of article
three, chapter fifty-nine of this code, and the publication area
for such publication shall be the county in which the county
fire board is located. The books, records and accounts of the
board are subject to audit and examination by the office of
the state tax commissioner of West Virginia and by any other
proper public official or body in the manner provided by
law. For failure to comply with the provisions of this section
the county fire board shall be fined not less than ten nor more
than twenty-five dollars.

§7-17-18. Sale or lease of property; reversion of assets upon dis-
solution.

The county fire board shall fix and determine the terms
and conditions of any property or equipment to be leased or
sold by the county fire board. Upon the dissolution of the
county fire board, all of its assets and property shall revert
to and become the property of the county for which the board
was created.

§7-17-19. Employees to be covered by workers’ compensation.

All employees of the county fire board eligible thereto
are considered to be within the Workers’ Compensation Act of
West Virginia, and premiums on their compensation shall be
paid by the county fire board as required by law.
§7-17-20. Liberal construction of article.

It is the purpose of this article to provide for the improvement, development and advancement of fire protection services within the counties and this article shall be liberally construed as giving to the county fire board full and complete power reasonably required to give effect to the purposes hereof.

CHAPTER 50

(Com. Sub. for S. B. 412—By Mr. McGraw, Mr. President, and Senator Loehr)

[Passed March 10, 1984; in effect July 1, 1984. Approved by the Governor.]

AN ACT to amend and reenact section ten-a, article one, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section thirteen, article two of said chapter, relating to salaries of justices of the supreme court of appeals and judges of circuit courts.

Be it enacted by the Legislature of West Virginia:

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

Article.

1. Supreme Court of Appeals.

ARTICLE 1. SUPREME COURT OF APPEALS.

§51-1-10a. Salary of justices.

1 The salary of each of the justices of the supreme court of appeals shall be fifty-five thousand dollars per year.

ARTICLE 2. CIRCUIT COURTS AND CIRCUIT JUDGES.


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

The annual salary of all circuit judges shall be fifty thousand dollars per year.

CHAPTER 51

[5. B. 372—By Senator Tucker and Senator Spears]

[Passed February 28, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one-h and one-bb, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the terms of court in the eighth and twenty-eighth circuits; changing the dates upon which such terms of court begin; and reducing the number of such terms of court.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. CIRCUIT COURTS AND CIRCUIT JUDGES.

§51-2-1h. Eighth circuit.
§51-2-1bb. Twenty-eighth circuit.

§51-2-1h. Eighth circuit.

1 For the county of McDowell, on the third Monday in February, June and October.

§51-2-1bb. Twenty-eighth circuit.

1 For the county of Nicholas, on the second Tuesday in January, May and September.
AN ACT to amend article fourteen, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine-a; and to amend article two, chapter sixty-one of said code, by adding thereto a new section, designated section ten-a, all relating to crimes against the elderly; directing the commission on aging and the department of public safety to prepare plans for the development, implementation and operation of programs designed to prevent crimes against the elderly and to reduce the fear of crime in the elderly; providing that upon conviction and sentence for the offense of assault upon a person sixty-five years of age or older during the commission of or attempt to commit a felony, the offenses of malicious or unlawful wounding upon a person sixty-five years of age or older, the offense of assault upon a person sixty-five years of age or older, or the offense of battery upon a person sixty-five years of age or older, the sentences provided for, upon conviction, shall not be subject to suspension or probation; and exceptions.

Be it enacted by the Legislature of West Virginia:

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

Chapter
  29. Miscellaneous Boards and Officers.
  61. Crimes and Their Punishment.

CHAPTER 29.
MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 14. STATE COMMISSION ON AGING.
§29-14-9a. Prevention of crimes against the elderly.
  1 (a) It is the express intent of the Legislature that all
state agencies cooperate with the state commission on aging and the department of public safety in carrying out the provisions of this section.

(b) The commission on aging shall, within existing appropriations, prepare yearly plans for the years one thousand nine hundred eighty-five through one thousand nine hundred eighty-nine, and a comprehensive five-year plan for that period, for the development, implementation and operation of programs designed to prevent crime against the elderly and to reduce the fear of crime in the elderly. The commission shall identify, through research and through monitoring and evaluation of programs and projects conducted outside the commission, any social, economic or educational methods, techniques or procedures which have the potential effectively to prevent crime against the elderly and reduce fear of crime in the elderly. The commission shall determine the costs and benefits that would be associated with such prevention and reduction efforts and shall develop or recommend the implementation of, those methods, techniques and procedures which are found likely to be cost efficient. The commission shall identify funding needs for such programs.

(c) In planning and developing programs and recommendations relating to the prevention of crime against elderly persons and reduction of fear of crime in elderly persons, the commission shall, within existing appropriations, consider and evaluate the potential for new or improved programs in, but not limited to, the following areas:

(1) Public education and awareness;

(2) Community coordination in areas of social services and criminal justice;

(3) Use of the elderly as a resource in community crime prevention and the voluntary involvement of elderly persons and retired professionals in the criminal justice system itself in order to improve the responsiveness and effectiveness of the existing system;

(4) Victim and witness assistance;
(5) Reduction of the economic and physical consequences of crime against the elderly; and

(6) Reduction of isolation of the elderly in the community.

(d) Other agencies of state government shall cooperate with and assist the commission, within their available resources, in gathering statistical data and in implementing programs which have the potential to prevent crime against elderly persons and to reduce the fear of crime in elderly persons and shall consider the findings and recommendations of the commission in developing and implementing agency programs and formulating agency budget requests. The department of public safety shall participate in the preparation and implementation of the plans required by this section, and shall collect statistical data on the characteristics of elderly victims of crimes.

(e) The commission shall submit to the governor for transmittal to the president of the senate and the speaker of the house of delegates the first yearly plan to prevent crime against the elderly and to reduce the fear of crime in the elderly not later than the first day of January, one thousand nine hundred eighty-five, and such plan shall be updated and resubmitted not later than the first day of January of each calendar year thereafter through the year one thousand nine hundred eighty-nine. The plan shall outline commission proposals for the identification of appropriate prevention and reduction efforts and the development of prevention and reduction programs and the provisions for services under such programs. The yearly plan shall contain, but not be limited to, the following elements:

(1) A compilation of and analysis of statistical data on types of crimes committed against the elderly in this state and the incidence of such crime. Included in this shall be an identification of the areas of the state where crime against the elderly is of significant proportions. Such data should also reflect an assessment of the degree of unreported, as well as officially reported, criminal acts.

(2) An identification and projection of the potential population for which prevention programs should be considered.
(3) An inventory and evaluation of existing prevention and reduction programs, facilities and services in the state or nationally, including population served, cost of services provided, percentage of unmet needs and an identification of any needed program improvement or change.

(4) A listing of potential prevention efforts identified by the commission, the estimated annual cost of providing such prevention services for the anticipated target population, an identification of potential funding sources and the projected benefits of providing such services.

(f) The yearly plans shall be compiled and analyzed by the commission in the five-year comprehensive plan, which shall be submitted to the governor for transmittal to the president of the senate and speaker of the house of delegates with the last yearly plan on or before the first day of January, one thousand nine hundred eighty-nine.

(g) All funding sources, including reallocated LEAA funds, shall be considered by the commission for implementing programs and projects for crimes against the elderly.

CHAPTER 61.
CRIMES AND THEIR PUNISHMENT.

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-10a. Violent crimes against the elderly; sentence not subject to suspension or probation.

(a) If any person be convicted and sentenced for an offense defined under the provisions of section nine or ten of this article, and if the person shall have committed such offense against a person who is sixty-five years of age or older, then the sentence shall be mandatory and shall not be subject to suspension or probation: Provided, That the court may, in its discretion, suspend the sentence and order probation to any person so convicted upon condition that such person perform public service for a period of time deemed appropriate by the court, which service shall be rendered in or about facilities or programs providing care or services for the elderly: Provided, however, That the court may apply the provisions of article
eleven-a, chapter sixty-two of this code to a person committed
to a term of one year or less.

(b) The existence of any fact which would make any per-
son ineligible for probation under subsection (a) of this sec-
tion because of the commission or attempted commission of a
felony against a victim sixty-five years of age or older shall not
be applicable unless such fact is (i) found by the court upon
a plea of guilty or nolo contendere, or (ii) found by the jury,
if the matter is tried before a jury or (iii) found by the court,
if the matter is tried by the court, without a jury.

CHAPTER 53

(Com. Sub. for S. B. 102—By Senator Boettner and Senator Ash)

(Passed March 9, 1984; in effect ninety days from passage. Approved by the Governor.)

AN ACT to amend and reenact sections fourteen and four­
teen-d, article two, chapter sixty-one of the code of West
Virginia, one thousand nine hundred thirty-one, as amend­
ed; and to further amend said article by adding thereto
a new section, designated section fourteen-e, all relating to
the crimes of child stealing and the abduction of certain
persons generally; the abduction of persons for purposes
of marriage or defilement; the abduction of children for
purposes of prostitution or concubinage; the abduction of
children for other unlawful, improper or immoral pur­
poses; the concealment or removal of minor child from its
custodian or from a person entitled to visitation; commis­
sion of such crime in another state; setting forth defenses;
aider or abettor in commission of certain crimes guilty as
a principal; venue; and providing criminal penalties for
such crimes.

Be it enacted by the Legislature of West Virginia:

That sections fourteen and fourteen-d, article two, 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 two be further amended by adding thereto
a new section, designated section fourteen-e, all to read as follows:

**ARTICLE 2. CRIMES AGAINST THE PERSON.**

§61-2-14. Abduction of person; kidnapping or concealing child; penalties.

§61-2-14d. Concealment or removal of minor child from custodian or from person entitled to visitation; penalties; defenses.

§61-2-14e. One aiding or abetting in offense under §61-2-14, §61-2-14a, §61-2-14c or §61-2-14d as principal; venue.

§61-2-14. Abduction of person; kidnapping or concealing child; penalties.

1 (a) Any person who takes away another person, or detains another person against such person's will, with intent to marry or defile the person, or to cause the person to be married or defiled by another person; or takes away a child under the age of sixteen years from any person having lawful charge of such child, for the purpose of prostitution or concubinage, shall be guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary not less than three nor more than ten years.

(b) Any person, other than the father or mother, who illegally, or for any unlawful, improper or immoral purpose other than the purposes stated in subsection (a) of this section or section fourteen-a or fourteen-c of this article, seizes, takes or secretes a child under sixteen years of age, from the person or persons having lawful charge of such child, shall be guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary not less than one nor more than ten years.

§61-2-14d. Concealment or removal of minor child from custodian or from person entitled to visitation; penalties; defenses.

1 (a) Any person who conceals, takes or removes a minor child in violation of any court order and with the intent to deprive another person of lawful custody or visitation rights shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than one nor more than five years, or in the discretion of the court, shall be imprisoned in the county jail not more than one year or fined not more than one thousand dollars, or both fined and imprisoned.
(b) Any person who violates this section and in so doing removes the minor child from this state or conceals the minor child in another state shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than one nor more than five years or fined not more than one thousand dollars, or both fined and imprisoned.

(c) It shall be a defense under this section that the accused reasonably believed such action was necessary to preserve the welfare of the minor child. The mere failure to return a minor child at the expiration of any lawful custody or visitation period without the intent to deprive another person of lawful custody or visitation rights shall not constitute an offense under this section.

§61-2-14e. One aiding or abetting in offense under §61-2-14, §61-2-14a, §61-2-14c or §61-2-14d guilty as principal; venue.

If any person in any way knowingly aid or abet any other person in the commission of any offense described in section fourteen, fourteen-a, fourteen-c or fourteen-d of this article, either as accessory before or an accessory after the fact, such person so aiding and abetting shall be guilty as a principal in the commission of such offense and shall be punished in the same manner and to the same extent as is provided in said sections for the person who committed the offense. The venue of any offense committed in violation of the provisions of this section shall be as provided in section seven, article eleven of this chapter.
possession of or removing personal property which is security for a claim without consent and with intent to defraud and providing criminal penalties; disposal, secreting or conversion of personal property subject to written lease without consent and with intent to defraud made a crime of larceny; providing for written notice; failure to return property within ten days of receipt of notice; prima facie evidence of intent to defraud; right of the lessor to immediate possession after expiration of the lease and written notice; and lessor not liable for certain damages incidental to reclaiming or taking possession of the leased property.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-32. Removal out of county of property securing claim; penalties; fraudulent disposition of personal property in possession by virtue of lease; notice to return; failure to return; penalty; right to immediate possession.

(a) Any debtor under any security instrument conveying personal property, who retains possession of such personal property, and who, without the consent of the owner of the claim secured by such security instrument, and with intent to defraud, removes or causes to be removed any of the property securing such claim out of the county where it is situated at the time it became security for such claim or out of a county to which it was removed by virtue of a former consent of the owner of the claim under this section, or, with intent to defraud, secretes or sells the same, or converts the same to his own use, shall be guilty of a misdemeanor, and, upon conviction, be fined not more than five hundred dollars, or imprisoned not more than six months, or both, in the discretion of the court.

(b) Any person in possession or control of any personal property by virtue of or subject to a written lease who, with
17 intent to defraud and without written consent of the owner,
18 disposes of such property by sale or transfer, or secretes or
19 converts such property to his own use, or removes or causes
20 to be removed such property from the state shall be deemed
21 guilty of the larceny of such property.

22 In any prosecution under the provisions of this
23 subsection, written notice may be mailed by certified mail,
24 addressed to the lessee at the address of the lessee stated in
25 the lease, and served on the lessee within ten days of the
26 expiration of the lease, which notice shall state that the
27 lease has expired and that lessee has ten days from receipt
28 of such notice to return the leased property. Proof that the
29 lessee failed to return the property within ten days of
30 receiving such notice shall in any prosecution under this
31 subsection constitute prima facie evidence that the lessee
32 intended to defraud the owner.

33 Whenever the lessee is a resident of the county in which
34 the lease was contracted, the lessor, after written notice to
35 the lessee within ten days after the expiration of the lease,
36 has the right to immediate possession of the leased
37 property, without formal process to secure return and
38 possession of the leased property, if this can be done
39 without breach of the peace. The lessor is not liable to the
40 lessee for any damages for any action taken that is
41 reasonable, necessary and incidental to the reclaiming or
42 taking possession of the leased property.

CHAPTER 55

(Com. Sub. for H. B. 1507—By Delegate Chambers and Delegate I. Damron)

[Passed March 8, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-nine-I, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to crimes against property; requiring checks on consumer deposit accounts to show when the accounts were opened; setting forth the method by which such information shall be placed on these checks.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-39l. 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-four, 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 a four or five-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, a five-digit combination. The first two digits, running from 01 through 12, shall numerically identify the month the account was opened, followed by a hyphen, and the fourth and fifth 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, a four-digit combination which shall be "1 Yr. +": 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.
30 account or share account established and maintained by a
31 natural person with a supervised financial organization and
32 operated primarily for personal, family or household pur-
33 poses. The term “supervised financial organization” shall
34 have the same meaning as is ascribed to such term in section
35 one hundred two, article one, chapter forty-six-a of this code.
36 (c) The commissioner of banking is authorized and em-
37 powered to order any supervised financial institution to
38 comply with the provisions of this section and may apply to
39 any state or federal court of competent jurisdiction for
40 appropriate orders, writs, processes and remedies in aid of
41 enforcement.

CHAPTER 56

(H. B. 2032—By Delegate Davis and Delegate Casey)

[Passed March 9, 1984; in effect July 1, 1984. Approved by the Governor.]

AN ACT to repeal section thirteen, article eight-b, chapter sixty-one
of the code of West Virginia, one thousand nine hundred thirty-
one, as amended; to amend and reenact section twelve, article
eight of said chapter sixty-one; and to amend and reenact sec-
tions one, two, three, four, five, six, seven, eight, nine, ten,
eleven and twelve of said article eight-b, all relating to sex of-
fenses generally; defining certain terms relating to the offense
of incest; defining the felony offense of incest and establishing
the penalty therefor; defining certain terms relating to the of-
fenses of sexual assault, sexual abuse, sexual assault of a spouse
and indecent exposure; providing that lack of consent is an
element of every offense defined in article eight-b, chapter sixty-
one of said code and delineating when lack of consent results or
when a person is deemed incapable of consent; defining the
felony offense of sexual assault in the first degree and establish-
ing the penalty therefor; defining the felony offense of sexual as-
sault in the second degree and establishing the penalty there-
for; defining the felony offense of sexual assault in the third
degree and establishing the penalty therefor; defining the felony
offense of sexual assault of a spouse and establishing the penalty therefor; defining the felony offense of sexual abuse in the first degree and establishing the penalty therefor; defining the misdemeanor offense of sexual abuse in the second degree and establishing the penalty therefor; defining the misdemeanor offense of sexual abuse in the third degree and establishing the penalty therefor; defining the misdemeanor offense of indecent exposure and establishing the penalty therefor; restricting the admissibility of certain types of evidence upon the trial of a person for offenses defined under the provisions of said article eight-b; providing that neither age nor mental capacity of the victim shall preclude the victim from testifying; and providing an affirmative defense for certain offenses charged under the provisions of said article eight-b.

Be it enacted by the Legislature of West Virginia:

That section thirteen, article eight-b, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section twelve, article eight of said chapter sixty-one be amended and reenacted; and that sections one, two, three, four, five, six, seven, eight, nine, ten, eleven and twelve of said article eight-b be amended and reenacted, all to read as follows:

Article.

8. Crimes against chastity, morality and decency.
8B. Sexual Offenses.

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-12. Incest; penalty.

1 (a) For the purposes of this section:

2 (1) "Aunt" means the sister of a person's mother or father;
3 (2) "Brother" means the son of a person's mother or father;

5 (3) "Daughter" means a person's natural daughter, adoptive daughter or the daughter of a person's husband or wife;
6 (4) "Father" means a person's natural father, adoptive father or the husband of a person's mother;
(5) "Granddaughter" means the daughter of a person's son or daughter;

(6) "Grandfather" means the father of a person's father or mother;

(7) "Grandmother" means the mother of a person's father or mother;

(8) "Grandson" means the son of a person's son or daughter;

(9) "Mother" means a person's natural mother, adoptive mother or the wife of a person's father;

(10) "Niece" means the daughter of a person's brother or sister;

(11) "Nephew" means the son of a person's brother or sister;

(12) "Sexual intercourse" means any act between persons involving penetration, however slight, of the female sex organ by the male sex organ or involving contact between the sex organs of one person and the mouth or anus of another person;

(13) "Sexual intrusion" means any act between persons involving penetration, however slight, of the female sex organ or of the anus of any person by an object for the purpose of degrading or humiliating the person so penetrated or for gratifying the sexual desire of either party;

(14) "Sister" means the daughter of a person's father or mother;

(15) "Son" means a person's natural son, adoptive son or the son of a person's husband or wife;

(16) "Uncle" means the brother of a person's father or mother.

(b) A person is guilty of incest when such person engages in sexual intercourse or sexual intrusion with his or her father, mother, brother, sister, daughter, son, grandfather, grandmother, grandson, granddaughter, nephew, niece, uncle or aunt.
(c) Any person who violates the provisions of this section shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than five years nor more than ten years, or fined not more than five thousand dollars and imprisoned in the penitentiary not less than five years nor more than ten years.

ARTICLE 8B. SEXUAL OFFENSES.

§61-8B-1. Definitions of terms.
§61-8B-2. Lack of consent.
§61-8B-4. Sexual assault in the second degree.
§61-8B-5. Sexual assault in the third degree.
§61-8B-7. Sexual abuse in the first degree.
§61-8B-10. Indecent exposure.

§61-8B-1. Definition of terms.

1 In this article, unless a different meaning plainly is re-quired:

3 (1) "Forcible compulsion" means:

4 (a) Physical force that overcomes such earnest resistance as might reasonably be expected under the circumstances; or

6 (b) Threat or intimidation, expressed or implied, placing a person in fear of immediate death or bodily injury to himself or another person or in fear that he or another person will be kidnapped.

10 For the purposes of this definition "resistance" includes physical resistance or any clear communication of the victim's lack of consent.

13 (2) "Married," for the purposes of this article in addition to its legal meaning, includes persons living together as man and wife regardless of the legal status of their relationship.

16 (3) "Mentally defective" means that a person suffers from a mental disease or defect which renders such person incapable of appraising the nature of his conduct.
(4) "Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling his or her conduct as a result of the influence of a controlled or intoxicating substance administered to such person without his or her consent or as a result of any other act committed upon such person without his or her consent.

(5) "Physically helpless" means that a person is unconscious or for any reason is physically unable to communicate unwillingness to an act.

(6) "Sexual contact" means any intentional touching, either directly or through clothing, of the anus or any part of the sex organs of another person, or the breasts of a female eleven years old or older, where the victim is not married to the actor and the touching is done for the purpose of gratifying the sexual desire of either party.

(7) "Sexual intercourse" means any act between persons not married to each other involving penetration, however slight, of the female sex organ by the male sex organ or involving contact between the sex organs of one person and the mouth or anus of another person.

(8) "Sexual intrusion" means any act between persons not married to each other involving penetration, however slight, of the female sex organ or of the anus of any person by an object for the purpose of degrading or humiliating the person so penetrated or for gratifying the sexual desire of either party.

(9) "Bodily injury" means substantial physical pain, illness or any impairment of physical condition.

(10) "Serious bodily injury" means bodily injury which creates a substantial risk of death, which causes serious or prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ.

(11) "Deadly weapon" means any instrument, device or thing capable of inflicting death or serious bodily injury, and designed or specially adapted for use as a weapon, or possessed, carried or used as a weapon.
§61-8B-2. Lack of consent.

(a) Whether or not specifically stated, it is an element of every offense defined in this article that the sexual act was committed without the consent of the victim.

(b) Lack of consent results from:

(1) Forcible compulsion; or

(2) Incapacity to consent; or

(3) If the offense charged is sexual abuse, any circumstances in addition to the forcible compulsion or incapacity to consent in which the victim does not expressly or impliedly acquiesce in the actor's conduct.

(c) A person is deemed incapable of consent when such person is:

(1) Less than sixteen years old; or

(2) Mentally defective; or

(3) Mentally incapacitated; or

(4) Physically helpless.


(a) A person is guilty of sexual assault in the first degree when:

(1) Such person engages in sexual intercourse or sexual intrusion with another person and, in so doing:

(i) Inflicts serious bodily injury upon anyone; or

(ii) Employs a deadly weapon in the commission of the act; or

(2) Such person, being fourteen years old or more, engages in sexual intercourse or sexual intrusion with another person who is eleven years old or less.

(b) Any person who violates the provisions of this section shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than fifteen nor more than twenty-five years, or fined not more than ten thou-
§61-8B-4. Sexual assault in the second degree.

(a) A person is guilty of sexual assault in the second degree when:

(1) Such person engages in sexual intercourse or sexual intrusion with another person without the person's consent, and the lack of consent results from forcible compulsion; or

(2) Such person engages in sexual intercourse or sexual intrusion with another person who is physically helpless.

(b) Any person who violates the provisions of this section shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than ten nor more than twenty years, or fined not more than ten thousand dollars and imprisoned in the penitentiary not less than ten nor more than twenty years.

§61-8B-5. Sexual assault in the third degree.

(a) A person is guilty of sexual assault in the third degree when:

(1) Such person engages in sexual intercourse or sexual intrusion with another person who is mentally defective or mentally incapacitated; or

(2) Such person, being sixteen years old or more, engages in sexual intercourse or sexual intrusion with another person who is less than sixteen years old and who is at least four years younger than the defendant.

(b) Any person who violates the provisions of this section shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than one year nor more than five years, or fined not more than ten thousand dollars and imprisoned in the penitentiary not less than one year nor more than five years.


(a) For the purposes of this subsection:
(1) "Sexual intercourse" means any act between persons married to each other involving penetration, however slight, of the female sex organ by the male sex organ or involving contact between the sex organs of one person and the mouth or anus of his or her spouse.

(2) "Sexual intrusion" means any act between persons married to each other involving penetration of the female sex organ or of the anus of either person by an object for the purpose of degrading or humiliating the person so penetrated or for gratifying the sexual desire of either party.

(b) A person is guilty of sexual assault of a spouse when such person engages in sexual penetration or sexual intrusion with his or her spouse without the consent of such spouse; and

(i) The lack of consent results from forcible compulsion; or

(ii) Such person inflicts serious bodily injury upon anyone; or

(iii) Such person employs a deadly weapon in the commission of the offense.

(c) Any person who violates the provisions of this section shall be guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary not less than two nor more than ten years, or fined not more than five thousand dollars and confined in the penitentiary not less than two nor more than ten years.

§61-8B-7. Sexual abuse in the first degree.

(a) A person is guilty of sexual abuse in the first degree when:

(1) Such person subjects another person to sexual contact without their consent, and the lack of consent results from forcible compulsion; or

(2) Such person subjects another person to sexual contact who is physically helpless; or

(3) Such person, being fourteen years old or more, sub-
jests another person to sexual contact who is eleven years old
or less.

(b) Any person who violates the provisions of this section shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than one year nor more than five years, or fined not more than ten thousand dollars and imprisoned in the penitentiary not less than one year nor more than five years.


(a) A person is guilty of sexual abuse in the second degree when such person subjects another person to sexual contact who is mentally defective or mentally incapacitated.

(b) Any person who violates the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be confined in the county jail not more than twelve months, or fined not more than five hundred dollars and confined in the county jail not more than twelve months.


(a) A person is guilty of sexual abuse in the third degree when he subjects another person to sexual contact without the latter's consent, when such lack of consent is due to the victim's incapacity to consent by reason of being less than sixteen years old.

(b) In any prosecution under this section it is a defense that:

(1) The defendant was less than sixteen years old; or

(2) The defendant was less than four years older than the victim.

(c) Any person who violates the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be confined in the county jail not more than ninety days, or fined not more than five hundred dollars and confined in the county jail not more than ninety days.
§61-8B-10. Indecent exposure.

(a) A person is guilty of indecent exposure when such person intentionally exposes his or her sex organs or anus or the sex organs or anus of another person or engages in any overt act of sexual gratification, and does so under circumstances in which the person knows that the conduct is likely to cause affront or alarm.

(b) Any person who violates the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be confined in the county jail not more than ninety days, or fined not more than two hundred fifty dollars and confined in the county jail not more than ninety days.


(a) In any prosecution under this article in which the victim's lack of consent is based solely on the incapacity to consent because such victim was below a critical age, evidence of specific instances of the victim's sexual conduct, opinion evidence of the victim's sexual conduct and reputation evidence of the victim's sexual conduct shall not be admissible. In any other prosecution under this article, evidence of specific instances of the victim's prior sexual conduct with the defendant shall be admissible on the issue of consent: Provided, That such evidence heard first out of the presence of the jury is found by the judge to be relevant.

(b) In any prosecution under this article evidence of specific instances of the victim's sexual conduct with persons other than the defendant, opinion evidence of the victim's sexual conduct and reputation evidence of the victim's sexual conduct shall not be admissible: Provided, That such evidence shall be admissible solely for the purpose of impeaching credibility, if the victim first makes his or her previous sexual conduct an issue in the trial by introducing evidence with respect thereto.

(c) In any prosecution under this article, neither age nor mental capacity of the victim shall preclude the victim from testifying.


(a) In any prosecution under this article in which the
victim’s lack of consent is based solely on the incapacity to consent because such victim was below a critical age, mentally defective, mentally incapacitated or physically helpless, it is an affirmative defense that the defendant, at the time he or she engaged in the conduct constituting the offense, did not know of the facts or conditions responsible for such incapacity to consent, unless the defendant is reckless in failing to know such facts or conditions.

(b) The affirmative defense provided in subsection (a) of this section shall not be available in any prosecution under subdivision (2), subsection (a), section three, and under subdivision (3), subsection (a), section seven of this article.

CHAPTER 57
(Com. Sub. for S. B. 4—By Senator White and Senator Boettner)

[Passed March 5, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eleven-a, relating to protection of victims generally; making certain findings and purposes; permitting statements of crime victims at sentencing hearings; providing for preparation of victim impact statements in criminal cases; when impact statements received; contents; use; right of defendants to review statement and present evidence; requiring restitution by defendant; when restitution required; how restitution made; providing a procedure for issuing restitution order; requiring the attorney general’s office in conjunction with the department of public safety and the department of human services to develop and implement guidelines for law-enforcement agencies and prosecuting attorneys’ offices consistent with the purposes of this act.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE II A. VICTIM PROTECTIN ACT OF 1984.

§61-11A-1. Legislative findings and purpose.
§61-11A-3. Victims impact statement; when required; contents; use, right of defendant to review and present evidence.
§61-11A-4. Restitution; when ordered.
§61-11A-7. Severability

§61-11A-1. Legislative findings and purpose.

1. (a) The Legislature finds and declares that without the cooperation of victims and witnesses, the criminal justice system would cease to function, yet too often these individuals are either ignored by the criminal justice system or simply used as tools to identify and punish offenders.

6. The Legislature finds further that all too often the victim of a serious crime is forced to suffer physical, psychological or financial hardship first as a result of the criminal act and then as a result of contact with a criminal justice system not totally responsive to the needs of such victims.

11. The Legislature finds further that under the current law, law-enforcement agencies must have cooperation from a victim of crime and yet neither the agencies nor the legal system can offer adequate protection or assistance when the victim, as a result of such cooperation, is threatened or intimidated.

17. The Legislature finds further that while the defendant is provided with counsel who can explain both the criminal justice process and the rights of the defendant, the victim or witness has no counterpart and is usually not even notified when the defendant is released on bail, the case is dismissed, a plea to a lesser charge is accepted or a court date is changed.

24. The Legislature finds further that the victim or witness who cooperates with the prosecutor often find that the
transportation, parking facilities and child care services at
the court are unsatisfactory and they must often share the
pretrial waiting room with the defendant or his family and
friends.

The Legislature finds further that the victim may lose
valuable property to a criminal only to lose it again for long
periods of time to law-enforcement officials, until the trial
and appeals are over; many times that property is damaged
or lost, which is particularly stressful for the elderly or
poor.

(b) The Legislature declares that the purposes of this
article are to enhance and protect the necessary role of
crime victims and witnesses in the criminal justice process
and to ensure that the state and local governments do all
that is possible within the limits of available resources to
assist victims and witnesses of crime without infringing on
the constitutional rights of the defendant.


(a) For the purposes of this section, "victim" means a
person who is a victim of a felony, the fiduciary of a
deceased victim's estate or a member of a deceased victim's
immediate family.

(b) Prior to the imposition of sentence upon any
defendant who has been found guilty of a felony or has
pleaded guilty or nolo contendere to any felony, the court
shall permit the victim of the crime to appear before the
court for the purpose of making an oral statement for the
record if the victim notifies the court of his desire to make
such a statement after receiving notification provided in
subsection (c) of this section. If the victim fails to so notify
the court such failure shall constitute a waiver of the right
to make an oral statement. In lieu of such appearance and
oral statement, the victim may submit a written statement
to the court or to the probation officer in charge of the case.
Such probation officer shall forthwith file any such
statement delivered to his office with the sentencing court,
and the statement shall be made a part of the record at the
sentencing hearing. Any such statement, whether oral or
written, shall relate solely to the facts of the case and the
extent of any injuries, financial losses and loss of earnings directly resulting from the crime for which the defendant is being sentenced.

(c) Within a reasonable time, prior to the imposition of sentence upon such defendant, the prosecuting attorney or assistant prosecuting attorney in charge of the case shall in writing advise the person who was the victim of such crime or in the case of a minor, the parent or guardian of such minor, or the fiduciary of his estate, if he be then deceased, of the date, time and place of the original sentencing hearing, and of the victim's rights to submit a written or oral statement to the sentencing court as hereinaLove provided.

(d) The oral or written statement given or submitted by any victim in accordance with the provisions of this section shall be in addition to and not in lieu of the victim impact statement required by the provisions of section three of this article.

§61-11A-3. Victim impact statement; when required; contents; use; right of defendant to review and present evidence.

(a) In every case in which a presentence report is ordered by the court, such presentence report shall contain a victim impact statement unless the court orders otherwise, if the defendant, in committing a felony or misdemeanor, caused physical, psychological or economic injury or death of the victim.

(b) The victim impact statement shall be prepared by the probation officer and shall include the identity of the victim, an itemization of any economic loss suffered by the victim as a result of the offense, a description of the nature and extent of any physical or psychological injury suffered by the victim as a result of the offense, the details of any change in the victim's personal welfare, lifestyle or family relationships as a result of the offense, whether there has been any request for psychological or medical services initiated by the victim or the victim's family as a result of the offense, and such other information related to the
impact of the offense upon the victim as may be required by
the court.

(c) If the court does not order a presentence
investigation and report, the prosecuting attorney may
request that the probation officer prepare a victim impact
statement. The victim impact statement shall be considered
by the court as a factor in determining the appropriate
sentence. Additionally, the statement may be utilized for
the determination of claims by victims of crimes pursuant
to the provisions of article two-a, chapter fourteen of this
code.

(d) A victim impact statement prepared in accordance
with the provisions of this section, other than for claims by
victims of crimes pursuant to the provisions of article two-
a, chapter fourteen of this code, shall be made available to
the defendant, and his counsel if he is so represented, at
least ten days prior to the date set for pronouncement of his
sentence. The court shall, upon motion by or on behalf of the
defendant, grant the defendant a hearing, whereby he may
introduce testimony or other information related to any
alleged factual inaccuracies in the statement.

§61-11A-4. Restitution; when ordered.

(a) The court, when sentencing a defendant convicted of
a felony or misdemeanor causing physical, psychological or
economic injury or loss to a victim, shall order, in addition
to or in lieu of any other penalty authorized by law, that the
defendant make restitution to any victim of the offense,
unless the court finds restitution to be wholly or partially
impractical as set forth in this article. If the court does not
order restitution, or orders only partial restitution, under
this section, the court shall state on the record the reasons
therefor.

(b) The order shall require that such defendant:

(1) In the case of an offense resulting in damage to, loss
of, or destruction of property of a victim of the offense

(A) Return the property to the owner of the property or
someone designated by the owner; or
(B) If return of the property under subparagraph (A) is impossible, impractical or inadequate, pay an amount equal to the greater of: (i) The value of the property on the date of sentencing, or (ii) the value of the property on the date of the damage, loss or destruction less the value (as of the date the property is returned) of any part of the property that is returned;

(2) In the case of an offense resulting in bodily injury to a victim

(A) Pay an amount equal to the cost of necessary medical and related professional services and devices relating to physical, psychiatric and psychological care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by the law of the place of treatment;

(B) Pay an amount equal to the cost of necessary physical and occupational therapy and rehabilitation; and

(C) Reimburse the victim for income lost by such victim as a result of such offense;

(3) In the case of an offense resulting in bodily injury that also results in the death of a victim, pay an amount equal to the cost of necessary funeral and related services; and

(4) In any case, if the victim (or if the victim is deceased, the victim’s estate) consents, or if payment is impossible or impractical, make restitution in services in lieu of money, or make restitution to a person or organization designated by the victim or the estate.

(c) If the court decides to order restitution under this section, the court shall, if the victim is deceased, order that the restitution be made to the victim’s estate.

(d) The court shall impose an order of restitution to the extent that such order is as fair as possible to the victim and the imposition of such order will not unduly complicate or prolong the sentencing process.

(e) The court shall not impose restitution with respect to
a loss for which the victim has received or is to receive compensation, except that the court may, in the interest of justice, order restitution to any person who has compensated the victim for such loss to the extent that such person paid the compensation. An order of restitution shall require that all restitution to victims under such order be made before any restitution to any other person under such order is made.

(f) The court may require that such defendant make restitution under this section within a specified period or in specified installments. The end of such period or the last such installment shall not be later than: (i) The end of the period of probation, if probation is ordered; (ii) five years after the end of the term of imprisonment imposed, if the court does not order probation; and (iii) five years after the date of sentencing in any other case. If not otherwise provided by the court under this subsection, restitution shall be made immediately.

(g) If such defendant is placed on probation or paroled under this article, any restitution ordered under this section shall be a condition of such probation or parole unless the court or parole board finds restitution to be wholly or partially impractical as set forth in this article. The court may revoke probation and the parole board may revoke parole if the defendant fails to comply with such order. In determining whether to revoke probation or parole, the court or parole board shall consider the defendant’s employment status, earning ability, financial resources, the willfulness of the defendant’s failure to pay, and any other special circumstances that may have a bearing on the defendant’s ability to pay.

(h) An order of restitution may be enforced by the state or a victim named in the order to receive the restitution in the same manner as a judgment in a civil action.


1 (a) The court, in determining whether to order restitution under this article and in determining the amount of such restitution, shall consider the amount of the loss sustained by any victim as a result of the offense, the
financial resources of the defendant, the financial needs and earning ability of the defendant and the defendant’s dependents, and such other factors as the court deems appropriate.

(b) The court may order the probation officer of the court to obtain information pertaining to the factors set forth in subsection (a) of this section. The probation officer of the court shall include the information collected in the report of presentence investigation or in a separate report, as the court directs.

(c) The court shall disclose to both the defendant and the prosecuting attorney all portions of the presentence or other report pertaining to the matters described in subsection (a) of this section.

(d) Any dispute as to the proper amount or type of restitution shall be resolved by the court by the preponderance of the evidence. The burden of demonstrating the amount of the loss sustained by a victim as a result of the offense shall be on the prosecuting attorney. The burden of demonstrating the financial resources of the defendant and the financial needs of the defendant and such defendant’s dependents shall be on the defendant. The burden of demonstrating such other matters as the court deems appropriate shall be upon the party designated by the court as justice requires.


(a) No later than the first day of July, one thousand nine hundred eighty-four, the attorney general shall promulgate rules and regulations in accordance with the provisions of chapter twenty-nine-a of this code, establishing guidelines for law-enforcement agencies and prosecuting attorneys’ offices consistent with the purposes of this article. The attorney general shall seek the advice of the department of public safety and department of human services in preparing such rules and regulations. In preparing such rules and regulations, the following objectives shall be considered:
12 (1) The arresting law-enforcement agency should ensure that victims routinely receive emergency social and medical services as soon as possible and are given information on the following:

16 (A) Availability of crime victim compensation (where applicable);

18 (B) Community-based victim treatment programs;

19 (C) The role of the victim in the criminal justice process, including what they can expect from the system as well as what the system expects from them; and

22 (D) Stages in the criminal justice process of significance to a crime victim, and the manner in which information about such stages can be obtained.

25 (2) The prosecuting attorney or his assistant should ensure that victims and witnesses receive information on steps that law-enforcement officers and prosecuting attorneys can take to protect victims and witnesses from intimidation.

30 (3) All victims and witnesses who have been scheduled to attend criminal justice proceedings should be notified by the prosecuting attorneys' offices as soon as possible of any scheduling changes which will affect their appearances.

34 (4) Victims, witnesses and one member of the immediate family of those victims and witnesses should, if such persons provide the appropriate official with a current address and telephone number, receive prompt advance notification, if possible, of judicial proceedings relating to their case, from the prosecuting attorney's office, including:

40 (A) The arrest of an accused;

41 (B) The initial appearance of an accused before a judicial officer;

43 (C) The release of the accused pending judicial proceedings; and

45 (D) Proceedings in the prosecution of the accused
(including the entry of a plea of guilty, trial, sentencing, and, where a term of imprisonment is imposed, the release of the accused from such imprisonment).

(5) The victim of a serious crime, or in the case of a minor child or a homicide, the family of the victim, shall be consulted by the prosecuting attorney in order to obtain the views of the victim or family about the disposition of any criminal case brought as a result of such crime, including the views of the victim or family about:

(A) Dismissal;

(B) Release of the accused pending judicial proceedings;

(C) Plea negotiations; and

(D) Pretrial diversion program.

(6) Victims and other prosecution witnesses should, if practical, be provided prior to court appearance a waiting area that is separate from all other witnesses.

(7) Law-enforcement agencies should promptly return victim's property held for evidentiary purposes unless there is a compelling law-enforcement reason for retaining it.

(8) A victim or witness who so requests should be assisted by law-enforcement agencies and prosecuting attorneys in informing employers that the need for victim and witness cooperation in the prosecution of the case may necessitate absence of that victim or witness from work. A victim or witness who, as a direct result of a crime or of cooperation with law-enforcement agencies or attorneys for the government, is subjected to serious financial strain, should be assisted by the appropriate state agencies in dealing with creditors.

(b) Nothing in this section shall be construed as creating a cause of action against the state of West Virginia or any of its political subdivisions.


1 The provision of subdivision (cc), section ten, article two,
2 chapter two of this code shall apply to the provisions of this
3 article to the same extent as if the provision of said
4 subdivision were set forth in extenso herein.

CHAPTER 58
(Com. Sub. for H. B. 1252—By Delegate Hatcher)

Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.

AN ACT to amend article one-c, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new sections, designated sections one-a and seventeen-b, relating to bail and recognizance generally; authorizing the release of certain persons upon their personal recognizance in certain instances; and defining the offense of failure to appear when required to do so and providing for penalties therefor.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1C. BAIL.

§62-1C-17a. Failure to appear; penalties.


Any other provision of this article to the contrary notwithstanding, when from all the circumstances, the court or magistrate is of the opinion that the defendant or person arrested will appear as may be required of him, either before or after conviction, such defendant or person arrested may be released upon his own recognizance.

§62-1C-17b. Failure to appear; penalties.

(a) Any person, who, having been released upon his personal recognizance pursuant to section one-a of this article or having been otherwise admitted to bail and released in
accordance with this article, and who shall willfully and
without just cause fail to appear as and when it may be re-
quired of him, shall be guilty of the offense as hereinafter
prescribed, and, upon conviction thereof, shall be punished
in the manner hereinafter provided.

(b) If any such person was admitted to bail or released
after being arrested for, charged or convicted of a felony
and shall thereafter be convicted for a violation of the pro-
visions of subsection (a) of this section, such person shall be
guilty of a felony and shall be fined not more than five
thousand dollars or imprisoned not less than one nor more
than five years, or both such fine and imprisonment.

(c) If any such person was admitted to bail or released
after being arrested for, charged or convicted of a misdeme-
onor and shall thereafter be convicted for a violation of the
provisions of subsection (a) of this section, such person shall
be guilty of a misdemeanor and shall be fined not more than
one thousand dollars or confined in the county jail for not
more than one year, or both such fine and confinement.

(d) If any such person was admitted to bail or released
pending appearance as a material witness and shall there-
after fail to appear when and where it shall have been re-
quired of him, such person shall be guilty of a misdemeanor,
and, upon conviction thereof, shall be fined not more than
one thousand dollars or confined in the county jail not more
than one year, or both such fine and confinement.

(e) Any penalty authorized by this section shall be in
addition to any forfeiture authorized or mandated by this
article or by any other provision of law.

CHAPTER 59

(Com. Sub. for H. B. 1044—By Delegate Love)

[Passed March 9, 1984; in effect ninety days from passage. Approved by the Governor.]
amended, by adding thereto a new section, designated section three, relating to stay of execution of sentence pending appeal generally; providing for removal to the penitentiary or other place of incarceration; authorizing the return of a defendant to a place of confinement near the place of trial if necessary; and establishing a procedure for bail in cases where a defendant is removed to the penitentiary or confined elsewhere pending disposition of appeal.

Be it enacted by the Legislature of West Virginia:

That article seven, chapter sixty-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 three, to read as follows:

ARTICLE 7. EXECUTION OF SENTENCES; STAYS.

§62-7-3. Stay of proceedings; removal to penitentiary after reasonable time pending appeal; procedure for bail.

(a) Whenever a stay of proceedings has been granted pursuant to section one or two of this article or any rule of court relating to stays granted under those sections, and the court upon its own motion or after notice and motion by the prosecuting attorney or the defendant shall determine that it is no longer necessary to retain the defendant at a place of confinement near the place of trial in order to permit the defendant to assist in the preparation of his or her appeal to the supreme court of appeals, then unless the defendant shall have posted bail, the sentencing court may vacate the order granting the stay or, in the case of the supreme court of appeals, the supreme court of appeals may vacate its order granting the stay upon the recommendation of the circuit court. Upon the vacation of the order granting the stay, the defendant shall be removed to the penitentiary pursuant to the provisions of section seven of this article: Provided, That the sentencing court or the supreme court of appeals may order incarceration elsewhere for other good cause. In the case of the removal of a defendant from a place of confine-
ment near the place of trial, if at any time during the pendency
of the petition for appeal or the appeal the defendant shall
post bail or the defendant or the defendant's counsel shall
have exhibited the defendant's readiness and ability to post
such bail, then the stay shall again be granted or the super-
sedes shall be reinstated and the defendant dealt with as
hereinafter provided in this section. If a defendant be con-
fined away from the place of trial under the provisions of
this subsection, he may nonetheless be returned to a place
of confinement near the place of trial at any time his presence
is necessary to facilitate preparation for, or access to, pro-
ceedings for an appeal.

(b) If a defendant is not released pending disposition of
appeal and is removed to the penitentiary or other place of
confinement in accordance with the provisions of subsection
(a) of this section, then upon the fixing of bail in a proper
case, the defendant may be admitted to bail as heretofore pro-
vided by law and released from any incarceration in accord-
ance with the terms and conditions of such bail, by the
warden of the state penitentiary or other officer having lawful
custody, upon the release order of the clerk or judge of the
court before whom such bail is to be given. A release order
shall be promptly issued by the clerk or judge when the
requirements for bail have been complied with or when the
defendant or the defendant's counsel has exhibited the de-
fendant's readiness and ability to comply with such require-
ments. Such release order may be provisional in form indica-
ting that proper arrangements for bail have been made and
could be completed upon the personal appearance of the
defendant before the clerk or judge. In order to be admitted
to bail following the execution by the clerk or judge of the
release order or provisional release order the defendant shall
be promptly brought before the court or clerk by the officer
having custody. If the circumstances under which bail was
fixed have changed so that bail is no longer appropriate, bail
may be denied: Provided, That nothing in this subsection is
intended to alter the conditions under which an individual may
be admitted to bail under other provisions of law.
CHAPTER 60

(H. B. 1694—By Delegate Davis and Delegate Crookshanks)

Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.

AN ACT to amend and reenact sections one, two, thirteen, fifteen, sixteen, seventeen and twenty-two, article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article two by adding thereto five new sections, designated sections thirty-two, thirty-three, thirty-four, thirty-five and thirty-six; and to amend and reenact section ten, article three of said chapter forty-eight, relating to the awarding of alimony, child support and other relief and the distribution of marital property upon the ordering of a divorce or annulment or the granting of a decree of separate maintenance generally; defining certain terms; setting forth conditions under which marriages are voidable and shall be void; providing for the annulment or affirmation of marriage; describing the temporary relief which a court may grant during the pendency of an action for divorce, annulment or separate maintenance; establishing a procedure for ex parte relief without notice; describing the relief which a court may grant upon ordering a divorce or annulment or granting a decree of separate maintenance; empowering the court to order accounts to be taken as to all or any part of marital property or the separate estates of the parties; providing that in awarding or denying alimony the court may consider fault or misconduct of either or both parties; providing that an award of alimony may be barred when both parties prove grounds or when a party has committed adultery, been convicted of a felony, or has actually abandoned or deserted; directing the manner in which a court is to structure relief when the parties have executed a separation agreement; describing the matters which a court shall consider in determining the amount to be ordered as alimony, child support or separate maintenance; prohibiting the recor dation of a judgment order in a case of divorce, annulment or separate maintenance and providing for the recor dation of an abstract of such order and an affidavit so as to create a lien; requiring the commencement of a proceeding within sixty days in order to preserve any lien so created; describing the proceedings
whereby a person may be found to be in criminal contempt or civil contempt and prescribing penalties for persons found to be in contempt; authorizing the court to enter judgment for arrearages in the payment of alimony, child support or separate maintenance, and to require security to ensure payment of future installments; allowing a court to attach forthwith the body of a person who refuses or fails to respond to the lawful process of the court or to comply with an order of the court; describing the manner in which a court is to divide the marital property of the parties to an action for divorce, annulment or separate maintenance; setting forth the matters which a court shall consider in distributing marital property between the parties; listing the alternatives available to the court for ascertaining and distributing the respective interests of the parties in marital property; requiring the court to set out findings of fact and conclusions of law and the reasons for dividing marital property; stating that neither the provisions of article two, chapter forty-eight of the code nor the doctrine of equitable distribution of marital property shall be construed to create community property nor any other interest or estate in property except those previously recognized in this state; describing the circumstances under which a husband or wife may alienate his or her separate property and describing the effect of transfers of property on third parties; providing for the full disclosure of all assets owned in full or in part by either party separately or by the parties jointly; requiring the use of a standard form for disclosure; establishing the time for filing the disclosure form; providing for the confidentiality of disclosures; describing the action to be taken upon a failure to disclose information; providing that a deliberate failure to provide disclosure constitutes an offense of false swearing; authorizing an injunction against the distribution of property and allowing the court to set aside certain encumbrances or dispositions of property to third persons; authorizing the filing of a notice of lis pendens upon the commencement of an action for divorce, annulment or separate maintenance; providing for the retroactive effect of amendments made to article two, chapter forty-eight of said code; and stating that in actions which require the court to divide marital property, the presumption of gift between spouses shall not apply.
Be it enacted by the Legislature of West Virginia:

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

Article
2. Divorce, Annulment and Separate Maintenance.

ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE MAINTENANCE.

§48-2-1. Definitions.
§48-2-2. For what and when marriages void; affirmation or annulment of marriage.
§48-2-13. Temporary relief during pendency of action for divorce, annulment or separate maintenance.
§48-2-15. Relief upon ordering divorce or annulment or granting decree of separate maintenance.
§48-2-16. Effect of separation agreement; what considered in awarding alimony, child support or separate maintenance.
§48-2-17. Recordation of an abstract of an order for alimony, child support or separate maintenance.
§48-2-32. Marital property disposition.
§48-2-33. Disclosure of assets required.
§48-2-34. Injunction against disposition of property pending suit and decree rendering fraudulent transfers null and void.
§48-2-35. Lis pendens.

§48-2-1. Definitions.

1. "Alimony" means the allowance which a person pays to or in behalf of the support of his or her spouse or divorced spouse while they are separated or after they are divorced. The payment of alimony may be required by court order or by the terms of a separation agreement. Alimony may be paid in a lump sum or paid in installments as periodic alimony. Alimony includes temporary alimony as that term is used in section thirteen of this article, as well as alimony as that term
(b) "Antenuptial agreement" or "prenuptial agreement" means an agreement between a man and woman before marriage, but in contemplation and generally in consideration of marriage, whereby the property rights and interests of the prospective husband and wife, or both of them, are determined, or where property is secured to either or both of them, to their separate estate, or to their children or other persons. An antenuptial agreement may include provisions which define the respective property rights of the parties during the marriage, or in the event of the death of either or both of the parties, and may provide for the disposition of marital property upon an annulment of the marriage or a divorce or separation of the parties. A prenuptial agreement is void if at the time it is made:

(1) Either of the parties is a minor; or

(2) The female party to the agreement is pregnant: Provided, That such female shall be presumed for the purposes of this article to have been pregnant at the time the agreement was made if she gives birth to a child at any time within the nine month period next following the execution of the agreement.

(c) "Marital property" means:

(1) All property and earnings acquired by either spouse during a marriage, including every valuable right and interest, corporeal or incorporeal, tangible or intangible, real or personal, regardless of the form of ownership, whether legal or beneficial, whether individually held, held in trust by a third party, or whether held by the parties to the marriage in some form of co-ownership such as joint tenancy or tenancy in common, joint tenancy with the right of survivorship, or any other form of shared ownership recognized in other jurisdictions without this state, except that marital property shall not include separate property as defined in subsection (d) of this section; and

(2) The amount of any increase in value in the separate property of either of the parties to a marriage, which increase results from (A) an expenditure of funds which are marital
property, including an expenditure of such funds which reduces indebtedness against separate property, extinguishes liens, or otherwise increases the net value of separate property, or (B) work performed by either or both of the parties during the marriage;

The definitions of "marital property" contained in this subsection and "separate property" contained in subsection (d) of this section shall have no application outside of the provisions of this article, and the common law as to the ownership of the respective property and earnings of a husband and wife, as altered by the provisions of article three of this chapter and other provisions of this code, are not abrogated by implication or otherwise, except as expressly provided for by the provisions of this article as such provisions are applied in actions brought under this article or for the enforcement of rights under this article.

(d) "Separate property" means:

1. Property acquired by a person before marriage; or
2. Property acquired by a person during marriage in exchange for separate property which was acquired before the marriage; or
3. Property acquired by a person during marriage, but excluded from treatment as marital property by a valid agreement of the parties entered into before or during the marriage; or
4. Property acquired by a person during marriage by gift, bequest, devise, descent or distribution; or
5. Property acquired by a party during a marriage but after the separation of the parties and before the granting of a divorce, annulment or decree of separate maintenance; and
6. Any increase in the value of separate property as defined in subdivision (1), (2), (3), (4) or (5) of this subsection which is due to inflation or to a change in market value resulting from conditions outside the control of the parties.

(e) "Separation" or "separation of the parties" means the separation of the parties next preceding the filing of an action.
under the provisions of this article, which separation continues,
without the parties cohabiting or otherwise living together as
husband and wife, and without interruption.

(f) "Separation agreement" means a written agreement en-
tered into by a husband and wife whereby they agree to live
separate and apart from each other and, in connection there-
with, agree to settle their property rights; or to provide for
the custody and support of their minor child or children, if
any; or to provide for the payment or waiver of alimony by
either party to the other; or to otherwise settle and compromise
issues arising out of their marital rights and obligations. Insofar
as an antenuptial agreement as defined in subsection (b) of
this section affects the property rights of the parties or the dis-
position of property upon an annulment of the marriage, or a
divorce or separation of the parties, such antenuptial agree-
ment shall be regarded as a separation agreement under the
provisions of this article.

§48-2-2. For what and when marriages void; affirmation or annul-
ment of marriage.

(a) The following marriages are voidable and shall be void
from the time they are so declared by a judgment order of
nullity:

(1) Marriages which are prohibited by law on account of
either of the parties having a wife or husband of a prior mar-
riage, when such prior marriage has not been terminated by
divorce, annulment or death;

(2) Marriages which are prohibited by law on account of
consanguinity or affinity between the parties;

(3) Marriages solemnized when either of the parties:

(A) Was an insane person, idiot or imbecile;

(B) Was afflicted with a venereal disease;

(C) Was incapable, because of natural or incurable impo-
tency of the body, of entering into the marriage state;

(D) Was under the age of consent; or
(E) Had been, prior to the marriage and without the knowledge of the other party, convicted of an infamous offense;

(4) Marriages solemnized when, at the time of the marriage, the wife, without the knowledge of the husband:

(A) Was with child by some person other than the husband; or

(B) Had been, prior to the marriage, notoriously a prostitute;

Or,

(5) Marriages solemnized when, prior to the marriage, the husband, without the knowledge of the wife, had been notoriously a licentious person.

(b) When a marriage is supposed to be void, or voidable, or any doubt exists as to its validity, for any of the causes set forth in subsection (a) of this section, or for any other cause recognized in law, either party may, except as provided in the next succeeding section, institute an action for annulling or affirming the same, and, upon hearing the proofs and allegations of the parties, the court shall enter a judgment order annulling or affirming the marriage, according to the right of the case. In every such case, and in every other case where the validity of a marriage is called into question, it shall be presumed that the marriage is valid, unless the contrary be clearly proven, and, if the marriage be adjudged to be valid, it shall be conclusive upon all persons concerned.

§48-2-13. Temporary relief during pendency of action for divorce, annulment or separate maintenance.

(a) At the time of the filing of the complaint or at any time after the commencement of an action for divorce, annulment or separate maintenance under the provisions of this article, and upon motion for temporary relief, notice of hearing and hearing, the court may order all or any portion of the following temporary relief, which order shall govern the marital rights and obligations of the parties during the pendency of the action:

(1) The court may require either party to pay temporary
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10 alimony in the form of periodic installments, or a lump sum,
11 or both, for the maintenance of the other party.

12 (2) The court may provide for the custody of minor
13 children of the parties subject to such rights of visitation,
14 both in and out of the residence of the custodial parent or
15 other person or persons having custody, as may be appro-
16 priate under the circumstances.

17 (3) The court may require either party to pay tempo-
18 rary child support in the form of periodic installments for the
19 maintenance of the minor children of the parties.

20 (4) The court may compel either party to pay attorney's
21 fees and court costs reasonably necessary to enable the
22 other party to prosecute or defend the action in the trial court.
23 The question of whether or not a party is entitled to temporary
24 alimony shall not be decisive of that party's right to a reason-
25 able allowance of attorney's fees and court costs. An order
26 for temporary relief awarding attorney fees and court costs
27 may be modified at any time during the pendency of the
28 action, as the exigencies of the case or equity and justice may
29 require, including, but not limited to, a modification which
30 would require full or partial repayment of fees and costs by
31 a party to the action to whom or on whose behalf payment
32 of such fees and costs was previously ordered. If an appeal
33 be taken or an intention to appeal be stated, the court may
34 further order either party to pay attorney fees and costs on
35 appeal.

36 (5) As an incident to requiring the payment of tempo-
37 rary alimony or temporary child support, the court may order
38 either party to continue in effect existing policies of insurance
39 covering the costs of health care and hospitalization of the
40 other party and the minor children of the parties. Payments
41 made to an insurer pursuant to this subdivision, either directly
42 or by a deduction from wages, shall be deemed to be tempo-
43 rary alimony or temporary child support, in such proportion
44 as the court shall direct: Provided, That if the court does not
45 set forth in the order that a portion of such payments is to
46 be deemed temporary child support, then all such payments
made pursuant to this subdivision shall be deemed to be temporary alimony.

(6) As an incident to requiring the payment of temporary alimony or temporary child support, the court may grant the exclusive use and occupancy of the marital home to one of the parties during the pendency of the action, together with all or a portion of the household goods, furniture and furnishings, reasonably necessary for such use and occupancy. The court may require payments to third parties in the form of home loan installments, land contract payments, rent, payments for utility services, property taxes, insurance coverage or other expenses or charges reasonably necessary for the use and occupancy of the marital domicile. Payments made to a third party pursuant to this subdivision shall be deemed to be temporary alimony or temporary child support, in such proportion as the court shall direct: Provided, That if the court does not set forth in the order that a portion of such payments is to be deemed temporary child support, then all such payments made pursuant to this subdivision shall be deemed to be temporary alimony: Provided, however, That the court may order such payments to be made without denoting them as either temporary alimony or temporary child support, reserving such decision until such time as the court determines the interests of the parties in marital property and equitably divides the same: Provided further, That at the time the court determines the interests of the parties in marital property and equitably divides the same, the court may consider the extent to which payments made to third parties under the provisions of this subdivision have affected the rights of the parties in marital property, and may treat such payments as a partial distribution of marital property notwithstanding the fact that such payments have been denominated temporary alimony or temporary child support or not so denominated under the provisions of this subdivision. Nothing contained in this subdivision shall abrogate an existing contract between either of the parties and a third party, or affect the rights and liabilities of either party or a third party under the terms of such contract.

(7) As an incident to requiring the payments of tempo-
rary alimony, the court may grant the exclusive use and possession of one or more motor vehicles to either of the parties during the pendency of the action. The court may require payments to third parties in the form of automobile loan installments or insurance coverage, and any such payments made pursuant to this subdivision shall be deemed to be temporary alimony: *Provided*, That the court may order such payments to be made without denominating them as temporary alimony, reserving such decision until such time as the court determines the interests of the parties in marital property and equitably divides the same: *Provided, however*, That at the time the court determines the interests of the parties in marital property and equitably divides the same, the court may consider the extent to which payments made to third parties under the provisions of this subdivision have affected the rights of the parties in marital property, and may treat such payments as a partial distribution of marital property notwithstanding the fact that such payments have been denominated temporary alimony or not so denominated under the provisions of this subdivision. Nothing contained in this subdivision shall abrogate an existing contract between either of the parties and a third party, or affect the rights and liabilities of either party or a third party under the terms of such contract.

(8) Where the pleadings include a specific request for specific property or raise issues concerning the equitable division of marital property, the court may enter such order as is reasonably necessary to preserve the estate of either or both of the parties, including the imposition of a constructive trust, so that such property be forthcoming to meet any order which may be made in the action, and may compel either party to give security to abide such order, or may require the property in question to be delivered into the temporary custody of a third party. The court may further order either or both of the parties to pay the costs and expenses of maintaining and preserving the property of the parties during the pendency of the action: *Provided*, That at the time the court determines the interests of the parties in marital property and equitably divides the same, the court may consider the extent to which payments made for the maintenance and preser-
vation of property under the provisions of this subdivision
have affected the rights of the parties in marital property,
and may treat such payments as a partial distribution of
marital property. When appropriate, the court may release
all or any part of such protected property for sale and sub-
stitute all or a portion of the proceeds of the sale for such
property.

(9) Unless a contrary disposition be found appropriate
and ordered pursuant to other provisions of this section, then
upon the motion of either party, the court may compel the
other party to deliver to the movant party any of his or
her separate estate which may be in the possession or control
of the respondent party, and may make such further order
as is necessary to prevent either party from interfering with
the separate estate of the other.

(10) The court may enjoin either party from molesting
or interfering with the other, or otherwise imposing any re-
straint on the personal liberty of the other, or interfering with
the custodial or visitation rights of the other.

(b) In ordering temporary relief under the provi-
sions of this section, the court shall consider the financial needs of
the parties, the present employment income and other recur-
ring earnings of each party from any source, their income-
earning abilities, and the respective legal obligations of each
party to support himself or herself and to support any other
persons. Except in extraordinary cases supported by specific
findings set forth in the order granting relief, payments of
temporary alimony and temporary child support are to be
made from a party's employment income and other recurring
earnings, and not from the corpus of a party's separate estate,
and an award of such relief shall not be disproportionate to
a party's ability to pay as disclosed by the evidence before
the court.

(c) At any time after a party is abandoned or deserted
or after the parties to a marriage have lived separate and
apart in separate places of abode without any cohabitation,
the party abandoned or either party living separate and
apart may apply for relief pursuant to this section by insti-
tuting an action for divorce as provided in section ten of
this article, alleging that the plaintiff reasonably believes
that the period of abandonment or of living separate and
apart will continue for the period prescribed by the applicable
provisions of section four of this article. If the period of
abandonment or living separate and apart continues for the
period prescribed by the applicable provisions of section
four of this article, the divorce action may proceed to a
hearing as provided in sections twenty-four and twenty-five
of this article without a new complaint being filed: Provided,
That the party desiring to proceed to a hearing shall give
the opposing party at least twenty days' notice of the time,
place and purpose of the hearing, unless the opposing party
shall have filed with the court a waiver of notice of further
proceedings, signed by such opposing party. If such notice
is required to be served, it shall be served in the same manner
as a complaint, regardless of whether the opposing party
has appeared or answered.

(d) To facilitate the resolution of issues arising at a
hearing for temporary relief, the court may, or upon the
motion of either party shall, order each of the parties to file
with the court, and serve on the other party, a sworn state-
ment of each party's assets, liabilities and employment income
and other earnings from any source. The statement shall be
in such form and contain such detailed information as the
court may prescribe by general order. In addition, the court
may, or upon the motion of either party shall, order the
parties to comply with the disclosure requirements set forth
in section thirty-three of this article, and, if necessary, con-
tinue the hearing for temporary relief from time to time to
afford the parties an opportunity to obtain and provide such
information.

(e) An ex parte order granting all or part of the relief
provided for in this section may be granted without written
or oral notice to the adverse party if:

(1) It appears from specific facts shown by affidavit or
by the verified complaint that immediate and irreparable
injury, loss or damage will result to the applicant before the
adverse party or such party's attorney can be heard in opposi-
Such potential injury, loss or damage may be anticipated when the following conditions exist: Provided, That the following list of conditions shall not be exclusive:

(A) There is a real and present threat of physical injury to the applicant at the hands or direction of the adverse party;

(B) The adverse party is preparing to quit the state with a minor child or children of the parties, thus depriving the court of jurisdiction in the matter of child custody;

(C) The adverse party is preparing to remove property from the state, or is preparing to transfer, convey, alienate, encumber or otherwise deal with property which could otherwise be subject to the jurisdiction of the court and subject to judicial order under the provisions of this section or section fifteen of this article;

And,

(2) The movant party or his or her attorney certifies in writing the efforts, if any, which have been made to give the notice, and the reasons supporting his claim that notice should not be required.

(e) Every ex parte order granted without notice shall be endorsed with the date and hour of issuance; shall be filed forthwith in the circuit clerk’s office and entered of record; and shall set forth the finding of the court that unless the order is granted without notice there is probable cause to believe that existing conditions will result in immediate and irreparable injury, loss or damage to the movant party before the adverse party or his or her attorney can be heard in opposition. The order granting ex parte relief shall fix a time for a hearing for temporary relief to be held within a reasonable time, not to exceed twenty days, unless before the time so fixed for hearing, such hearing is continued for good cause shown or with the consent of the party against whom the ex parte order is directed. The reasons for the continuance shall be entered of record. Within the time limits described herein, when an ex parte order is made, a motion for temporary relief shall be set down for hearing at the
earliest possible time and shall take precedence of all matters except older matters of the same character. If the party who obtained the ex parte order fails to proceed with a motion for temporary relief, the court shall set aside the ex parte order. At any time after ex parte relief is granted, and on two days' notice to the party who obtained such relief or on such shorter notice as the court may direct, the adverse party may appear and move the court to set aside or modify the ex parte order on the grounds that the effects of such order are onerous or otherwise improper. In such event, the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

§48-2-15. Relief upon ordering divorce or annulment or granting decree of separate maintenance.

(a) Upon ordering a divorce or granting a decree of separate maintenance, the court may require either party to pay alimony in the form of periodic installments, or a lump sum, or both, for the maintenance of the other party. Payments of alimony and child support are to be ordinarily made from a party's employment income and other recurring earnings, but in cases where the employment income and other recurring earnings are not sufficient to adequately provide for payments of alimony and child support, the court may, upon specific findings set forth in the order, order the party required to make such payments to make the same from the corpus of his or her separate estate. An award of such relief shall not be disproportionate to a party's ability to pay as disclosed by the evidence before the court.

(b) Upon ordering the annulment of a marriage or a divorce or granting a decree of separate maintenance, the court may further order all or any part of the following relief:

(1) The court may provide for the custody of minor children of the parties, subject to such rights of visitation, both in and out of the residence of the custodial parent or other person or persons having custody, as may be appropriate under the circumstances. In addition, the court may, in its discretion, make such further order as it shall deem expedient, concerning the grant of reasonable visitation rights to any grandparent or
grandparents of the minor children upon application, if the
grandparent or grandparents are related to such minor child
through a party:

(A) Whose whereabouts are unknown, or

(B) Who did not answer or otherwise appear and defend
the cause of action.

(2) The court may require either party to pay child support
in the form of periodic installments for the maintenance of the
minor children of the parties.

(3) As an incident to requiring the payment of alimony or
child support, the court may order either party to continue in
effect existing policies of insurance covering the costs of health
care and hospitalization of the other party and the minor chil-
dren of the parties: Provided, That if the other party is no
longer eligible to be covered by such insurance because of the
granting of an annulment or divorce, the court may require a
party to substitute such insurance with a new policy to cover
the other party, or may consider the prospective cost of such
insurance in awarding alimony to be paid in periodic install-
ments. Payments made to an insurer pursuant to this subdi-
vision, either directly or by a deduction from wages, shall be
deemed to be alimony, child support or installment payments
for the distribution of marital property, in such proportion as
the court shall direct: Provided, however, That if the court
does not set forth in the order that a portion of such payments
is to be deemed child support or installment payments for the
distribution of marital property, then all such payments made
pursuant to this subdivision shall be deemed to be alimony:
Provided further, That the designation of insurance coverage as
alimony under the provisions of this subdivision shall not, in
and of itself, give rise to a subsequent modification of the order
to provide for alimony other than insurance for covering the
costs of health care and hospitalization.

(4) As an incident to requiring the payment of alimony or
child support, the court may grant the exclusive use and occu-
pancy of the marital home to one of the parties, together with
all or a portion of the household goods, furniture and furnish-
ings reasonably necessary for such use and occupancy. Such use and occupancy shall be for a definite period, ending at a specific time set forth in the order, subject to modification upon the petition of either party. Except in extraordinary cases supported by specific findings set forth in the order granting relief, a grant of the exclusive use and occupancy of the marital home shall be limited to those situations where such use and occupancy is reasonably necessary to accommodate the rearing of minor children of the parties. The court may require payments to third parties in the form of home loan installments, land contract payments, rent, payments for utility services, property taxes, insurance coverage, or other expenses or charges reasonably necessary for the use and occupancy of the marital domicile. Payments made to a third party pursuant to this subdivision for the benefit of the other party shall be deemed to be alimony, child support or installment payments for the distribution of marital property, in such proportion as the court shall direct: Provided, That if the court does not set forth in the order that a portion of such payments is to be deemed child support or installment payments for the distribution of marital property, then all such payments made pursuant to this subdivision shall be deemed to be alimony. Nothing contained in this subdivision shall abrogate an existing contract between either of the parties and a third party, or affect the rights and liabilities of either party or a third party under the terms of such contract.

(5) As an incident to requiring the payment of alimony, the court may grant the exclusive use and possession of one or more motor vehicles to either of the parties. The court may require payments to third parties in the form of automobile loan installments or insurance coverage, and any such payments made pursuant to this subdivision for the benefit of the other party shall be deemed to be alimony or installment payments for the distribution of marital property, as the court may direct. Nothing contained in this subsection shall abrogate an existing contract between either of the parties and a third party, or affect the rights and liabilities of either party or a third party under the terms of such contract.

(6) Where the pleadings include a specific request for
specific property or raise issues concerning the equitable division of marital property as defined in section one of this article, the court shall order such relief as may be required to effect a just and equitable distribution of the property and to protect the equitable interests of the parties therein.

(7) Unless a contrary disposition be found appropriate and ordered pursuant to other provisions of this section, then upon the motion of either party, the court may compel the other party to deliver to the movant party any of his or her separate estate which may be in the possession or control of the respondent party, and may make such further order as is necessary to prevent either party from interfering with the separate estate of the other.

(8) The court may enjoin either party from the molesting or interfering with the other, or otherwise imposing any restraint on the personal liberty of the other, or interfering with the custodial or visitation rights of the other.

(9) The court may order either party to take necessary steps to transfer utility accounts and other accounts for recurring expenses from the name of one party into the name of the other party or from the joint names of the parties into the name of one party. Nothing contained in this subdivision shall affect the liability of the parties for indebtedness on any such account incurred before the transfer of such account.

(c) In any case where an annulment or divorce is denied, the court shall retain jurisdiction of the case and may order all or any portion of the relief provided for in subsections (a) and (b) of this section which has been demanded or prayed for in the pleadings.

(d) In any case where a divorce or annulment is granted in this state upon constructive service of process, and personal jurisdiction is thereafter obtained of the defendant in such case, the court may order all or any portion of the relief provided for in subsections (a) and (b) of this section which has been demanded or prayed for in the pleadings.

(e) At any time after the entry of an order pursuant to the provisions of this section, the court may, upon the verified
petition of either of the parties, revise or alter such order
concerning the maintenance of the parties, or either of them,
and make a new order concerning the same, as the altered
circumstances or needs of the parties may render necessary to
meet the ends of justice; and the court may also from time to
time afterward, on the verified petition of either of the parties
or other proper person having actual or legal custody of the
minor child or children of the parties, revise or alter such order
concerning the custody and maintenance of the children, and
make a new order concerning the same, as the circumstances
of the parents or other proper person or persons and the bene-
fit of the children may require. In granting such relief, the
court may, where other means are not conveniently available,
alter any prior order of the court with respect to the distribu-
tion of marital property, if such property is still held by the
parties, and if necessary to give effect to a modification of ali-
mony, child support or child custody or necessary to avoid an
inequitable or unjust result which would be caused by the
manner in which the modification will affect the prior distri-
bution of marital property.

(f) In every case where a separation agreement is the basis
for an award of alimony, the court, in approving the agree-
ment, shall examine the agreement to ascertain whether it
clearly provides for alimony to continue beyond the death of
the payor party or to cease in such event. Where alimony is to
be paid pursuant to the terms of a separation agreement which
does not state whether the payment of alimony is to continu-
beyond the death of the payor party or is to cease, or where
the parties have not entered into a separation agreement and
alimony is to be awarded, the court shall specifically state as
a part of its order whether such payments of alimony are to be
continued beyond the death of the payor party or cease.

(g) In every case where a separation agreement is the basis
for an award of alimony, the court, in approving the agree-
ment, shall examine the agreement to ascertain whether it
clearly provides for alimony to continue beyond the remar-
riage of the payee party or to cease in such event. Where ali-
mony is to be paid pursuant to the terms of a separation agree-
ment which does not state whether the payment of alimony is
to continue beyond the remarriage of the payee party or is to cease, or where the parties have not entered into a separation agreement and alimony is to be awarded, the court shall specifically state as a part of its order whether such payments of alimony are to be continued beyond the remarriage of the payee party or cease.

(h) In addition to the statement provided for in subsection (d), section thirteen of this article and in addition or in lieu of the disclosure requirements set forth in section thirty-three of this article, the court may order accounts to be taken as to all or any part of marital property or the separate estates of the parties, and may direct that the accounts be taken as of the date of the marriage, the date upon which the parties separated, or any other time deemed to be appropriate in assisting the court in the determination and equitable division of property.

(i) In determining whether alimony is to be awarded, or in determining the amount of alimony, if any, to be awarded under the provisions of this section, the court shall consider and compare the fault or misconduct of either or both of the parties and the effect of such fault or misconduct as a contributing factor to the deterioration of the marital relationship. However, alimony shall not be awarded in any case where both parties prove grounds for divorce and are denied a divorce, nor shall an award of alimony under the provisions of this section be ordered which directs the payment of alimony to a party determined to be at fault, when, as a grounds granting the divorce, such party is determined by the court:

(1) To have committed adultery; or

(2) To have been convicted for the commission of a crime which is a felony, subsequent to the marriage. If such conviction has become final; or

(3) To have actually abandoned or deserted his or her spouse for six months.

(j) Whenever under the terms of this section or section thirteen of this article a court enters an order requiring the payment of alimony or child support, if the court anticipates the payment of such alimony or child support or any portion
thereof to be paid out of "disposable retired or retainer pay" as that term is defined in 10 U.S.C. §1408, relating to members or former members of the uniformed services of the United States, the court shall specifically provide for the payment of an amount, expressed in dollars or as a percentage of disposable retired or retainer pay, from the disposable retired or retainer pay of the payor party to the payee party.

§48-2-16. Effect of separation agreement; what considered in awarding alimony, child support or separate maintenance.

(a) In cases where the parties to an action commenced under the provisions of this article have executed a separation agreement, if the court finds that the agreement is fair and reasonable, and not obtained by fraud, duress or other unconscionable conduct by one of the parties, and further finds that the parties, through the separation agreement, have expressed themselves in terms which, if incorporated into a judicial order, would be enforceable by a court in future proceedings, then the court shall conform the relief which it is authorized to order under the provisions of sections thirteen and fifteen of this article to the separation agreement of the parties. The separation agreement may contractually fix the division of property between the parties and may determine whether alimony shall be awarded, whether a court shall have continuing jurisdiction over the amount of an alimony award so as to increase or decrease the amount of alimony to be paid, whether alimony shall be awarded as a lump sum settlement in lieu of periodic payments, whether alimony shall continue beyond the death of the payor party or the remarriage of the payee party, or whether the alimony award shall be enforceable by contempt proceedings or other judicial remedies aside from contractual remedies. Any award of periodic payments of alimony shall be deemed to be judicially decreed and subject to subsequent modification unless there is some explicit, well expressed, clear, plain and unambiguous provision to the contrary set forth in the court approved separation agreement or the order granting the divorce. Child support shall, under all circumstances, always be subject to continuing judicial modification.
(b) In cases where the parties to an action commenced
under the provisions of this article have not executed a sepa-
ration agreement, or have executed an agreement which is
incomplete or insufficient to resolve the outstanding issues be-
tween the parties, or where the court finds the separation
agreement of the parties not to be fair and reasonable or
clear and unambiguous, the court shall proceed to resolve the
issues outstanding between the parties. The court shall consider
the following factors in determining the amount of alimony,
child support or separate maintenance, if any, to be ordered
under the provisions of sections thirteen and fifteen of this
article, as a supplement to or in lieu of the separation agree-
ment:

(1) The length of time the parties were married;

(2) The period of time during the marriage when the
parties actually lived together as husband and wife;

(3) The present employment income and other recurring
earnings of each party from any source;

(4) The income-earning abilities of each of the par-
ties, based upon such factors as educational background, train-
ing, employment skills, work experience, length of absence
from the job market and custodial responsibilities for chil-
dren;

(5) The distribution of marital property to be made
under the terms of a separation agreement or by the court
under the provisions of section thirty-two of this article,
insofar as the distribution affects or will affect the earnings
of the parties and their ability to pay or their need to receive
alimony, child support or separate maintenance;

(6) The ages and the physical, mental and emotional
condition of each party;

(7) The educational qualifications of each party;

(8) The likelihood that the party seeking alimony, child
support or separate maintenance can substantially increase
his or her income-earning abilities within a reasonable time by
acquiring additional education or training;
(9) The anticipated expense of obtaining the education and training described in subdivision (8) above;

(10) The costs of educating minor children;

(11) The costs of providing health care for each of the parties and their minor children;

(12) The tax consequences to each party;

(13) The extent to which it would be inappropriate for a party, because said party will be the custodian of a minor child or children, to seek employment outside the home;

(14) The financial need of each party;

(15) The legal obligations of each party to support himself or herself and to support any other person; and

(16) Such other factors as the court deems necessary or appropriate to consider in order to arrive at a fair and equitable grant of alimony, child support or separate maintenance.

§48-2-17. Recordation of an abstract of an order for alimony, child support or separate maintenance.

An order for alimony, child support or separate maintenance shall not give rise to a lien on any real estate of the person against whom the order is entered until the procedures set forth in this section are complied with. An abstract of the order may be recorded in the office of the clerk of the county commission in the county wherein such real property is situate without constituting a lien against such real property, until the person entitled to receive such alimony, child support or separate maintenance presents for recordation with the clerk an affidavit which sets forth allegations that the person required to pay such alimony, child support or separate maintenance is in arrears in such payment for a period of not less than thirty days.

The abstract of the order and the affidavit shall be recorded in the same manner as other abstracts of judgments are recorded, but shall not constitute a lien unless both the abstract and affidavit are recorded. The abstract of judgment shall contain the name of the parties to the action in which
the order of alimony, child support or separate maintenance was entered, the name of the party in whose favor such award was made, the date of the judgment and the court which rendered such judgment. In no event shall the judgment order, in its entirety, be recorded. Unless a proceeding for the enforcement of the order for support, maintenance or alimony or the collection thereof be commenced or brought within sixty days of the recordation of such affidavit, the lien created by such recorded affidavit shall be discharged and extinguished. If the proceeding be brought in a county other than the county wherein the original judgment was rendered or wherein the abstract or affidavit was recorded, then notice of the bringing of such proceeding shall be recorded in the same county and in the same manner as the abstract and affidavit were recorded. The lien created by such recording shall be effective as to the amount of any judgment rendered in such proceeding regardless of whether such judgment be for less or more than prayed for.

The provisions of this section restricting the right of recordation of judgment orders shall not be deemed to limit the right of any person to record a judgment for a sum certain for past-due alimony, child support or separate maintenance.


(a) Upon a verified petition for contempt, notice of hearing and hearing, if the petition alleges criminal contempt or the court informs the parties that the matter will be treated and tried as a criminal contempt, the matter shall be tried before a jury, unless the party charged with contempt shall knowingly and intelligently waive the right to a jury trial with the consent of the court and the other party. If the jury, or the court sitting without a jury, shall find the defendant in contempt for willfully failing to comply with an order of the court made pursuant to the provisions of this article, as charged in the petition, the court may find the person to be in criminal contempt and may commit such person to the county jail for a determinate period not to exceed six months.

(b) If trial is had under the provisions of subsection (a) of this section and the court elects to treat a finding of
criminal contempt as a civil contempt, or if the petition alleges civil contempt and the matter is not tried before a jury and the court finds the defendant in contempt for willfully failing to comply with an order of the court made pursuant to the provisions of this article, and if the court further finds the person has the ability to purge himself of contempt, the court shall afford the contemnor a reasonable time and method whereby he may purge himself of contempt. If the contemnor fails or refuses to purge himself of contempt, the court may confine the contemnor to the county jail for an indeterminate period not to exceed six months or until such time as the contemnor has purged himself, whichever shall first occur.

(c) In the case of a charge of contempt based upon the failure of the defendant to pay alimony, child support or separate maintenance, if the court or jury finds that the defendant did not pay because he was financially unable to pay, the defendant may not be imprisoned on charges of contempt of court.

(d) Regardless of whether the court or jury finds the defendant to be in contempt, if the court shall find that a party is in arrears in the payment of alimony, child support or separate maintenance ordered to be paid under the provisions of this article, the court shall enter judgment for such arrearage and award interest on such arrearage from the due date of each unpaid installment. Following any hearing wherein the court finds that a party is in arrears in the payment of alimony, child support or separate maintenance, the court may, if sufficient assets exist, require security to ensure the timely payment of future installments.

(e) At any time during a contempt proceeding, the court may enter an order to attach forthwith the body of, and take into custody, any person who refuses or fails to respond to the lawful process of the court or to comply with an order of the court. Such order of attachment shall require the person to be brought forthwith before the court or the judge thereof in any county in which the court may then be sitting.

§48-2-32. Marital property disposition.

(a) Except as otherwise provided in this section, upon
every judgment of annulment, divorce or separation, the court
shall divide the marital property of the parties equally be-
tween the parties.

(b) In cases where the parties to an action commenced
under the provisions of this article have executed a sepa-
ration agreement, then the court shall divide the marital
property in accordance with the terms of the agreement, un-
less the court finds:

(1) That the agreement was obtained by fraud, duress,
or other unconscionable conduct by one of the parties, or

(2) That the parties, in the separation agreement, have
not expressed themselves in terms which, if incorporated into
a judicial order, would be enforceable by a court in future
proceedings, or

(3) That the agreement, viewed in the context of the actual
contributions of the respective parties to the net value of the
marital property of the parties, is so inequitable as to defeat
the purposes of this section, and such agreement was inequit-
able at the time the same was executed.

(c) In the absence of a valid agreement, the court shall
presume that all marital property is to be divided
equally between the parties, but may alter this distribution,
without regard to any attribution of fault to either party
which may be alleged or proved in the course of the action,
after a consideration of the following:

(1) The extent to which each party has contributed to the
acquisition, preservation and maintenance, or increase in
value of marital property by monetary contributions, in-
cluding, but not limited to:

(A) Employment income and other earnings; and

(B) Funds which are separate property.

(2) The extent to which each party has contributed to
the acquisition, preservation and maintenance, or increase
in value of marital property by nonmonetary contributions,
including, but not limited to:
(A) Homemaker services;
(B) Child care services;
(C) Labor performed without compensation, or for less than adequate compensation, in a family business or other business entity in which one or both of the parties has an interest;
(D) Labor performed in the actual maintenance or improvement of tangible marital property; and
(E) Labor performed in the management or investment of assets which are marital property.

(3) The extent to which each party expended his or her efforts during the marriage in a manner which limited or decreased such party's income-earning ability or increased the income-earning ability of the other party, including, but not limited to:
(A) Direct or indirect contributions by either party to the education or training of the other party which has increased the income-earning ability of such other party; and
(B) Foregoing by either party of employment or other income-earning activity through an understanding of the parties or at the insistence of the other party.

(4) The extent to which each party, during the marriage, may have conducted himself or herself so as to dissipate or depreciate the value of the marital property of the parties: Provided, That except for a consideration of the economic consequences of conduct as provided for in this subdivision, fault or marital misconduct shall not be considered by the court in determining the proper distribution of marital property.

(d) After considering the factors set forth in subsection (c) of this section, the court shall:
(1) Determine the net value of all marital property of the parties as of the date of the commencement of the action or as of such later date determined by the court to be more appropriate for attaining an equitable result;
(2) Designate the property which constitutes marital prop-
partition, and define the interest therein to which each party is entitled and the value of their respective interest therein. In the case of an action wherein there is no agreement between the parties and the relief demanded requires the court to consider such factors as are described in subdivisions one, two, three and four, subsection (c) of this section, if a consideration of factors only under said subdivisions one and two would result in an unequal division of marital property, and if an examination of the factors described in said subdivisions three and four produce a finding that a party (A) expended his or her efforts during the marriage in a manner which limited or decreased such party's income-earning ability or increased the income-earning ability of the other party, or (B) conducted himself or herself so as to dissipate or depreciate the value of the marital property of the parties, then the court may, in the absence of a fair and just alimony award under the provisions of section fifteen of this article which adequately takes into account the facts which underlie the factors described in said subdivisions three and four, equitably adjust the definition of the parties' interest in marital property, increasing the interest in marital property of a party adversely affected by the factors considered under said subdivisions three and four who would otherwise be awarded less than one half of the marital property, to an interest not to exceed one half of the marital property;

(3) Designate the property which constitutes separate property of the respective parties or the separate property of their children;

(4) Determine the extent to which marital property is susceptible to division in accordance with the findings of the court as to the respective interests of the parties therein;

(5) In the case of any property which is not susceptible to division, ascertain the projected results of a sale of such property;

(6) Ascertain the projected effect of a division or transfer of ownership of income-producing property, in terms of the possible pecuniary loss to the parties or other persons which may result from an impairment of the property's capacity to generate earnings; and
(7) Transfer title to such component parts of the marital property as may be necessary to achieve an equitable distribution of the marital property. To make such equitable distribution, the court may:

(A) Direct either party to transfer their interest in specific property to the other party;

(B) Permit either party to purchase from the other party their interest in specific property;

(C) Direct either party to pay a sum of money to the other party in lieu of transferring specific property or an interest therein, if necessary to adjust the equities and rights of the parties, which sum may be paid in installments or otherwise, as the court may direct;

(D) Direct a party to transfer his or her property to the other party in substitution for property of the other party of equal value which the transferor is permitted to retain and assume ownership of;

(E) Order a sale of specific property and an appropriate division of the net proceeds of such sale: Provided, That such sale may be by private sale, or through an agent, or by judicial sale, whichever would facilitate a sale within a reasonable time at a fair price.

(e) In order to achieve the equitable distribution of marital property, the court shall, unless the parties otherwise agree, order, when necessary, the transfer of legal title to any property of the parties, giving preference to effecting equitable distribution through periodic or lump sum payments: Provided, That the court may order the transfer of legal title to motor vehicles, household goods and the former marital domicile without regard to such preference where the court determines it to be necessary or convenient. In any case involving the equitable distribution of (1) property acquired by bequest, devise, descent, distribution or gift, or (2) ownership interests in a business entity, the court shall, unless the parties otherwise agree, give preference to the retention of the ownership interests in such property. In the case of such business interests, the court shall give preference to the party having the
closer involvement, larger ownership interest or greater depen-
dency upon the business entity for income or other resources
required to meet responsibilities imposed under this article,
and shall also consider the effects of transfer or retention in
terms of which alternative will best serve to preserve the value
of the business entity or protect the business entity from undue
hardship or from interference caused by one of the parties or
by the divorce, annulment or decree of separate maintenance:
Provided, That the court may, unless the parties otherwise
agree, sever the business relationship of the parties and order
the transfer of legal title to ownership interests in the business
entity from one party to the other, without regard to the limi-
tations on the transfer of title to such property otherwise pro-
vided in this subsection, if such transfer is required to achieve
the other purposes of this article: Provided, however, That in
all such cases the court shall order or the agreement of the
parties shall provide for equitable payment or transfer of legal
title to other property, of fair value in money or money's
worth, in lieu of any ownership interests in a business entity
which are ordered to be transferred under this subsection:
Provided further, That the court may order the transfer of
such business interests to a third party (such as the business
entity itself or another principal in the business entity) where
the interests of the parties under this article can be protected
and at least one party consents thereto.

(f) In any order which divides or transfers the title to any
property, determines the ownership or value of any property,
designates the specific property to which any party is entitled,
or grants any monetary award, the court shall set out in detail
its findings of fact and conclusions of law, and the reasons for
dividing the property in the manner adopted.

(g) If an order entered in accordance with the provisions
of this article requires the transfer of title to property and a
party fails or refuses to execute a deed or other instrument
necessary to convey title to such property, the deed or other
instrument shall be executed by a special commissioner ap-
pointed by the court for the purpose of effecting such transfer
of title pursuant to section seven, article twelve, chapter fifty-
five of this code.
(h) As to any third party, the doctrine of equitable distribution of marital property and the provisions of this article shall be construed as creating no interest or title in property until and unless an order is entered under this article judicially defining such interest or approving a separation agreement which defines such interest. Neither this article nor the doctrine of equitable distribution of marital property shall be construed to create community property nor any other interest or estate in property except those previously recognized in this state. A husband or wife may alienate property at any time prior to the entry of an order under the provisions of this article or prior to the recordation of a notice of lis pendens in accordance with the provisions of section thirty-five of this article, and at anytime and in any manner not otherwise prohibited by an order under this article, in like manner and with like effect as if this article and the doctrine of equitable distribution had not been adopted: Provided, That as to any transfer prior to the entry of an order under the provisions of this article, a transfer other than to a bona fide purchaser for value shall be voidable if the court finds such transfer to have been effected to avoid the application of the provisions of this article or to otherwise be a fraudulent conveyance. Upon the entry of any order under this article or the admission to record of any notice with respect to an action under this article, restraining the alienation of property of a party, a bona fide purchaser for value shall take such title or interest as he or she might have taken prior to the effective date of this section and no purchaser for value need see to the application of the proceeds of such purchase except to the extent he or she would have been required so to do prior to the effective date of this section: Provided, however, That as to third parties nothing in this section shall be construed to limit or otherwise defeat the interests or rights to property which any husband or wife would have had in property prior to the enactment of this section or prior to the adoption of the doctrine of equitable distribution by the supreme court of appeals on the twenty-fifth day of May, one thousand nine hundred eighty-three: Provided further, That no order entered under this article shall be construed to defeat the title of a third party transforee thereof except to the extent that the power to effect such a transfer of title or interest
in such property is secured by a valid and duly perfected lien
and, as to any personal property, secured by a duly perfected
security interest.

(i) Notwithstanding the provisions of chapter eleven of
this code, no transfer of interest in or title to property under
this section shall be taxable as a transfer of property without
consideration nor, except as to alimony, create liability for
sales, use, inheritance and transfer, or income taxes due the
state or any political subdivision nor require the payment of the
excise tax imposed under article twenty-two of said chapter
eleven.

(j) Whenever under the terms of this article a court enters
an order requiring a division of property, if the court antici-
pates the division of property will be effected by requiring sums
to be paid out of “disposable retired or retainer pay” as that
term is defined in 10 U.S.C. §1408, relating to members or
former members of the uniformed services of the United States,
the court shall specifically provide for the payment of an
amount, expressed in dollars or as a percentage of disposable
retired or retainer pay, from the disposable retired or retainer
pay of the payor party to the payee party.

§48-2-33. Disclosure of assets required.

(a) In addition to any discovery ordered by the court
pursuant to rule eighty-one of the rules of civil procedure, the
court may, or upon pleadings or motion of either party the
court shall, require each party to furnish, on such standard
forms as the court may require, full disclosure of all
assets owned in full or in part by either party separately
or by the parties jointly. Such disclosure may be made
by each party individually or by the parties jointly.
Assets required to be disclosed shall include, but shall not
be limited to, real property, savings accounts, stocks
and bonds, mortgages and notes, life insurance, interest in
a partnership or corporation, tangible personal property,
income from employment, future interests whether vested
or nonvested, and any other financial interest or source.
The court may also require each party to furnish, on
the same standard form, information pertaining to all debts
and liabilities of the parties. The form used shall contain a statement in conspicuous print that complete disclosure of assets and debts is required by law and deliberate failure to provide complete disclosure as ordered by the court constitutes false swearing. The court may on its own initiative and shall at the request of either party require the parties to furnish copies of all state and federal income tax returns filed by them for the past two years, and may require copies of such returns for prior years.

(b) Disclosure forms required under this section shall be filed within sixty days after the service of summons or at such other time as ordered by the court. Information contained on such forms shall be updated on the record to the date of hearing.

(c) Information disclosed under this section shall be confidential and may not be made available to any person for any purpose other than the adjudication, appeal, modification or enforcement of judgment of an action affecting the family of the disclosing parties. The court shall include in any order compelling disclosure of assets, such provisions as the court considers necessary to preserve the confidentiality of the information ordered disclosed.

(d) Upon the failure by either party timely to file a complete disclosure statement as may be required by this section, the court may accept the statement of the other party as accurate.

(e) If any party deliberately or negligently fails to disclose information which may be required by this section and in consequence thereof any asset or assets with a fair market value of five hundred dollars or more is omitted from the final distribution of property, the party aggrieved by such non-disclosure may at any time petition a court of competent jurisdiction to declare the creation of a constructive trust as to all undisclosed assets, for the benefit of the parties and their minor or dependent children, if any, with the party in whose name the assets are held declared the constructive trustee, such trust to include such terms and conditions as the
court may determine. The court shall impose the trust upon
a finding of a failure to disclose such assets as required under
this section.

(f) Any assets with a fair market value of five hundred
dollars or more which would be considered part of the
estate of either or both of the parties if owned by either or
both of them at the time of the action, but which was trans­
ferred for inadequate consideration, wasted, given away or
otherwise unaccounted for by one of the parties, within five
years prior to the filing of the petition or length of the mar­
riage, whichever is shorter, shall be presumed to be part of
the estate and shall be subject to the disclosure requirement
contained in this section. With respect to such transfers the
spouse shall have the same right and remedies as a creditor
whose debt was contracted at the time the transfer was made
under section three, article one, chapter forty of this code.
Transfers which resulted in an exchange of assets of sub­
stantially equivalent value need not be specifically disclosed
where such assets are otherwise identified in the statement
of net worth.

(g) Deliberate failure to provide the disclosure required
by the court pursuant to the provisions of this section is false
swearing.

§48-2-34. Injunction against disposition of property pending suit
and decree rendering fraudulent transfers null and
void.

(a) Where it appears to the court that a party is about
to remove himself or herself or his or her property from
the jurisdiction of the court or is about to dispose of, alienate
or encumber property in order to defeat a fair distribution of
marital property, or the payment of alimony, child support or
separate maintenance, an injunction may issue to prevent such
removal or disposition and such property may be attached as
provided by this code. The court may issue such injunction
or attachment without bond.

(b) Any such injunction may be granted upon proper
hearing after notice. For good cause shown, a temporary
injunction may be issued after an ex parte proceeding with
notice and proper hearing for a permanent injunction to be
held forthwith thereafter.

(c) The procedures of this section are not intended to
apply to the sale of goods in the ordinary course of operating
a business but shall apply to the disposition of the major
assets of a business.

(d) Any encumbrance or disposition of property to third
persons, except to bona fide purchasers without notice for
full and adequate consideration, may be set aside by the court.

§48-2-35. Lis pendens.

Upon the commencement of an action under the provisions
of this article, any party claiming an interest in real property
in which the other party has an interest, may cause a notice
of lis pendens to be recorded in the office of the clerk of the
county commission of the county wherein the property is
located.

The notice shall contain the names of the parties, the
nature of the complaint, the court having jurisdiction, the
date the complaint was filed, and a description of the real
property. Such notice shall, from the time of the recording
only, be notice to any person thereafter acquiring any interest
in such property of the pendency of the complaint. Each
person whose conveyance or encumbrance is subsequently
executed or subsequently recorded or whose interest is there-
after acquired by descent, or otherwise, shall be deemed to
be a subsequent purchaser or encumbrancer, and shall be
bound by all proceedings taken after the recording of such
notice, to the same extent as if he were made a party to the
complaint. A notice of lis pendens recorded in accordance
with this section may be discharged by the court upon sub-
stitution of a bond with surety in an amount established by
the court, if the court finds that the claim against the property
subject to the notice of lis pendens can be satisfied by a mone-
tary award. In cases in which the sale of property is already
in process when the notice of lis pendens is filed, and upon application, proper notice and hearing, the court may substitute a lien on the net proceeds of the sale.


Amendments made to the provisions of this article during the regular session of the Legislature in the year one thousand nine hundred eighty-four shall be of retroactive effect to the extent that such amended provisions shall apply to the distribution of marital property, but not an award of alimony, in all actions filed under the provisions of this article after the twenty-fifth day of May, one thousand nine hundred eighty-three, or actions pending on that date in which a claim for equitable distribution of marital property had been pleaded: Provided, That such amendments to the provisions of this article shall not, in any case, be applicable to actions filed under the provisions of this article in which, prior to the effective date of the act of the Legislature enacting such amendments, (1) there has been a final decree entered under the provisions of section fifteen of this article, or (2) the taking of evidence has been completed and the case has been submitted for decision.

ARTICLE 3. PROPERTY, RIGHTS AND LIABILITIES OF MARRIED WOMEN; HUSBAND AND WIFE.

§48-3-10. Presumption of gift in certain transactions between husband and wife.

Where one spouse purchases real or personal property and pays for the same, but takes title in the name of the other spouse, such transaction shall, in the absence of evidence of a contrary intention, be presumed to be a gift by the spouse so purchasing to the spouse in whose name the title is taken: Provided, That in the case of an action under the provisions of article two of this chapter wherein the court is required to determine what property of the parties constitutes marital property and equitably divide the same, the presumption created by this section shall not apply, and a gift between spouses must be affirmatively proved.
AN ACT to repeal section twenty-two, article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section twenty-five, article eleven of said chapter; and to amend and reenact section twenty-six, article twenty-six of said chapter, all relating to parking facilities or areas at state colleges and universities; issuing revenue bonds for construction and acquisition of same; establishing civil and criminal penalties for offenses; and authorizing removal of unauthorized vehicles.

Be it enacted by the Legislature of West Virginia:

That section twenty-two, article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section twenty-five, article eleven of said chapter be amended and reenacted; and that section twenty-six, article twenty-six of said chapter be amended and reenacted, all to read as follows:

Article
11. West Virginia University.
26. West Virginia Board of Regents.

ARTICLE 11. WEST VIRGINIA UNIVERSITY.

§18-11-25. Financing of parking facilities or areas.

In addition to the provisions of section twenty-six, article twenty-six, chapter eighteen of this code, the board of regents may from time to time issue revenue bonds of the state as provided in this section to finance the construction of additional parking facilities or the acquisition by lease or purchase of additional parking areas and pledge all or any part of the moneys in such special funds for the payment of the principal of and interest on such revenue bonds, and for reserves therefor. Whenever parking facilities are provided in any university building financed in whole or in part by the issue of revenue bonds otherwise authorized
by law, the net revenue derived from the parking facilities included in such building may be used or pledged to meet the sinking fund requirements of the bonds issued for construction of the buildings. The pledge of moneys in such special fund for any revenue bonds shall be a prior and superior charge on such special fund over the use of any of the moneys in such fund to pay for the cost of any of such purposes on a cash basis.

Such revenue bonds may be authorized and issued from time to time by the board of regents to finance in whole or in part the purposes provided in this section in an aggregate principal amount not exceeding the amount which the board shall determine can be paid as to both principal and interest and reasonable margins for a reserve therefor from the moneys in such special fund.

The issuance of such bonds shall be authorized by a resolution adopted by the board, and such revenue bonds shall bear such date or dates; mature at such times not exceeding forty years from their respective dates; bear interest at such rate or rates, not exceeding twelve per centum per annum; be in such form either coupon or registered, with such exchangeability and interchangeability privileges; be payable in such medium of payment and at such place or places, within or without the state; be subject to such terms of prior redemption at such prices not exceeding one hundred six per centum of the principal amount thereof; and shall have such other terms and provisions as the board shall determine. Such revenue bonds shall be signed by the governor and by the president of the board of regents, under the great seal of the state, attested by the secretary of state, and the coupons, if any, attached thereto shall bear the facsimile signature of the president of the board. Such revenue bonds shall be sold in such manner as the board may determine to be for the best interests of the state, such sale to be made at a price not lower than a price which will show a net return of not more than thirteen per centum per annum to the purchaser upon the amount paid therefor computed to the stated maturity dates of such revenue bonds without regard to any right of prior redemption.
The board may enter into trust agreements with banks or trust companies, within or without the state, and in such trust agreements or the resolutions authorizing the issuance of such bonds, may enter into valid and legally binding covenants with the holders of such revenue bonds as to the custody, safeguarding and disposition of the proceeds of such revenue bonds, the moneys in such special fund, sinking funds, reserve funds, or any other moneys or funds; as to the rank and priority, if any, of different issues of revenue bonds under the provisions of this section; and as to any other matters or provisions which are deemed necessary and advisable by the board in the best interests of the state and to enhance the marketability of such revenue bonds.

Such revenue bonds shall be and constitute negotiable instruments under the law merchant and the negotiable instruments law of the state; shall, together with the interest thereon, be exempt from all taxation by the state of West Virginia, or by any county, school district, municipality or political subdivision thereof; and such revenue bonds shall not be deemed to be obligations or debts of the state, and the credit or taxing power of the state shall not be pledged therefor, but such revenue bonds shall be payable only from the revenue pledged therefor as provided in this section.

ARTICLE 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 purchase and the construction thereon of additional parking facilities 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 university under its jurisdiction the speed, flow and parking of vehicles on campus roads, driveways and parking facilities or areas. Rules and regulations for this purpose shall be promulgated 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, including, but not limited to, the availability of temporary parking permits and where same may be obtained, and of the penalties which may be imposed for violations of the rules and regulations shall be conspicuously 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 appearance within ten days, excluding Saturdays, Sundays and holidays observed by the college or university, before a designated official of the college or university and, if the
person cited fails to appear within said ten days, ordering
an appearance 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 ten-
day period. Any person so cited may plead no contest to
the offense and, by so pleading, shall be subject to a civil
penalty to be determined uniformly by the designated of-
official and commensurate with the severity of the offense in
an amount not more than 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 ten days, or upon a pleading
of not guilty before the designated official of the college
or university within the ten days, the magistrate or judge
of the municipal court shall have jurisdiction of the of-
fense and any person cited under the provisions of this
section, upon a finding of guilty by the magistrate or munici-
pal judge, shall be subject to a fine of not less than ten
dollars nor more than twenty dollars for each offense, the
amount to be commensurate with the severity of the offense.

Each designated official of the college or university pre-
siding 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 univer-
sity 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, re­
move the vehicle, by towing or otherwise, to an area owned by
the college or university 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 uni­
versity shall maintain any vehicle so towed in the same con­
dition as it was immediately prior to being towed, but 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 en­
force this lien in the manner provided in section fourteen,
article eleven, chapter thirty-eight of this code for the en­
forcement of other liens.

CHAPTER 62

(H. B. 2079—By Delegate Sattes and Delegate Sergent)

[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five, chapter eighteen of the code of
West Virginia, one thousand nine hundred thirty-one, as
amended, by adding thereto a new section, designated section
sixteen-b, relating to district transfer of pupils; mandating the
transfer of pupils in certain limited circumstances; providing
for the payment of state and county funds in the event of such
transfer; and providing a date for the termination of the pro­
visions of the bill.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-16b. Mandatory transfer of pupils from one district to another district upon parental request.

Notwithstanding the provisions of section sixteen-a of this article, upon the written request of the custodial parent or parents or the guardian or person legally responsible for a pupil within a school district who resides (1) within one mile of any adjoining district in which the net enrollment exceeds twenty-five thousand pupils, (2) more than ten miles, via travel routes upon state roads or highways used by boards of education for the transportation of pupils, from the nearest school facility which said pupil has the right to attend in the home district of such pupil, and (3) closer in proximity, via travel routes upon state roads or highways used by boards of education for the transportation of pupils, to a school facility in which said pupil is qualified academically to attend in the said adjoining district than the school facility in the home district, the board of education of that school district shall transfer such pupil to the adjoining school district and the transferee school district shall accept and enroll the transferring pupil and include such pupil in its net enrollment in accordance with article nine-a of this chapter.

Whenever a pupil is so transferred from one school district to another district, the board of education of the school district in which the pupil is a bona fide resident shall pay to the board of education of the school district to which the pupil is transferred a tuition that is agreed upon by both such boards. Tuition for each pupil, when the transferor board of education and the transferee board of education cannot agree upon a tuition fee, shall be equal to the difference between the state aid per pupil received by the county
to which the pupil is transferred and the county cost per
pupil in the county to which said pupil is transferred.

The provisions of this section shall expire on the first day
of January, one thousand nine hundred ninety-five.

CHAPTER 63
(Com. Sub. for S. B. 574—By Senator Holliday)

[Passed March 10, 1984; in effect July 1, 1984. Approved by the Governor.]

AN ACT to amend and reenact section seventeen, article five,
chapter eighteen of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to
compulsory preenrollment hearing, vision and speech and
language screening tests; requiring such tests for all chil-
dren entering public school for the first time in this state;
authorizing county boards of education to provide, upon
request, such screening tests to all children entering non-
public schools; requiring trained personnel to conduct such
screening tests for all such children; and including speech
and language disabilities in the provisions requiring notifi-
cation.

Be it enacted by the Legislature of West Virginia:

That section seventeen, 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.

§18-5-17. Compulsory preenrollment hearing, vision and
speech and language testing.

1 All children entering public school for the first time in
this state shall be given prior to their enrollments screen-
ing tests to determine if they might have vision or hear-
ing impairments or speech and language disabilities.
5 County boards of education may provide, upon request,
such screening tests to all children entering nonpublic
school. County boards of education shall conduct these
class screening tests for all children through the use of trained
personnel. Parents or guardians of children who are
found to have vision or hearing impairments or speech
and language disabilities shall be notified of the results of
these tests and advised that further diagnosis and treat-
ment of the impairments or disabilities by qualified pro-
fessional personnel is recommended.

The state board of education is hereby authorized to
promulgate rules and regulations consistent with this
section. The state superintendent is directed to apply
for federal funds, if available, for the implementation of
the requirements of this section.

CHAPTER 64

(Com. Sub. for S. B. 131—By Mr. McGraw, Mr. President, et al.)

[Passed March 10, 1984; in effect July 1, 1984. Approved by the Governor.]
provide benefits to school personnel with certain limitations
to assist in benefit equity among the counties; providing for
aides in special education programs; creating an “Aide IV”
class title for school service personnel with a corresponding
pay grade; excluding salary equity appropriations in the
calculation of “basic resources per pupil”; providing for
high quality educational standards; adding a recognition
status of substantial approval; deleting the penalty clause
for counties on nonapproval status for two years in
succession; and repealing an obsolete code provision.

Be it enacted by the Legislature of West Virginia:

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

Chapter
18. Education.
18A. School Personnel

CHAPTER 18. EDUCATION.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

1 For the purpose of this article:
2 “State board” means the West Virginia board of
3 education.
4 “County board” or “board” means a county board of
5 education.
6 “Professional salaries” means the state legally mandated
7 salaries of the professional educators as provided in article
8 four, chapter eighteen-a of this code.
“Professional educator” shall be synonymous with and shall have the same meaning as “teacher” as defined in section one, article one, chapter eighteen of this code.

“Professional instructional personnel” means a professional educator whose regular duty is as that of a classroom teacher, librarian or counselor. A professional educator having both instructional and administrative or other duties shall be included as professional instructional personnel for that ratio of the school day for which he is assigned and serves on a regular full-time basis in appropriate instruction, library or counseling duties.

“Service personnel salaries” shall mean the state legally mandated salaries for service personnel as provided in section eight-a, article four, chapter eighteen-a of the code.

“Service personnel” shall mean all personnel as provided for in section eight, article four, chapter eighteen-a of this code. For the purpose of computations under this article of ratios of service personnel to adjusted enrollment, a service employee shall be counted as that number found by dividing his number of employment days in a fiscal year by two hundred: Provided, That the computation for any such person employed for three and one-half hours or less per day as provided in section eight-a, article four, chapter eighteen-a of this code, shall be calculated as one half an employment day.

“Net enrollment” means the number of pupils enrolled in special education programs, kindergarten programs and grades one to twelve, inclusive, of the public schools of the county.

“Adjusted enrollment” means the net enrollment plus twice the number of pupils enrolled for special education, all adjusted to the equivalent of the instructional term and in accordance with such eligibility requirements and regulations as established by the state board, but no pupil shall be counted more than once by reason of transfer within the county or from another county within the state, and no pupil shall be counted who attends school in this state from another state.
“Levies for general current expense purposes” means on each hundred dollars of valuation, twenty-two and five-tenths cents on Class I property, forty-five cents on Class II property and ninety cents on Classes III and IV property.

“Basic resources per pupil” for the state and the several counties means the total of (a) property tax revenues computed at the maximum regular levy rates as provided by section six-c, article eight, chapter eleven of this code, at a uniform rate of ninety-five percent, but excluding revenues from increased levies as provided in section ten, article X of the Constitution of West Virginia, and (b) basic state aid as provided in sections twelve and thirteen of this article, but excluding the foundation allowance to improve instructional programs as provided in section ten of this article, and excluding any funds appropriated for the purpose of achieving salary equity among county board employees, this total divided by the number of students in adjusted enrollment: Provided, That any year’s allocations to the counties of the eighty percent portion of the foundation allowance to improve instructional programs, as provided in section ten of this article, shall be determined on the basis of the immediately preceding school year’s basic resources per pupil.


1 The purpose of this section is to declare the intent of the Legislature to provide a thorough and efficient system of education for West Virginia public school students. High quality educational standards shall be provided all public school students on an equal educational opportunity basis. A system for the review of county educational plans and the on-site reviews of county educational programs shall provide assurances that the high quality standards, established pursuant to this section, are being met.

On or before January one, one thousand nine hundred eighty-five, the state board of education shall establish and adopt high quality educational standards and shall provide each county board of education a copy thereof.

On or before July one, one thousand nine hundred eighty-five, and each July one thereafter, each county board of
education shall file an annual specific program plan with the state department of education. The program plan shall, at a minimum, meet the statewide high quality educational standards as established by the state board of education.

The purpose of the program plan is to allow county boards of education flexibility in developing school improvement programs structured around locally identified needs, but in compliance with the high quality standards adopted by the state board of education. High quality standards must be met in curriculum, finance, transportation, special education, facilities, textbooks, personnel qualifications and other such areas as determined by the state board of education.

The state department of education shall review the plans annually and conduct an on-site review of each county's educational program every fourth year. The state board of education shall have authority to issue four types of recognition status: (1) Full approval, (2) substantial approval, (3) probationary, and (4) nonapproval.

Full approval status may be granted to a county board of education whose educational program has undergone an on-site evaluation by representatives of the state department of education and has met the high quality standards adopted by the state board of education. Full approval status shall be for a period not to exceed four years.

Substantial approval status may be granted to a county board of education whose educational program has satisfied all conditions identified under full approval status, with the exception of an on-site review, or all conditions identified under full approval have been satisfied except that one or more of the high quality standards have not been met but will be attained within one year, as described in an acceptable plan of action.

Probationary status is given to a county board of education whose educational program has not met the high quality standards. Probationary status is a warning that the county board of education must make specified improvements. If progress is not made toward meeting the
55 high quality standards during the succeeding year, the 
56 county board of education is automatically placed on 
57 nonapproval status.

58 Nonapproval status is given to a county board of 
59 education which fails to submit an annual program plan, 
60 fails to give evidence of meeting the high quality standards 
61 or has not demonstrated a reasonable effort to meet such 
62 standards.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

§18A-4-2. Salaries, wages, and other benefits.
§18A-4-3. State minimum annual salary increments for principals and 
assistant principals.
§18A-4-5. Salary equity among the counties; state salary supplement.
§18A-4-5a. County salary supplements for teachers.
§18A-4-5b. County salary supplements for school service personnel.
§18A-4-5c. Equity appropriation from surplus revenues.
§18A-4-8. Employment term and class titles of service personnel; 
definitions.
§18A-4-8a. Service personnel minimum monthly salaries.
§18A-4-2. State minimum salaries for teachers.

STATE MINIMUM SALARY SCHEDULE

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On and after the first day of July, one thousand nine hundred eighty-four, each teacher shall receive the amount prescribed in the "state minimum salary schedule" as set forth in this section, specific additional amounts prescribed in this article, and any county supplement in effect in a county pursuant to section five-a of this article during the contract year.

§18A-4-3. State minimum annual salary increments for principals and assistant principals.

In addition to any salary increments for principals and assistant principals in effect on the first day of January, one thousand nine hundred eighty-four, and paid from local funds, and in addition to the county schedule in effect for teachers, the county board shall pay each principal a principal's salary increment and each assistant principal an assistant principal's salary increment as prescribed by this section commencing on the first day of July, one thousand nine hundred eighty-four, from state funds appropriated therefor.

State funds for this purpose shall be paid within the West Virginia public school support plan in accordance with article nine-a, chapter eighteen of this code.

The salary increment herein for each principal shall be determined by multiplying the basic salary for teachers in accordance with the classification of certification and of training of said principal as prescribed in this article, by the appropriate percentage rate prescribed herein according to the number of teachers supervised. The salary increment herein for each assistant principal shall be determined in the same manner as that for principals, utilizing the number of teachers supervised by the principal under whose direction the assistant principal works, except that the percentage rate shall be fifty percent of the rate prescribed for said principal.

STATE MINIMUM SALARY INCREMENT RATES FOR PRINCIPALS AND ASSISTANT PRINCIPALS

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Salaries for employment beyond the minimum employment term shall be at the same daily rate as the salaries for the minimum employment term.

For the purpose of determining the number of teachers supervised by a principal, the county board shall use data for the second school month of the prior school term and the number of teachers shall be interpreted to mean the total number of professional educators assigned to each school on a full-time equivalency basis: Provided, That due to a change in circumstances because of consolidation or catastrophe, the county board of education shall determine what is a reasonable number of supervised teachers in order to establish the appropriate increment percentage rate.

No county shall reduce local funds allocated for salary increments for principals and assistant principals in effect on the first day of January, one thousand nine hundred eighty-four, and used in supplementing the state minimum salaries as provided for in this article, unless forced to do so by defeat of a special levy, or a loss in assessed values or events over which it has no control and for which the county board has received approval from the state board prior to making such reduction.

Nothing herein shall prevent a county board from providing, in a uniform manner, salary increments greater than those required by this section.

§18A-4-5. Salary equity among the counties; state salary supplement.

To assist the state in meeting its objective of salary equity among the counties, on and after the first day of July, one thousand nine hundred eighty-four, subject to available state appropriations and the conditions set forth herein, each teacher and school service personnel shall receive a supplemental amount in addition to the amount from the state minimum salary schedules provided for in this article.
State funds for this purpose shall be paid within the West Virginia public school support plan in accordance with article nine-a, chapter eighteen of this code. The amount allocated for salary equity shall be apportioned between teachers and school service personnel in direct proportion to that amount necessary to support the professional salaries and service personnel salaries statewide under sections four and five, article nine-a, chapter eighteen of this code: Provided, That in making such division an adequate amount of state equity funds shall be reserved to finance the appropriate foundation allowances and staffing incentives provided for in said article nine-a.

Pursuant to this section, each teacher and school service personnel shall receive the amount that is the difference between their authorized state minimum salary and ninety-five percent of the maximum salary schedules prescribed in sections five-a and five-b of this article, reduced by any amount provided by the county as a salary supplement for teachers and school service personnel on the first day of January of the fiscal year immediately preceding that in which the salary equity appropriation is distributed: Provided, That such amount may be reduced proportionately based upon the amount of funds appropriated for this purpose.

No county may reduce any salary supplement that was in effect on the first day of January, one thousand nine hundred eighty-four, except as permitted by sections five-a and five-b of this article.

§18A-4-5a. County salary supplements for teachers.

County boards of education in fixing the salaries of teachers shall use at least the state minimum salaries established under the provisions of this article. The board may establish salary schedules which shall be in excess of the state minimums fixed by this article, such county schedules to be uniform throughout the county as to the above stipulated training classifications, experience, responsibility and other requirements, except that no such county schedule may exceed one hundred two and one-half percent of a schedule which incorporates the state minimum salary for teachers in effect on the first day of
July, one thousand nine hundred eighty-four, and adopts a supplement which equals the highest supplement provided by a county on the first day of January, one thousand nine hundred eighty-four, so as to assist the state in meeting its objective of salary equity among the counties: Provided, That all teachers in the state shall be entitled to any increases in the minimum salary schedules established under the provisions of this article, and when a county schedule changes due to said increase in the state minimum salary taking effect after the first day of July, one thousand nine hundred eighty-four, it shall not be deemed to exceed the maximum salary schedule prescribed herein.

Counties may fix higher salaries for teachers placed in special instructional assignments, for those assigned to or employed for duties other than regular instructional duties and for teachers of one-teacher schools, and they may provide additional compensation for any teacher assigned duties in addition to his regular instructional duties wherein such noninstructional duties are not a part of the scheduled hours of the regular school day. Uniformity also shall apply to such additional salary increments or compensation for all persons performing like assignments and duties within the county: Provided, That in establishing such local salary schedules, no county shall reduce local funds allocated for salaries in effect on the first day of January, one thousand nine hundred and eighty-four, and used in supplementing the state minimum salaries as provided for in this article, unless forced to do so by defeat of a special levy, or a loss in assessed values or events over which it has no control and for which the county board has received approval from the state board prior to making such reduction.

Counties may provide, in a uniform manner, benefits for teachers which require an appropriation from local funds including, but not limited to, dental, optical, health and income protection insurance, vacation time and retirement plans excluding the state teachers retirement system: Provided, That no county may expend per teacher an amount which exceeds one hundred twelve percent of the amount expended by the county having the highest expenditure per teacher on January one, one thousand nine
hundred eighty-four, unless such excessive amount is
approved by the state board of education to allow for an
inflation factor to maintain or obtain a comparable benefit
or a higher per unit rate among smaller groups. The state
board shall determine what benefits are authorized by this
section and whether any county's expenditure per teacher
exceeds the maximum prescribed by this section, so as to
assist the state in meeting its objective of benefit equity
among the counties. Nothing herein shall prohibit the
maintenance nor result in the reduction of any benefits in
effect on January one, one thousand nine hundred eighty-
four, by any county board of education.

To further assist the state in meeting such objective, each
county board of education shall provide to the state board
of education on or before the first day of November, one
thousand nine hundred eighty-four, such information as
the state board directs to assist the state superintendent of
schools in preparing a report to be submitted to the
Legislature on the first day of the regular session thereof in
the year one thousand nine hundred eighty-five. Such
report shall include findings, conclusions and recom-
mendations with respect to benefits provided and meeting
the objective of benefit equity among the counties.

§18A-4-5b. County salary supplements for school service per-
sonnel.

The county board of education may establish salary
schedules which shall be in excess of the state minimums
fixed by this article, except that no such schedule may
exceed one hundred two and one-half percent of a schedule
which incorporates the state minimum salary for school
service personnel in effect on the first day of July, one
thousand nine hundred eighty-four, and adopts a monthly
supplement of two hundred and five dollars for zero years of
experience for all pay grades and which increases said
monthly supplement by two dollars for each year of
experience codified for school service personnel in this
article, so as to assist the state in meeting its objective of
salary equity among the counties: Provided, That all service
personnel in the state shall be entitled to any increase in the
minimum salary for school service personnel established
under the provisions of this article, and when a county
schedule changes due to said increase in the state minimum
salary taking effect after the first day of July, one thousand
nine hundred eighty-four, it shall not be deemed to exceed
the maximum salary schedule prescribed herein. Any
county supplement for any position which, on the first day
of January, one thousand nine hundred eighty-four,
extends the schedule beyond the maximum prescribed
herein for such position shall be exempt from the
maximums stated herein, subject to the approval of the
state board, but no such supplement shall be increased
beyond the amount received on the first day of January, one
thousand nine hundred eighty-four.

These county schedules shall be uniform throughout the
county with regard to any training classification,
experience, years of employment, responsibility, duties,
pupil participation, pupil enrollment, size of buildings,
operation of equipment or other requirements. Further,
uniformity shall apply to all salaries, rates of pay, benefits,
increments or compensation for all persons regularly
employed and performing like assignments and duties
within the county: Provided, That in establishing such local
salary schedules, no county shall reduce local funds
allocated for salaries in effect on the first day of January,
one thousand nine hundred eighty-four, and used in
supplementing the state minimum salaries as provided for
in this article, unless forced to do so by defeat of a special
levy, or a loss in assessed values or events over which it has
no control and for which the county board has received
approval from the state board prior to making such
reduction.

Counties may provide, in a uniform manner, benefits for
service personnel which require an appropriation from
local funds including, but not limited to, dental, optical,
health and income protection insurance, vacation time and
retirement plans excluding the state teachers retirement
system: Provided, That no county may expend per school
service personnel an amount which exceeds one hundred
twelve percent of the amount expended by the county
having the highest expenditure per service personnel on
January one, one thousand nine hundred eighty-four,
unless such excessive amount is approved by the state board of education to allow for an inflation factor to maintain or obtain a comparable benefit or a higher per unit rate among smaller groups. The state board shall determine what benefits are authorized by this section and whether any county's expenditure per service personnel exceeds the maximum prescribed by this section, so as to assist the state in meeting its objective of benefit equity among the counties. Nothing herein shall prohibit the maintenance, nor result in the reduction of any benefits in effect on January one, one thousand nine hundred eighty-four, by any county board of education.

To further assist the state in meeting such objective, each county board of education shall provide to the state board of education on or before the first day of November, one thousand nine hundred eighty-four, such information as the state board directs to assist the state superintendent of schools in preparing a report to be submitted to the Legislature on the first day of the regular session thereof in the year one thousand nine hundred eighty-five. Such report shall include findings, conclusions and recommendations with respect to benefits provided and meeting the objective of benefit equity among the counties.

§18A-4-5c. Equity appropriation from surplus revenues.

The first twenty-nine million dollars of surplus funds from the state fund, general revenue, that have accrued as of the thirtieth day of June, one thousand nine hundred eighty-four, shall be appropriated and shall be expended during fiscal year one thousand nine hundred eighty-four—eighty-five, in accordance with section five of this article, subject to the terms and conditions set forth in this section and in said section five.

In the event that the surplus revenues as of the thirtieth day of June, one thousand nine hundred eighty-four, are not sufficient to meet all of the appropriation mandated by this section, then the appropriation shall be available only to the extent of the total actual surplus accrued as of said date.

§18A-4-8. Employment term and class titles of service personnel; definitions.
The purpose of this section is to establish an employment term and class titles for service personnel. The employment term for service personnel shall be no less than ten months, a month being defined as twenty employment days: Provided, That the county board of education may contract with all or part of these personnel for a longer term. The beginning and closing dates of the ten-month term shall not exceed forty-three weeks. Service personnel employed on a yearly or twelve-month basis may be employed by calendar months. Whenever there is a change in job assignment during the school year, the minimum pay scale and any county supplement shall be applicable.

Service personnel employed in the same classification for more than the two hundred day minimum employment term shall be paid for additional employment at a daily rate of not less than the daily rate paid for the two hundred day minimum employment term.

No service employee, without his agreement, shall be required to report for work more than five days per week and no part of any working day may be accumulated by the employer for future work assignments, unless the employee agrees thereto.

Should an employee whose regular work week is scheduled from Monday through Friday agree to perform any work assignments on a Saturday or Sunday, the employee shall be paid for at least one-half day of work for each such day he reports for work, and if the employee works more than three and one-half hours on any Saturday or Sunday, he shall be paid for at least a full day of work for each such day.

Custodians required to work a daily work schedule that is interrupted, that is, who do not work a continuous period in one day, shall be paid additional compensation which shall be equal to at least one eighth of their total salary as provided by their state minimum salary and any county pay supplement, and payable entirely from county funds.

Upon the change in classification or upon meeting the requirements of an advanced classification of or by any employee, his salary shall be made to comply with the
requirements of this article, and to any county salary schedule in excess of the minimum requirements of this article, based upon his advanced classification and allowable years of employment.

An employee's contract as provided in sections four and five, article two of this chapter shall state the appropriate monthly salary the employee is to be paid, based on the class title as provided in this article and any county salary schedule in excess of the minimum requirements of this article.

The column heads of the state minimum pay scale and class titles, set forth in section eight-a of this article are defined as follows:

"Pay grade" means the monthly salary applicable to class titles of service personnel.

"Years of employment" means the number of years which an employee classified as service personnel has been employed by a board of education in any position prior to or subsequent to the effective date of this section and including service in the armed forces of the United States if the employee were employed at the time of his induction. For the purpose of section eight-a of this article, years of employment shall be limited to the number of years shown and allowed under the state minimum pay scale as set forth in section eight-a of this article.

"Class title" means the name of the position or job held by service personnel.

"Accountant I" means personnel employed to maintain payroll records and reports and perform one or more operations relating to a phase of the total payroll.

"Accountant II" means personnel employed to maintain accounting records and to be responsible for the accounting process associated with billing, budgets, purchasing and related operations.

"Accountant III" means personnel who are employed in the county board of education office to manage and supervise accounts payable and/or payroll procedures.
“Aide I” means those personnel selected and trained for
teacher-aid classifications such as monitor aide, clerical
aide, classroom aide or general aide.

“Aide II” means those personnel referred to in the “Aide
I” classification who have completed a training program
approved by the state board of education, or who hold a
high school diploma or have received a general educational
development certificate. Only personnel classified in an
Aide II class title shall be employed as an aide in any special
education program.

“Aide III” means those personnel referred to in the “Aide
I” classification who hold a high school diploma or a
general educational development certificate and have
completed six semester hours of college credit at an
institution of higher education or are employed as an aide in
a special education program and have one year’s experience
as an aide in special education.

“Aide IV” means personnel referred to in the “Aide I”
classification who hold a high school diploma or a general
educational development certificate and who have
completed eighteen hours of state board-approved college
credit at a regionally accredited institution of higher
education, or who have completed fifteen hours of state
board-approved college credit at a regionally accredited
institution of higher education and successfully completed
an in-service training program determined by the state
board to be the equivalent of three hours of college credit.

“Audiovisual technician” means personnel employed to
perform minor maintenance on audiovisual equipment,
films, supplies and the filling of requests for equipment.

“Auditor” means personnel employed to examine and
verify accounts of individual schools and to assist schools
and school personnel in maintaining complete and accurate
records of their accounts.

“Bus operator” means personnel employed to operate
school buses and other school transportation vehicles as
provided by the state board of education.
“Buyer” means personnel employed to review and write specifications, negotiate purchase bids and recommend purchase agreements for materials and services that meet predetermined specifications at the lowest available costs.

“Cabinetmaker” means personnel employed to construct cabinets, tables, bookcases and other furniture.

“Cafeteria manager” means personnel employed to direct the operation of a food services program in a school, including assigning duties to employees, approving requisitions for supplies and repairs, keeping inventories, inspecting areas to maintain high standards of sanitation, preparing financial reports and keeping records pertinent to food services of a school.

“Carpenter I” means personnel classified as a carpenter’s helper.

“Carpenter II” means personnel classified as a journeyman carpenter.

“Chief mechanic” means personnel employed to be responsible for directing activities which ensure that student transportation or other board-owned vehicles are properly and safely maintained.

“Clerk I” means personnel employed to perform clerical tasks.

“Clerk II” means personnel employed to perform general clerical tasks, prepare reports and tabulations and operate office machines.

“Computer operator” means qualified personnel employed to operate computers.

“Cook I” means personnel employed as a cook’s helper.

“Cook II” means personnel employed to interpret menus, to prepare and serve meals in a food service program of a school and shall include personnel who have been employed as a “Cook I” for a period of four years, if such personnel have not been elevated to this classification within that period of time.
“Cook III” means personnel employed to prepare and serve meals, make reports, prepare requisitions for supplies, order equipment and repairs for a food service program of a school system.

“Crew leader” means personnel employed to organize the work for a crew of maintenance employees to carry out assigned projects.

“Custodian I” means personnel employed to keep buildings clean and free of refuse.

“Custodian II” means personnel employed as a watchman or groundsman.

“Custodian III” means personnel employed to keep buildings clean and free of refuse, to operate the heating or cooling systems and to make minor repairs.

“Custodian IV” means personnel employed as head custodians. In addition to providing services as defined in “Custodian III,” their duties may include supervising other custodian personnel.

“Director or coordinator of services” means personnel not defined as professional personnel or professional educators in section one, article one of this chapter, who are assigned to direct a department or division.

“Draftsman” means personnel employed to plan, design and produce detailed architectural/engineering drawings.

“Electrician I” means personnel employed as an apprentice electrician helper or who holds an electrician helper license issued by the state fire marshal.

“Electrician II” means personnel employed as an electrician journeyman or who holds a journeyman electrician license issued by the state fire marshal.

“Electronic technician I” means personnel employed at the apprentice level to repair and maintain electronic equipment.

“Electronic technician II” means personnel employed at the journeyman level to repair and maintain electronic equipment.
"Executive secretary" means personnel employed as the county school superintendent's secretary or as a secretary who is assigned to a position characterized by significant administrative duties.

"Foods service supervisor" means qualified personnel not defined as professional personnel or professional educators in section one, article one of this chapter, employed to manage and supervise a county school system's food service program. The duties would include preparing in-service training programs for cooks and food service employees, instructing personnel in the areas of quantity cooking with economy and efficiency, and keeping aggregate records and reports.

"Foreman" means skilled persons employed for supervision of personnel who work in the areas of repair and maintenance of school property and equipment.

"General maintenance" means personnel employed as helpers to skilled maintenance employees and to perform minor repairs to equipment and buildings of a county school system.

"Glazier" means personnel employed to replace glass or other materials in windows and doors and to do minor carpentry tasks.

"Graphic artist" means personnel employed to prepare graphic illustrations.

"Groundsman" means personnel employed to perform duties that relate to the appearance, repair and general care of school grounds in a county school system. Additional assignments may include the operation of a small heating plant and routine cleaning duties in buildings.

"Handyman" means personnel employed to perform routine manual tasks in any operation of the county school system.

"Heating and air conditioning mechanic I" means personnel employed at the apprentice level to install, repair and maintain heating and air conditioning plants and related electrical equipment.
"Heating and air conditioning mechanic II" means personnel employed at the journeyman level to install, repair and maintain heating and air conditioning plants and related electrical equipment.

"Heavy equipment operator" means personnel employed to operate heavy equipment.

"Inventory supervisor" means personnel who are employed to supervise or maintain operations in the receipt, storage, inventory and issuance of materials and supplies.

"Key punch operator" means qualified personnel employed to operate key punch machines or verifying machines.

"Locksmith" means personnel employed to repair and maintain locks and safes.

"Lubrication man" means personnel employed to lubricate and service gasoline or diesel-powered equipment of a county school system.

"Machinist" means personnel employed to perform machinist tasks which include the ability to operate a lathe, planer, shaper, threading machine and wheel press. Such personnel should also have ability to work from blueprints and drawings.

"Mail clerk" means personnel employed to receive, sort, dispatch, deliver or otherwise handle letters, parcels and other mail.

"Maintenance clerk" means personnel employed to maintain and control a stocking facility to keep adequate tools and supplies on hand for daily withdrawal for all school maintenance crafts.

"Mason" means personnel employed to perform tasks connected with brick and block laying and carpentry tasks related to such laying.

"Mechanic" means personnel employed who can independently perform skilled duties in the maintenance and repair of automobiles, school buses and other mechanical and mobile equipment to use in a county school system.
“Mechanic assistant” means personnel employed as a mechanic apprentice and helper.

“Office equipment repairman I” means personnel employed as an office equipment repairman apprentice or helper.

“Office equipment repairman II” means personnel responsible for servicing and repairing all office machines and equipment. Personnel shall be responsible for parts being purchased necessary for the proper operation of a program of continuous maintenance and repair.

“Painter” means personnel employed to perform duties of painting, finishing and decorating of wood, metal and concrete surfaces of buildings, other structures, equipment, machinery and furnishings of a county school system.

“Plumber I” means personnel employed as an apprentice plumber and helper.

“Plumber II” means personnel employed as a journeyman plumber.

“Printing operator” means personnel employed to operate duplication equipment, and as required, to cut, collate, staple, bind and shelve materials.

“Printing supervisor” means personnel employed to supervise the operation of a print shop.

“Programmer” means personnel employed to design and prepare programs for computer operation.

“Roofing/sheet metal mechanic” means personnel employed to install, repair, fabricate and maintain roofs, gutters, flashing and duct work for heating and ventilation.

“Sanitation plant operator” means personnel employed to operate and maintain a water or sewage treatment plant to ensure the safety of the plant’s effluent for human consumption or environmental protection.

“School bus supervisor” means qualified personnel employed to assist in selecting school bus operators and routing and scheduling of school buses, operate a bus when needed, relay instructions to bus operators, plan emergency
routing of buses and promoting good relationships with parents, pupils, bus operators and other employees.

"Secretary I" means personnel employed to transcribe from notes or mechanical equipment, receive callers, perform clerical tasks, prepare reports and operate office machines.

"Secretary II" means personnel employed in any elementary, secondary, kindergarten, nursery, special education, vocational or any other school as a secretary. The duties may include performing general clerical tasks, transcribing from notes or stenotype or mechanical equipment or a sound-producing machine, preparing reports, receiving callers and referring them to proper persons, operating office machines, keeping records and handling routine correspondence. There is nothing implied herein that would prevent such employees from holding or being elevated to a higher classification.

"Secretary III" means personnel assigned to the county board of education office administrators in charge of various instructional, maintenance, transportation, food services, operations and health departments, federal programs or departments with particular responsibilities of purchasing and financial control or any personnel who have served in a position which meets the definition of "secretary II" herein for twelve continuous years.

"Supervisor of maintenance" means skilled personnel not defined as professional personnel or professional educators as in section one, article one of this chapter. The responsibilities would include directing the upkeep of buildings and shops, issuing instructions to subordinates relating to cleaning, repairs and maintenance of all structures and mechanical and electrical equipment of a board of education.

"Supervisor of transportation" means qualified personnel employed to direct school transportation activities, properly and safely, and to supervise the maintenance and repair of vehicles, buses and other mechanical and mobile equipment used by the county school system.
"Switchboard operator-receptionist" means personnel employed to refer incoming calls, to assume contact with the public, to direct and to give instructions as necessary, to operate switchboard equipment and to provide clerical assistance.

"Truck driver" means personnel employed to operate light or heavy duty gasoline and diesel-powered vehicles.

"Warehouse clerk" means personnel employed to be responsible for receiving, storing, packing and shipping goods.

"Watchman" means personnel employed to protect school property against damage or theft. Additional assignments may include operation of a small heating plant and routine cleaning duties.

"Welder" means personnel employed to provide acetylene or electrical welding services for a school system.

In addition to the compensation provided for in section eight-a of this article, for service personnel, each service employee shall, notwithstanding any provisions in this code to the contrary, be entitled to all service personnel employee rights, privileges and benefits provided under this or any other chapter of this code without regard to such employee's hours of employment or the methods or sources of compensation.

Service personnel whose years of employment exceed the number of years shown and provided for under the state minimum pay scale set forth in section eight-a of this article, may not be paid less than the amount shown for the maximum years of employment shown and provided for in the classification in which he is employed.

The county boards shall review each service personnel employee job classification annually and shall reclassify all service employees as required by such job classifications. The state superintendent of schools is hereby authorized to withhold state funds appropriated pursuant to this article for salaries for service personnel who are improperly classified by such county boards. Further, he shall order county boards to correct immediately any improper classification matter and with the assistance of the attorney
373 general shall take any legal action necessary against any
374 county board to enforce such order.
375 The state board of education is authorized to establish
376 other class titles of service personnel positions and jobs not
377 listed in this section. The state board of education is further
378 authorized to provide appropriate pay grades for such
379 positions and jobs but pay shall be established within the
380 minimum salary scale in section eight-a of this article.
381 No service employee, without his written consent, may be
382 reclassified by class title, nor may a service employee,
383 without his written consent, be relegated to any condition
384 of employment which would result in a reduction of his
385 salary, rate of pay, compensation or benefits earned during
386 the current fiscal year or which would result in a reduction
387 of his salary, rate of pay, compensation or benefits for
388 which he would qualify by continuing in the same job
389 position and classification held during said fiscal year and
390 subsequent years.
391 Any board failing to comply with the provisions of this
392 article may be compelled to do so by mandamus, and shall
393 be liable to any party prevailing against the board for court
394 costs and his reasonable attorney fee, as determined and
395 established by the court.
§18A-4-8a. Service personnel minimum monthly salaries.

STATE MINIMUM PAY SCALE PAY GRADE

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On and after the first day of July, one thousand nine hundred eighty-four, the minimum monthly pay for each service employee whose employment is for a period of more than three and one-half hours a day shall be at least the amounts indicated in the "state minimum pay scale" as set forth in this section, and the minimum monthly pay for each service employee whose employment is for a period of three and one-half hours or less a day shall be at least one half the amount indicated in the "state minimum pay scale" set forth in this section.

Any service employee required to work on any legal school holiday shall be paid at a rate one and one-half times his usual hourly rate.

CHAPTER 65

(Com. Sub. for H. B. 1794—By Mr. Speaker, Mr. See)

[Passed March 6, 1984; in effect from passage. Approved by the Governor.]

AN ACT to repeal sections four-b, four-c, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, thirty-two, thirty-three, thirty-four, thirty-five, thirty-six, thirty-seven, thirty-eight, thirty-nine, forty, forty-one, forty-two and forty-three, article eleven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend said chapter by adding thereto a new article, designated article eleven-c, all relating to the West Virginia University medical center; authorizing the West Virginia board of regents to enter into a long-term lease and agreement and to otherwise contract with a nonstock, not-for-profit corporation, to be formed under the general corporation laws of the state; certain requirements with respect to such corporation; the directors of such corporation and their appointment; setting forth required pro-
visions of such agreement, including the date thereof; requiring the payment by the West Virginia board of regents to such corporation of sums on deposit in specified accounts, as reflected on the financial ledgers of West Virginia university, not to exceed three million, four hundred thousand dollars; the assignment to such corporation of other assets of the West Virginia University hospital; the letting of an interest in the existing West Virginia University hospital prior to completion of new facilities by such corporation and a long-term leasehold interest in a proposed site in Monongalia County, West Virginia, for such new facilities; requiring the board to acquire such corporation's agreement to provide space in such new facilities for educational and research purposes; to provide an annual allowance for residents' and interns' expenses and an annual clinical teaching subsidy; to provide other property and services to be specified in such agreement; to assume certain liabilities of the West Virginia board of regents relating to the West Virginia University hospital; stating liabilities not to be so assumed; relating to the existing employees of the West Virginia board of regents at the West Virginia University hospital; exempting such agreement and other transactions from bidding, public sale and intragovernmental approvals otherwise required by said code; requiring the audit of certain transactions entered into by the board and the corporation; certain requirements with respect to conflicts of interest; penalties for failure to file required statement of conflict of interest; requiring that the board be informed as to such conflicts; providing that article shall not waive the sovereign immunity of this state; prohibiting the pledging of the credit of the state with respect to any such agreements; and providing for the severability and liberal construction of the provisions of said article.

Be it enacted by the Legislature of West Virginia:

That sections four-b, four-c, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, thirty-two, thirty-three, thirty-four, thirty-five, thirty-six, thirty-seven, thirty-eight, thirty-nine, forty, forty-one, forty-two and forty-three, article eleven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that said chapter be amended by adding thereto a new article, designated article eleven-c, to read as follows:
ARTICLE 11C. LEASE AND AGREEMENT OF WEST VIRGINIA BOARD OF REGENTS RELATING TO WEST VIRGINIA UNIVERSITY HOSPITAL.

§18-11C-1. Definitions.

§18-11C-2. Findings.

§18-11C-3. Board authorized to contract with corporation; description to be met by corporation.

§18-11C-4. Agreement; required provisions.

§18-11C-5. Exemption from certain requirements; audit.

§18-11C-6. Conflicts of interest; statement; penalties.

§18-11C-7. No waiver of sovereign immunity.

§18-11C-8. Not obligation of the state.

§18-11C-9. Sections and provisions severable.

§18-11C-10. Liberal construction.

§18-11C-1. Definitions.

1. The following words used in this article shall, unless the context clearly indicates a different meaning, be construed as follows:

(a) “Agreement” means the long-term lease and agreement to be entered into between the board and the corporation pursuant to section four of this article.

(b) “Assets” means all assets of the board constituting tangible and intangible personal property credited to the hospital on the financial ledgers and equipment inventories of the university at the transfer date, and as more particularly or additionally identified or supplemented in the agreement, excluding all hospital funds deposited with the state treasurer.

(c) Notwithstanding section one, article one of this chapter, “board” means the West Virginia board of regents.

(d) “Corporation” means the nonstock, not-for-profit corporation to be established under the general corporation laws of the state, which meets the description prescribed by section three of this article.

(e) “Corporation employees” means employees of the corporation.

(f) “Directors” means the board of directors of the corporation.
(g) "Existing facilities" means the West Virginia University hospital and clinics, other than those used for student health and family practice, presently existing at the West Virginia University medical center in Morgantown and owned and operated by the board.

(h) "Health science schools" means the schools of medicine, dentistry, pharmacy and nursing and any other schools at the university deemed by the board to be health sciences.

(i) "Hospital" means the in-patient and out-patient health care services of the board, other than those used for student health services and family practice clinics, operated in connection with the university, consisting of the existing facilities and any other health care service components of the West Virginia University medical center at Morgantown rendering patient care services and more particularly identified by the agreement.

(j) "Liabilities" means all liabilities, except those specifically excluded by section four of this article, credited to the hospital on the financial ledgers of the university at the transfer date and as more particularly or additionally identified, supplemented or limited in the agreement.

(k) "Medical personnel" means both university personnel and corporation employees.

(l) "New facilities" means a new hospital facility and outpatient clinics, appurtenant facilities, equipment and necessary services to be acquired, built, operated or contracted for by the corporation on property leased from the board within Monongalia County, West Virginia, pursuant to the agreement.

(m) "Transfer date" means the first day of July, one thousand nine hundred eighty-four, or any later date agreed upon by the board and the corporation and filed with the secretary of state.

(n) "University" means West Virginia University.

(o) "University personnel" means those employees of the board or the university for whose services the corporation contracts with the board or the university, as appropriate.
§18-11C-2. Findings.

1 It is hereby found and determined that:

2 (a) The purposes of the existing facilities are to facilitate
3 the clinical education and research of the health science
4 schools and to provide patient care, including specialized ser-
5 vices not widely available elsewhere in West Virginia. The
6 eventual termination of such services in lieu of replacement
7 or modernization would create an unreasonable hardship on
8 patients in the area and throughout the state.

9 (b) These purposes separately and collectively serve the
10 highest public interest and are essential to the public health
11 and welfare, but must be realized in the most efficient manner
12 and at the lowest cost practicable and consistent with these
13 purposes.

14 (c) The existing facilities require substantial renovation,
15 and it is necessary and appropriate and in the best interests
16 of the state and the citizens thereof that a replacement facility
17 be built as soon as possible instead of such renovation.

18 (d) It is unnecessarily costly and administratively cumber-
19 some for the board to finance, manage and carry out the
20 patient care activities of an academic institution within the
21 existing framework of a state agency. Such patient care
22 operations are more efficiently served by contemporary legal,
23 management and procedural structures utilized by similarly
24 situated private entities throughout the nation.

25 (e) It is fiscally desirable that the state separate the busi-
26 ness and service functions of the hospital from the educa-
27 tional functions of the health science schools, that the board
28 cease operation of the existing facilities, that the board trans-
29 fer such operations to the corporation, that the board pay
30 certain existing sums and assign the assets and certain lease-
31 hold interests to the corporation in order to acquire the
32 corporation’s agreement to provide certain space and services
33 and to assume the liabilities, that the agreement and certain
34 other contractual relationships between the board and the
35 corporation be authorized, and that the existing facilities
36 operated by the corporation, and subsequently the new facili-
ties owned and operated by the corporation, be self-sufficient and will remove the tax burden from the state.

(f) A not-for-profit corporate structure with appropriate governance consistent with the delivery of health care to the patient and academic need of the university shall be the best means of assuring prudent financial management and the future economy of operation under rapidly changing market conditions, regulation and reimbursement.

(g) The interests of the citizens of the state will be best met by the board’s entering into and carrying out the provisions of the agreement as soon as possible, to provide independence and flexibility of management and funding while enabling the state’s tertiary health care and health science education needs to be better served.

§18-11C-3. Board authorized to contract with corporation; description to be met by corporation.

1 The board is hereby authorized to enter into the agreement and any other contractual relationships authorized by this article with the corporation, but only if the corporation meets the following description:

(a) The directors of the corporation, all of whom shall be voting, shall consist of the president of the university, who shall serve ex officio as chairman of the directors, the president of the board or his designee, the vice chancellor for health affairs of the board, the vice president for health sciences of the university, the vice president for administration and finance of the university, the chief of the medical staff of the hospital, the dean of the school of medicine of the university, the dean of the school of nursing of the university and the chief executive officer of the corporation, as ex officio members of the directors, a representative elected at large by the corporation employees and seven directors to be appointed by the governor, subject to confirmation by the senate of the state Legislature, which seven appointed directors shall be selected in conformance with the provisions of section six-a, article five-b, chapter sixteen of this code: Provided, That said seven directors shall be appointed to six year terms, but no more than two such members shall be from the same congressional district: Pro-
vided, however, That of the seven directors so appointed by the governor for terms beginning the year one thousand nine hundred eighty-four, three such appointments shall be for a term of two years, two shall be for a term of four years, and two shall be for a term of six years.

(b) The audited records of the corporation shall be reported publicly and to the joint committee on government and finance at least annually.

c) Upon liquidation of the corporation, the assets of the corporation shall be transferred to the board for the benefit of the university.

§18-11C-4. Agreement; required provisions.

Notwithstanding section three, article twenty-three of this chapter, or section ten, article three, chapter twelve of this code, or any other provision of this code to the contrary, the board is hereby authorized to enter into the agreement with the corporation, which agreement shall contain the following provisions, subject to further specification as shall be mutually agreed upon by the board and the corporation:

(a) On the transfer date, the board shall disburse and pay to the corporation the sums on deposit in the following accounts as reflected on the financial ledgers of the university:

(i) That portion of accounts numbered 928000, 928001, 928002 and 928003 which are made up from hospital revenue;

(ii) The capital reserve account numbered 9285, which is accumulated through the capital surcharge on patient receipts;

(iii) The cafeteria account numbered 8612330000;

(iv) The kidney reimbursement account numbered 8610108810;

(v) The general stores account numbered 8610601230;

(vi) The home dialysis account numbered 8610601450;

(vii) The vending income account numbered 8610600180;

(viii) The optical shop account numbered 8610601350;
(ix) The emergency medical education account numbered 8610601460;

(x) The radiation safety account numbered 8610600320; and

(xi) The Monongalia General Hospital AN account numbered 8610106530: Provided, That the aggregate amount so paid to the corporation shall not exceed three million, four hundred thousand dollars; and shall assign to the corporation all the assets, a leasehold interest in the existing facilities prior to completion of the new facilities and a leasehold interest in the proposed site for the new facilities, which site shall be mutually agreed upon by the board and the corporation, for a period not to exceed ninety-nine years, all in order to acquire the corporation's agreement to provide not less than one hundred thousand square feet of space in the new facilities for educational and research purposes, to provide an annual allowance of not less than four million dollars for residents' and interns' expenses and an annual clinical teaching subsidy of not less than six million dollars, to provide other property or services to be specified in the agreement and to assume the liabilities, including the accounts payable, but excluding liabilities for other than accrued sick leave, accrued annual leave and unemployment compensation benefits relating to corporation employees arising prior to the transfer date and excluding other liabilities of a contingent nature. Effective on the transfer date, the corporation shall assume responsibility for and shall defend, indemnify and hold harmless the university, the board and the state with respect to all liabilities and duties of the university or the board pursuant to contracts and agreements for commodities, services and supplies utilized by the hospital, and all claims for breach of contract resulting from the corporation's action or failure to act after the transfer date. The value and the adequacy of the services by and other agreements of the corporation shall be mutually agreed upon by the board and the corporation. Upon completion of the construction and occupation of the new facilities the least upon the existing facilities shall terminate.

(b) On and after the transfer date, the corporation shall lease, manage and operate the existing facilities, subject to the
provisions of this article, and shall construct, own and operate
the new facilities, and shall have the power to encumber and
otherwise deal with the assets, without limitation or regard to
their sources: Provided, That the corporation shall have no
power to mortgage or otherwise encumber the real property
constituting a part of the existing facilities.

(c) The existing facilities and, subsequently, the new fac-
cilities will serve as the primary clinical setting for health
science school students to receive educational and research
experiences. The university faculty shall have exclusive medi-
cal and dental staff privileges at the existing facilities and,
subsequently, at the new facilities.

(d) The corporation may utilize both corporation em-
ployees and university personnel. On or after the transfer date,
each university employee working in the hospital shall elect
to be either a corporation employee or a part of university
personnel. No university employee may be required to become
an employee of the corporation as the condition of employ-
ment or promotion. All university personnel are university
employees in all respects.

(e) If reasonable progress toward construction of new
facilities has not been made by the first day of July, one
thousand nine hundred eighty-five, the agreement shall auto-
matically terminate, and the transfers of operations of the
existing facilities and the assets and liabilities under the agree-
ment shall revert to the board and the university.

(f) After completion of construction of the new facilities
and vacation of the existing facilities by the corporation, the
board and the university may not use the existing facilities or
otherwise provide services competing with the new facilities:
Provided, That the existing facilities may be used for student
health and family practice clinics and for medical support
services and other appropriate university purposes which will
not compete with the services offered by the new facilities.

(g) The new facilities shall be constructed by the corpora-
tion in a manner so as to provide sufficient space for conduct-
ing clinical education for the health science schools.
§18-11C-5. Exemption from certain requirements; audit.

1 In order, as expeditiously as possible, to cease operation of
2 the existing facilities by the board, to transfer the operations
3 of the existing facilities and the assets and liabilities to the
4 corporation, which will construct the new facilities, at the same
5 time maintaining the educational services of an operating hos-
6 pital facility, the transactions provided by this article shall be
7 exempt from the bidding and public sale requirements, from
8 the approval of contractual agreements by the department of
9 finance and administration or the attorney general and from
10 the requirements of chapter five-a of this code. The trans­
11 actions provided by this article shall be subject to an audit
12 by an independent auditor mutually agreed upon by the board
13 and the corporation.

§18-11C-6. Conflicts of interest; statement; penalties.

1 Notwithstanding any other provisions of this code to the
2 contrary, officers and employees of the board and the univer-
3 sity may hold appointments to offices of the corporation and
4 be members of the boards of directors, or officers or employees
5 of other entities contracting with either the corporation or the
6 board or the university. The board and the directors must be
7 informed of such appointments annually, and either the board
8 or the directors may require that an appointment be terminated
9 to avoid an actual or potential conflict of interest as determined
10 by the board: Provided, That every member of the board
11 shall, between January one and January fifteen of each year,
12 file a written statement, which shall be fully available for pub­
13 lic disclosure, with the chairman of the board, under oath,
14 setting forth:

15 (1) The name of every person, firm, corporation, associa-
16 tion, partnership, sole proprietorship or other business assos-
17 ciation in which he, his spouse or his unemancipated minor
18 child or children, in his or their own name or beneficially,
19 own at least ten percent of such business entity, or of which
20 he or they are an officer, director, agent, attorney, representa-
21 tive, employee, partner or employer, and which to his actual
22 knowledge is then furnishing or within the previous calendar
23 year has furnished to the state, the board of regents, West
Virginia University or the corporation defined in this article, commodities or printing as those terms are defined in section one, article one, chapter five-a of this code.

(2) Any other interest or relationship which might reasonably be expected to be affected by action taken by the board of such corporation or which in the public interest should be disclosed.

Those persons to whom the provisions of subdivisions (1) and (2) above are not applicable shall file a written statement to that effect with the chairman of the board at the same time above specified.

Any person who shall fail or refuse to file a written statement under oath as required above shall by operation of law be automatically removed from such board until such statement is filed.

Any person who shall intentionally file a false statement shall be guilty of a misdemeanor, and, upon conviction, shall be confined in jail not less than six months nor more than one year.

§18-11C-7. No waiver of sovereign immunity.

Nothing contained in this article shall be deemed or construed to waive or abrogate in any way the sovereign immunity of the state or to deprive the board, the university or any officer or employee thereof of sovereign immunity.

§18-11C-8. Not obligation of the state.

Obligations of the corporation shall not constitute debts or obligations of the university, the board or the state.

§18-11C-9. Sections and provisions severable.

The sections 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 this article, and, if any of said sections, or the provisions or parts of any 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 of this
§18-11C-10. Liberal construction.

This article, being necessary for the health, safety, convenience and welfare of the people of the state, shall be liberally construed to effectuate the purposes hereof.

CHAPTER 66

(H. B. 1851—(By Delegate Schifano and Delegate Manchin)

[Passed March 9, 1984; in effect ninety days 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 two new articles, designated articles eleven-d and eleven-e, relating generally to the issuance of revenue bonds and notes by the West Virginia board of regents to finance the cost of any or all of constructing, reconstructing, remodeling, repairing, improving, extending, equipping or furnishing the football stadium, the athletic facilities building or related facilities at West Virginia University and the football stadium or other athletic facilities at Marshall University; payment of the principal of and premium, if any, and interest on said revenue bonds and notes; requiring the written approval of the director of athletics; allowing pledge to bonds of all or any portion of the moneys derived from admission fees, other than student admission fees, to athletic contests at West Virginia University and Marshall University; bonds and notes not to be considered debt of state, county, municipality or any political subdivision; and to the interpretation of said article.

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 two new articles, designated articles eleven-d and eleven-e, to read as follows:
ARTICLE 11D. REVENUE BONDS FOR WEST VIRGINIA UNIVERSITY ATHLETIC FACILITIES.

§18-11D-1. Definition of board; cost of constructing, reconstructing, remodeling, repairing, improving, extending, equipping or furnishing the football stadium, the athletic facilities building or related facilities of West Virginia University to be financed by revenue bonds or notes.

§18-11D-2. Trustee for bondholders or noteholders; contents of trust agreement.

§18-11D-3. Payment of principal of and premium, if any, and interest on bonds and notes from all or any portion of the moneys derived from admission fees to athletic contests at West Virginia University; approval of director of athletics.

§18-11D-4. Enforcement; payment and validity of bonds and notes.

§18-11D-5. Pledges; time; liens; recordation.

§18-11D-6. Refunding bonds.

§18-11D-7. Purchase and cancellation of bonds or notes.


§18-11D-10. Bonds and notes not debt of state, county, municipality or any political subdivision; expenses incurred pursuant to article.


§18-11D-1. Definition of board; cost of constructing, reconstructing, remodeling, repairing, improving, extending, equipping or furnishing the football stadium, the athletic facilities building or related facilities of West Virginia University to be financed by revenue bonds or notes.

(a) Notwithstanding the provisions of section one, article one of this chapter, the word “board,” when used in this article, means the West Virginia board of regents.

(b) For the purpose of financing the cost of any or all of the following: Constructing, reconstructing, remodeling, repairing, improving, extending, equipping or furnishing the football stadium, the athletic facilities building or related
facilities of West Virginia University, the board periodically
may issue negotiable bonds or notes of the state in a principal
amount, not in excess of seven and one-half million dollars,
which, in the opinion of the board, shall be necessary to fi-
nance said cost. Such cost shall include, but not be limited to,
the following: The cost of such construction, reconstruction,
remodeling, repair, improvement, extension, equipment or fur-
nishings; studies and surveys; plans, specifications, architec-
tural and engineering services; legal, organizational, marketing
or other special services; interest and carrying charges prior to,
during and for six months after completion of such construc-
tion, reconstruction, remodeling, repair, improvement, exten-
sion, 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.

(c) 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 refund in
advance bonds issued by the board by the issuance of new
bonds of the state, pursuant to the requirements of section six
of this article.

(d) 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.

(e) The bonds and the notes shall be authorized by reso-
lution of the board, shall bear such date and shall mature at
such time or times, in the case of any such note or any re-
newals 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 or
places 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 de-
termines. The bonds and notes shall be executed by the gov-
error 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.

(f) A resolution authorizing bonds or notes or an issue of bonds or notes under 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:

(1) With the written approval of the director of athletics at West Virginia University, which approval shall be specific as to such moneys pledged, pledging and creating a lien on all or any portion of the moneys derived from admission fees to athletic contests at West Virginia University 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;

(2) Pledging and creating a lien on any loan, grant or contribution to be received from the federal, state or local government or other source;

(3) Setting aside of reserves or sinking funds and the regulation and disposition thereof;

(4) Limitations on the purpose to which the proceeds of sale of bonds or notes may be applied and pledging the proceeds to secure the payment of the bonds or notes or of any issue of the bonds or notes;

(5) Limitations on the issuance of additional bonds or notes and the terms upon which additional bonds or notes may be issued and secured;
(6) 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
consent thereto and the manner in which the consent may be
given; and

(7) Vesting in a trustee or trustees the property, rights,
powers, remedies and duties which the board considers neces-
sary or convenient.

(g) 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 defini-
tive bonds or notes, as the case may be, upon the issuance
of the latter.

§18-11D-2. 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 one of this article with respect to the
resolution. All expenses incurred in carrying out such agree-
ment may be treated as a part of the cost of constructing,
reconstructing, remodeling, repairing, improving, extending,
equipping or furnishing the football stadium, the athletic
facilities building or related facilities of West Virginia Univer-
sity affected by such agreement.

§18-11D-3. Payment of principal of and premium, if any, and
interest on bonds and notes from all or any portion
of the moneys derived from admission fees to ath-
etic contests at West Virginia University; approval
of director of athletics.

Whenever bonds or notes are issued for financing the cost
of any or all of the following: Constructing, reconstructing,
remodeling, repairing, improving, extending, equipping or
furnishing the football stadium, the athletic facilities building
or related facilities of West Virginia University, the board may, with the written approval of the director of athletics at West Virginia University, 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 derived from admission fees to athletic contests and deposited into the athletic accounts at West Virginia University: Provided, That said approval of the director of athletics must specify all or any said portions of the money to be pledged: Provided, however, That no fees paid by students other than the regular student activity fee may be so pledged.

§18-11D-4. Enforcement of payment and validity of bonds and notes.

(a) The provisions 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 this article 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.

(b) The resolution authorizing the bonds or notes shall provide that such bonds or notes shall contain a recital that they are issued pursuant to this article, which recital shall be conclusive evidence of their validity and of the regularity of their issuance.

§18-11D-5. Pledges; time; lien; recordation.

Any pledge made by the board shall be valid and binding from the time the pledge is made: Provided, That the pledge by the board of all or any portion of the moneys derived from admission fees to athletic contests and deposited into the athletic accounts at West Virginia University shall be subject to the written approval of the director of athletics at West Virginia University. The moneys so pledged and thereafter received by the board shall immediately be subject to the lien of such 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, con-
tract or otherwise against the board, irrespective of whether such parties have notice thereof.

§18-11D-6. Refunding bonds.

Any bonds issued under the provisions 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 an unpaid interest thereon; to provide additional funds for the purposes authorized by this article; 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, together with the interest on such proceeds, for the payment of the bonds to be refunded thereby and the interest thereon as the same come due, 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 this article.

§18-11D-7. 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 applicable 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.


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 constructing, reconstructing, remodeling, repairing, improving, extending, equipping or furnishing the football stadium, the athletic facilities building or related facilities of West Virginia University and the other purposes herein 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 loans or temporary advances may be repaid out of the proceeds of the bonds authorized to be issued under the provisions 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.


The state pledges and agrees with the holders of any bonds or notes issued under this article that the state will not limit or alter the rights vested in the board to fulfill the terms of any agreements 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 its pledge and agreement of the state in any agreement with the holders of such bonds or notes.
§18-11D-10. 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 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 the 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 the 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 this article: Provided, That notes issued in anticipation of the issuance of bonds or bonds being refunded may be paid from the proceeds of bonds which are payable solely from revenues and funds pledged for their payment as authorized by this article. 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 this article shall be payable solely from funds provided under the authority of this article. This article does 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.


Other provisions of this code to the contrary notwithstanding, the bonds or notes authorized to be issued by 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 the state, including the
West Virginia state board of investments, all municipalities and
other political subdivisions of the 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 associ-
ations, deposit guarantee associations and investment compan-
ies, all administrators, guardians, executors, trustees and other
fiduciaries and all other persons whatsoever who are autho-
rized 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 this
article will be in all respects for the benefit of the students and
the faculty and other employees at West Virginia University
and the other people of the state, for the improvement of their
safety, convenience and welfare, and is a public purpose. As the
operation and maintenance of the football stadium, the athletic
facilities building and related facilities at West Virginia Uni-
versity constitute 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 the state and
any county, municipality, political subdivision or agency there-
of, except inheritance taxes.


This article shall be deemed to provide an additional and
alternative method for the doing of the things authorized here-
by and shall be regarded as supplementary and additional to
the powers conferred by other laws.


This article, being necessary for the safety, convenience and
2 welfare of the students and the faculty and other employees at
3 West Virginia University and the other people of the state,
4 shall be liberally construed to effectuate the purposes hereof.

ARTICLE 11E. REVENUE BONDS FOR MARSHALL UNIVERSITY
ATHLETIC FACILITIES.

§18-11E-1. Definition of board; cost of constructing, reconstructing, re-
modeling, repairing, improving, extending, equipping or furn-
ishing the football stadium or other athletic facilities of
Marshall University to be financed by revenue bonds or notes.

§18-11E-2. Trustee for bondholders or noteholders; contents of trust agree-
ment.

§18-11E-3. Payment of principal of and premium, if any, and interest on
bonds and notes from all or any portion of the moneys de-
derived from admission fees to athletic contests at Marshall
University; approval of director of athletics.

§18-11E-4. Enforcement of payment and validity of bonds and notes.

§18-11E-5. Pledges; time; liens; recordation.

§18-11E-6. Refunding bonds.

§18-11E-7. Purchase and cancellation of bonds or notes.


§18-11E-10. Bonds and notes not debt of state, county, municipality or any
political subdivision; expenses incurred pursuant to article.

§18-11E-11. Negotiability of bonds and notes.


§18-11E-14. Article regarded as supplementary.


§18-11E-1. Definition of board; cost of constructing, reconstruct-
ing, remodeling, repairing, improving, extending,
equipping or furnishing the football stadium or other
athletic facilities of Marshall University to be fin-
anced by revenue bonds or notes.

(a) Notwithstanding the provisions of section one, article
one of this chapter, the word "board," when used in this article
means the West Virginia board of regents.

(b) For the purpose of financing the cost of any or all of
the following: Constructing, reconstructing, remodeling, re-
pairing, improving, extending, equipping or furnishing the
football stadium or other athletic facilities of Marshall Uni-
versity, the board periodically may issue negotiable bonds or
notes of the state in a principal amount, not in excess of fifteen million dollars, which, in the opinion of the board, shall be necessary to finance said cost. Such cost shall include, but not be limited to, the following: The cost of such construction, reconstruction, remodeling, repair, improvement, extension, equipment or furnishings; studies and surveys; plans, specifications, architectural and engineering services; legal, organizational, marketing or other special services; interest and carrying charges prior to, during and for six months after completion of such 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.

(c) 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 refund in advance bonds issued by the board by the issuance of new bonds of the state, pursuant to the requirements of section six of this article.

(d) 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.

(e) 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 or places 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.

(f) A resolution authorizing bonds or notes or an issue of bonds or notes under 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:

(1) With the written approval of the director of athletics at Marshall University, which approval shall be specific as to such moneys pledged, pledging and creating a lien on all or any portion of the moneys derived from admission fees to athletic contests at Marshall University to secure the payment of the bonds or notes or of any issue of bonds or notes, subject to those agreements with bondholders or note-holders which then exist;

(2) Pledging and creating a lien on any loan, grant or contribution to be received from the federal, state or local government or other source;

(3) Setting aside of reserves or sinking funds and the regulation and disposition thereof;

(4) Limitations on the purpose to which the proceeds of sale of bonds or notes may be applied and pledging the proceeds to secure the payment of the bonds or notes or of any issue of the bonds or notes;

(5) Limitations on the issuance of additional bonds or
notes and the terms upon which additional bonds or notes may be issued and secured;

(6) 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 consent thereto and the manner in which the consent may be given; and

(7) Vesting in a trustee or trustees the property, rights, powers, remedies and duties which the board considers necessary or convenient.

(g) 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.

§18-11E-2. 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 one 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 constructing, reconstructing, remodeling, repairing, improving, extending, equipping or furnishing the football stadium or other athletic facility at Marshall University affected by such agreement.

§18-11E-3. Payment of principal of and premium, if any, and interest on bonds and notes from all or any portion of the moneys derived from admission fees to athletic contests at Marshall University; approval of director of athletics.

Whenever bonds or notes are issued for financing the cost of any or all of the following: Constructing, reconstructing, remodeling, repairing, improving, extending, equipping or fur-
nishing the football stadium or other athletic facilities of
Marshall University, the board may, with the written approval
of the director of the athletics at Marshall University, 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 derived from admission fees to athletic contests and
deposited into the athletic accounts at Marshall University:
Provided, That said approval of the director of athletics must
specify all or any said portions of the moneys to be pledged:
Provided, however, That no fees paid by students other than
the regular student activity fee may be so pledged.

§18-11E-4. Enforcement of payment and validity of bonds and
notes.

(a) The provisions 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 this article and any resolution or trust agreement
shall be enforceable by any bondholder or noteholder by
mandamus or other appropriate action in any court of com-
petent jurisdiction.

(b) The resolution authorizing the bonds or notes shall pro-
vide that such bonds or notes shall contain a recital that
they are issued pursuant to this article, which recital shall
be conclusive evidence of their validity and of the regularity
of their issuance.

§18-11E-5. Pledges; time; liens; recordation.

Any pledge made by the board shall be valid and binding
from the time the pledge is made: Provided, That the pledge
by the board of all or any portion of the moneys derived
from admission fees to athletic contests and deposited into
the athletic accounts at Marshall University shall be subject
to the written approval of the director of athletics at Marshall
University. The moneys so pledged and thereafter received
by the board shall immediately be subject to the lien of such
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.

§18-11E-6. Refunding bonds.

Any bonds issued under the provisions 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 addi-
tional funds for the purposes authorized by this article; 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, together
with the interest on such proceeds, for the payment of the
bonds to be refunded thereby and the interest thereon as the
same come due, 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 ex-
change 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 con-
tained in and shall be secured in accordance with this article.

§18-11E-7. 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 applicable 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.


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 constructing, reconstructing, remodeling, repairing, improving, extending, equipping or furnishing the football stadium or other athletic facilities of Marshall University and the other purposes herein 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 loans or temporary advances may be repaid out of the proceeds of the bonds authorized to be issued under the provisions 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.


The state pledges and agrees with the holders of any bonds or notes issued under this article that the state will not limit or alter the rights vested in the board to fulfill the terms of any agreements 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 its pledge and agreement of the state in any agreement with the holders of such bonds or notes.
§18-11E-10. 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 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 the 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 the 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 this article: Provided, That notes issued in anticipation of the issuance of bonds or bonds being refunded may be paid from the proceeds of bonds which are payable solely from revenues and funds pledged for their payment as authorized by this article. 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 this article shall be payable solely from funds provided under the authority of this article. This article does 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.

§18-11E-11. Negotiability of bonds and notes.

Other provisions of this code to the contrary notwithstanding, the bonds or notes authorized to be issued by 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 the state, including
the West Virginia state board of investments, all municipalities
and other political subdivisions of the state, all insurance
companies and associations and other persons carrying on
an insurance business, including domestic for life and do-
mestic not for life insurance companies, all banks, trust com-
panies, societies for savings, building and loan associations,
savings and loan associations, deposit guarantee associations
and investment companies, all administrators, guardians, exec-
utors, 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 this
article will be in all respects for the benefit of the students
and the faculty and other employees at Marshall University
and the other people of the state, for the improvement of
their safety, convenience and welfare, and is a public pur-
pose. As the operation and maintenance of the football
stadium or other athletic facilities at Marshall University
constitute the performance of essential governmental func-
tions, 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 the state and any county,
municipality, political subdivision or agency thereof, except
inheritance taxes.

§18-11E-14. Article regarded as supplementary.

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.


This article, being necessary for the safety, convenience
and welfare of the students and the faculty and other em-
ployees at Marshall University and the other people of the
state, shall be liberally construed to effectuate the purposes
hereof.

CHAPTER 67
(Com. Sub. for S. B. 612—By Senator Burdette, et al.)

[Passed March 9, 1984; in effect July 1, 1984. 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-two, all relating to higher education full-time faculty salaries; establishing minimum salary goals for full-time faculty of institutions of higher education; defining terms; assignment to salary schedule; providing for a seven and one-half percent increase of certain salaries; establishing a minimum salary for each academic rank; requiring remaining funds appropriated be utilized for appropriate placement on the salary schedule; prohibiting reduction of salary; providing that salaries for full-time faculty after the effective date of this article comply therewith; permitting merit increases and salary adjustments in certain circumstances; and providing for additional employment.

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-two, to read as follows:

ARTICLE 22. HIGHER EDUCATION FULL-TIME FACULTY SALARIES.

§ 18-22-1. Definitions.
§ 18-22-3. Assignment to salary schedule; actual salary.
§ 18-22-4. Hirings after effective date.
§ 18-22-5. Merit increases and salary adjustments.
§ 18-22-6. Additional employment by mutual agreement.
§18-22-1. Definitions.

As used in this article:

(a) "Schedule" or "salary schedule" means the grid of minimum salary figures listed in section two of this article;

(b) "Academic rank" means the position held by a faculty member as determined by the president, consistent with policy established by the board of regents, and includes the positions of professor, associate professor, assistant professor and instructor; all other ranks are excluded from the provisions of this article;

(c) "Years of experience" means the actual number of years a person has been a full-time faculty member at an institution of higher education within this state. Employment for nine months shall equal one year of experience, but no faculty member may accrue more than one year of experience during any given academic year. Employment for less than full-time, or less than nine months during any fiscal year, shall be prorated. In accordance with rules and regulations established by the board of regents, a faculty member may be granted additional years of experience for actual years of work or teaching experience at institutions other than institutions of higher education within this state;

(d) "Doctoral institutions" means West Virginia University; "master's institutions" means Marshall University, West Virginia School of Osteopathic Medicine and the West Virginia College of Graduate Studies; "baccalaureate and two-year institutions" means Bluefield State College, Concord College, Fairmont State College, Glenville State College, Shepherd College, West Liberty State College, West Virginia Institute of Technology, West Virginia State College, Parkersburg Community College, Southern West Virginia Community College, West Virginia Northern Community College and Potomac State College of West Virginia University;

(e) "Salary" means the total nine-month or ten-month salary paid from state funds to a full-time faculty member, or if other than nine or ten months, adjusted to a nine-month base salary;
(f) "Full-time faculty" means any faculty member designated as such by the president, consistent with approved policy of the board of regents, and those persons with faculty rank who have research or administrative responsibilities;

(g) "Fiscal year" means twelve calendar months and begins on the first day of July and ends on the thirtieth day of June; and

(h) "Merit increases and salary adjustments" means the amount of additional salary increase allowed on a merit basis or to rectify salary inequities or accommodate competitive market conditions, in accordance with policy established by the board of regents.


There is hereby established a state minimum salary schedule for full-time faculty employed by the board of regents consisting of a minimum salary for each academic rank in accordance with years of experience: Provided, That it is the intention of the Legislature to create a schedule of minimum salary goals in higher education subject to the availability of funds; and with the exception of the placement of all full-time faculty members included under the provisions of this article on the schedule at zero years of experience, nothing in this article shall be construed to guarantee payment to any faculty member of the salary indicated on the appropriate schedule at his actual years of experience.

MINIMUM SALARY SCHEDULE
FOR FULL-TIME FACULTY AT
BACCALAUREATE AND TWO-YEAR INSTITUTIONS

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**MINIMUM SALARY SCHEDULE FOR FULL-TIME FACULTY AT MASTER'S INSTITUTIONS**
(MARSHALL UNIVERSITY, WEST VIRGINIA SCHOOL OF OSTEOPATHIC MEDICINE AND THE WEST VIRGINIA COLLEGE OF GRADUATE STUDIES)

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<td>15</td>
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</table>

For those faculty members whose years of experience exceed those delineated on the schedule, the appropriate salary may be determined by adding two and one-half percent for each additional year of experience.

§18-22-3. Assignment to salary schedule; actual salary.

(a) Upon the effective date of this article, each faculty member then employed shall be given notice of the placement on the minimum salary schedule which is appropriate to such faculty member's years of experience and to which such individual has been assigned, or notice of the appropriate salary if such member has greater than fifteen years of experience, notwithstanding the actual salary paid under the provisions of this article.

(b) Each full-time faculty member employed as of the effective date of this article shall receive, for full-time employment at the same academic rank during the academic year one thousand nine hundred eighty-four—eighty-five and thereafter, a salary which is at least seven and one-half percent greater than the salary being paid such faculty member for the academic year one thousand nine hundred eighty-three—eighty-four.

(c) Each full-time faculty member whose salary under subsection (b) is less than the salary for zero years of experience for the appropriate academic rank as set forth in section two of this article, shall receive additional amounts
so that salary is at least the amount prescribed for the appropriate academic rank at zero years of experience.

(d) Funds remaining after increasing the salary of each full-time faculty member in accordance with subsection (c) of this section shall be used to pay that amount that is the difference between the salary as prescribed in subsection (b) of this section and the appropriate salary for each full-time faculty member's appropriate placement on the schedule: Provided, That such amount may be reduced proportionately based upon the amount of funds available for such purpose.

(e) The salary of any full-time faculty member shall not be reduced by the provisions of this article.

(f) Upon promotion in rank, placement on the minimum salary schedule will be such as to provide a salary increase of at least ten percent, and shall be at least the amount prescribed for the appropriate academic rank to which promoted at zero years of experience.

§18-22-4. Hirings after the first day of July, one thousand nine hundred eighty-four.

Any person hired as a full-time faculty member after the effective date of this article shall be assigned a placement on the minimum salary schedule which is appropriate to such person's academic rank and years of experience, and such person shall have a minimum salary paid in accordance with the provisions of this article.

§18-22-5. Merit increases and salary adjustments.

Nothing in this article shall be construed to prohibit merit increases or salary adjustments that rectify inequities or accommodate competitive market conditions in specific areas of specialty, in accordance with policy established by the board of regents, if funds are available for such increases: Provided, That all increases as set forth in section two of this article shall be granted prior to the consideration of any increases based on merit.
§18-22-6. Additional employment by mutual agreement.

1 Any employment for greater than a nine-month period, or
2 any responsibilities in excess of full-time duties, shall be
3 only by mutual agreement of the employee and the college
4 president, or his designated representative in accordance
5 with policy established by the West Virginia board of
6 regents. The terms and conditions of any such agreement
7 shall be in writing, signed by both parties, and shall state
8 the maximum number of additional employment days or
9 credit hours or their equivalent to be worked and the
10 amount of compensation to be paid.

CHAPTER 68

(Com. Sub. for S. B. 260—By Senator Holmes, et al.)

[Passed March 10, 1984; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article twenty-
four, chapter eighteen of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to fees and other money collected at state institutions of
higher education; disposition of funds received from fees
and contracts from athletic events, bowl games and post
season tournaments; authority to transfer funds to aca-
demic programs.

Be it enacted by the Legislature of West Virginia:

That section seven, 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.

§18-24-7. Fees and money derived from athletic contests.

1 The directors of athletics at state institutions of higher
2 education may fix and charge admission fees to athletic
3 contests at state institutions of higher education and may
enter into contracts and spend and receive money under such contracts for the student athletic teams of state institutions of higher education to contest with other athletic teams inside or outside the state. All money received from such fees and contracts shall be deposited into the athletic accounts of the state institutions of higher education.

All money derived from such fees and under such contracts shall be used to defray the cost of maintaining the athletic department and athletic program of such institutions. The operation of training camps and training tables and providing room accommodations for participants in the athletic program of such institutions shall be recognized and considered as a proper part of such maintenance, but the specific mention of training camps and training tables and providing room accommodations shall not be construed or understood to limit in any way the general power and authority otherwise granted and conferred by this section: Provided, That (1) one percent of the total gross receipts deposited into the athletic accounts, and (2) not less than twenty-five percent of the net receipts from televised athletic events, bowl games and postseason tournaments deposited into the athletic accounts shall be transferred into a separate and distinct special revenue account for each individual state institution of higher education, which special revenue account shall be designated "athletic facilities construction, repair or replacement reserve account," in the state treasury. Such revenues shall be used only for construction, repair or replacement of athletic facilities at the same individual state institution of higher education to which such special revenue account is credited. Notwithstanding any other provision in this section to the contrary, in the year in which they are received, no more than twenty-five percent of the net receipts from televised athletic events, bowl games and postseason tournaments deposited into athletic accounts may be transferred into other accounts of the same state institution of higher education having such receipts for the support of academic programs to meet an occasional rather than recurrent need or
expense, and in accord with legislative rules promulgated
by the board of regents pursuant to chapter twenty-nine-a
of this code, notwithstanding any other provision of this
code to the contrary.

CHAPTER 69
(S. B. 699—By Senator Parker)
[Passed March 8, 1984; in effect 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-eight, relating to the board of regents
selling certain vacant property located outside the campus
of West Virginia University in Morgantown; and providing
for the use of the receipts therefrom.

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-eight, to read as follows:

ARTICLE 26. WEST VIRGINIA BOARD OF REGENTS.
§18-26-28. Authorization to sell West Virginia University
poultry farm properties located in Morgantown.

1 (a) The board of regents is hereby authorized and
2 empowered to sell those parcels of land situate on the
3 Van Voorhis Road in Monongalia County, West Virginia,
4 bounded and described as follows:
5 Beginning at a post standing south of the center line
6 of the said Van Voorhis Road, in the line of property now
7 or formerly of Vandervort, 170.0 feet, thence from said
8 post, S. 75 degrees 34' E. 1190.6 feet to a white oak stump,
9 corner to land now or formerly of Gorman, Goodwin,
10 Baker and Hawkins; thence with a line of the said corner
11 to land of J. D. Harless, and with his said line, N. 58
degrees 18' W. 279.7 feet to a point in the center line of 
said Van Voorhis Road; thence with the center line of 
said road, S. 56 degrees 25' W. 964.1 feet to a point in the 
center of said road; thence S. 10 degrees 34' E. 170.0 feet 
to the place of beginning, containing 15.71 acres, as sur-
veyed and platted by B. W. Reynolds, Surveyor, October 
28, 1946.

And, beginning at a stake in a line of Charles Baker 
and 27.96 feet from the corner of Charles Baker and D. 
L. Hartman; thence N. 26 degrees 26' E. 150 feet to a 
stake; thence S. 63 degrees 34' E. 70 feet to a stake; thence 
S. 26 degrees 26' thence N. 36 degrees 58' W. 7.29 feet 
to the place of beginning, containing .28 acres, more or 
less. And, beginning at a stake in a line of Charles Baker 
and on a corner of land of Virginia May Burruss and A. 
J. W. Headlee; thence N. 26 degrees 26' E. 160 feet to a 
stake; thence S. 63 degrees 34' E. 70 feet to a stake; thence 
S. 26 degrees 26' W. 160 feet to a stake on a corner of land 
of Virginia May Burruss and A. J. W. Headlee; thence N. 
63 degrees 34' W. 75 feet to the place of beginning, con-
taining .257 acres, more or less.

And, beginning at a stone corner of the lands of W. W. 
McClure and L. O. Starkey, and running Southwest a 
distance of 660 feet (40 poles) to a point or corner of lands 
of L. O. Starkey and Emma Hill; thence westward a 
distance of 587.4 feet (35.35 poles) to a white oak tree, 
corner to lands of the said Emma Hill and Charles M. 
Baker; thence northwest a distance of 610.5 (37 poles) to 
a walnut tree, corner to lands of Charles M. Baker and 
Martin L. Goodwin; thence in an easterly direction a 
distance of 990 feet (60 poles) to the cornerstone herein-
before mentioned as the place of beginning, containing 
12 3/4 acres, more or less.

And, beginning at a point in the line of property for-
merly belonging to James Gorman, being the property 
formerly occupied by S. S. Ivill, which said beginning 
point is N. 9½ degrees W. 739 feet from the center of 
Chestnut Ridge Road; thence with the line of property 
formerly belonging to Coleman Vandervort and now be-
longing to Headlee, and thence with a line of Headlee, S. 80 degrees E. 535 feet, more or less, to the corner of Baker; and thence with Baker two lines in a Southerly direction with the line of Baker, 645 feet to a point and 576 feet to a point in the line of Baker, which said last mentioned point is 754 feet in a northerly direction from the center of said Chestnut Ridge Road; and thence with an arbitrary line through the property formerly belonging to Adam W. Thompson in a Westerly direction 570 feet to the place of beginning, containing 16 acres, more or less; and being the same real estate conveyed to the grantor, Lee Moore, by deed from Benjamin G. Reeder and Marie F. Reeder, his wife, dated February 28, 1956, and recorded in the office of the clerk of the County of Monongalia, West Virginia, at a public auction: Provided, That prior to such action the board of regents shall have the property appraised by two licensed appraisers and shall not sell the property for less than the average of the two appraisals.

(b) The proceeds from the sale of the property referred to shall be deposited in a special revenue account from which the board of regents is hereby authorized to expend funds to relocate the West Virginia University poultry facility with such surplus as may be left being used for improvements to the college of agriculture and forestry facilities or deposited in a special medical school fund heretofore created in the state treasury under the provisions of section two, article nineteen, chapter eleven of this code, for educationally related projects.
said article by adding thereto a new section, designated section two-a, relating to the continuing contract of teachers and school service personnel; providing that teachers and service personnel with continuing contracts be granted such status after one year acceptable employment with another county in certain instances; relating to rights of teachers returning from certain approved leaves of absence; and requiring restoration to former assignment and retention of seniority rights and other privileges upon such return.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-2. Employment of teachers; contracts; continuing contract status; how terminated; dismissal for lack of need; released time; failure of teacher to perform contract or violation thereof.


§18A-2-6. Continuing contract status for service personnel; termination.

§18A-2-2. Employment of teachers; contracts; continuing contract status; how terminated; dismissal for lack of need; released time; failure of teacher to perform contract or violation thereof.

Before entering upon their duties, all teachers shall execute a contract with their boards of education, which contract shall state the salary to be paid and shall be in the form prescribed by the state superintendent of schools. Every such contract shall be signed by the teacher and by the president and secretary of the board of education, and when so signed shall be filed, together with the certificate of the teacher, by the secretary of the office of the board.

A teachers' contract, under this section, shall be for a term of not less than one nor more than three years; and if, after three years of such employment, the teacher who holds a professional certificate, based on at least a bachelor's degree, has met the qualifications for the same, and the board of edu-
cation enter into a new contract of employment, it shall be
a continuing contract: Provided, That any teacher holding
a valid certificate with less than a bachelor's degree who is
employed in a county beyond the said three-year probationary
period shall upon qualifying for said professional certificate
based upon a bachelor's degree, if reemployed, be granted
continuing contract status: Provided, however, That a teacher
holding continuing contract status with one county shall be
granted continuing contract status with any other county upon
completion of one year of acceptable employment if such
employment is during the next succeeding school year or
immediately following an approved leave of absence extending
no more than one year.

The continuing contract of any teacher shall remain in full
force and effect except as modified by mutual consent of the
school board and the teacher, unless and until terminated
(1) by a majority vote of the full membership of the board
before April first of the then current year, after written notice,
served upon the teacher, return receipt requested, stating
cause or causes, and an opportunity to be heard at a meeting
of the board prior to the board's action thereon, or (2) by
written resignation of the teacher before that date. Such
termination shall take effect at the close of the school year
in which the contract is so terminated: Provided, That
the contract may be terminated at any time by mutual con-
sent of the school board and the teacher, and that this section
shall not affect the powers of the school board to suspend
or dismiss a principal or teacher pursuant to section eight
of this article: Provided, however, That a continuing con-
tract for any teacher holding a certificate valid for more than
one year and in full force and effect during the school year
one thousand nine hundred eighty-four and one thousand
nine hundred eighty-five shall remain in full force and effect:
Provided further, That a continuing contract shall not operate
to prevent a teacher's dismissal based upon the lack of need for
the teacher's services pursuant to the provisions of law relating
to the allocation to teachers and pupil-teacher ratios. But
in case of such dismissal, the teachers so dismissed shall be
placed upon a preferred list in the order of their length of
service with that board, and no teacher shall be employed by
the board until each qualified teacher upon the preferred list, in order, shall have been offered the opportunity for reemployment: *And provided further,* That he has not accepted a teaching position elsewhere. Such reemployment shall be upon a teacher's preexisting continuing contract and shall have the same effect as though the contract had been suspended during the time the teacher was not employed.

In the assignment of position or duties of a teacher under said continuing contract, the board shall have authority to provide for released time of a teacher for any special professional or governmental assignment without jeopardizing the contractual rights of such teacher or any other rights, privileges or benefits under the provisions of this chapter.

Any teacher who fails to fulfill his contract with the board, unless prevented from so doing by personal illness or other just cause, or unless released from such contract by the board, or who violates any lawful provision thereof, shall be disqualified to teach in any other public school in the state for a period of the next ensuing school year, and the state department of education or board may hold all papers and credentials of such teacher on file for a period of one year for such violation: *Provided,* That marriage of a teacher shall not be considered a failure to fulfill, or a violation of, the contract.


Any teacher who is returning from an approved leave of absence that extended for a period of less than one year shall be reemployed by the board with the right to be restored to the same assignment of position or duties held prior to the approved leave of absence. Such teacher shall retain all seniority, rights and privileges which had accrued at the time of the approved leave of absence, and shall have all rights and privileges generally accorded teachers at the time of the reemployment.

§18A-2-6. Continuing contract status for service personnel; termination.

After three years of acceptable employment, each service
personnel employee who enters into a new contract of employment with the board shall be granted continuing contract status: Provided, That a service personnel employee holding continuing contract status with one county shall be granted continuing contract status with any other county upon completion of one year of acceptable employment if such employment is during the next succeeding school year or immediately following an approved leave of absence extending no more than one year. The continuing contract of any such employee shall remain in full force and effect except as modified by mutual consent of the school board and the employee, unless and until terminated with written notice, stating cause or causes, to the employee, by a majority vote of the full membership of the board before the first day of April of the then current year, or by written resignation of the employee before that date. The affected employee shall have the right of a hearing before the board, if requested, before final action is taken by the board upon the termination of such employment.

Those employees who have completed three years of acceptable employment as of the effective date of this legislation shall be granted continuing contract status.

CHAPTER 71

(Com. Sub. for H. B. 1540—By Delegate Murphy and Delegate Mullett)

[Passed March 7, 1984; in effect July 1, 1984. Approved by the Governor.]

AN ACT to amend and reenact section one, article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to salary classifications for teachers; and allowing fifteen undergraduate credits earned after the effective date of this section at institutions of higher education to be used for advanced salary classification in certain circumstances.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

§18A-4-1. Definitions.

For the purpose of this section, salaries shall be defined as: (a) "Basic salaries" which shall mean the salaries paid to teachers with zero years of experience and in accordance with the classification of certification and of training of said teachers; and (b) "advanced salaries" which shall mean the basic salary plus an experience increment based on the allowable years of experience of the respective teachers in accordance with the schedule established herein for the applicable classification of certification and of training of said teachers.

"Classification of certification" means the class or type of certificate issued by the state superintendent of schools under the statutory provisions of this chapter. "Classification of training" means the number of collegiate or graduate hours necessary to meet the requirements stipulated in the definitions set forth in the next paragraph in items (2) to (10) inclusive.

The column heads of the state minimum salary schedule set forth in section two of this article are defined as follows:

(1) "Years of experience" means the number of years the teacher has been employed in the teaching profession, including active work in educational positions other than the public schools, and service in the armed forces of the United States if the teacher were under contract to teach at the time of his induction. For a registered professional nurse employed by a county board of education, "years of experience" means the number of years the nurse has been employed as a public school health nurse, including active work in a nursing position related to education, and service in the armed forces if the nurse was under contract with the county board at the time of induction. For the purpose of section two of this article, the experience of a teacher or a nurse shall be limited to that allowed under his training classification as found in the minimum salary schedule.
(2) "Fourth class" means all certificates previously identified as (a) "certificates secured by examination," (b) "other first grade certificates."

(3) "Third class" means all certificates previously identified as (a) "standard normal certificates" and (b) "third class temporary (sixty-four semester hours) certificates."

(4) "Second class" means all certificates previously identified as "second class temporary certificates based upon the required ninety-six hours of college work."

(5) "A.B." means a bachelor's degree, from an accredited institution of higher education, which has been issued to, or for which the requirements for such have been met by, a person who qualifies for or holds a professional certificate or its equivalent. A registered professional nurse with a bachelor's degree, who is licensed by the West Virginia board of examiners for registered professional nurses and employed by a county board of education, shall be within this classification for payment in accordance with sections two and two-a of this article.

(6) "A.B. plus 15" means a bachelor's degree as defined above plus fifteen hours of graduate work, from an accredited institution of higher education certified to do graduate work, in an approved planned program at the graduate level which requirements have been met by a person who qualifies for or holds a professional certificate or its equivalent.

(7) "M. A." means a master's degree, earned in an institution of higher education approved to do graduate work, which has been issued to, or the requirements for such have been met by, a person who qualifies for or holds a professional certificate or its equivalent.

(8) "M. A. plus 15" means the above-defined master's degree plus fifteen hours of graduate work, earned in an institution of higher education approved to do graduate work, if the person is qualified for or holds a professional certificate or its equivalent.

(9) "M. A. plus 30" means the above-defined master's degree plus thirty graduate hours, earned in an institution
approved to do graduate work, if the person is qualified for
or holds a professional certificate or its equivalent.

(10) "Doctorate" means a doctor's degree, earned from a
university qualified and approved to confer such a degree,
which has been issued to or the requirements for such have
been met by a person who qualifies for or holds a professional
certificate or its equivalent.

Notwithstanding the requirements set forth in subdivisions
(6), (8) and (9) of this section relating to hours of graduate
work at an institution certified to do such work, fifteen
undergraduate credit hours from a regionally accredited
institution of higher education, earned after the effective date
of this section, may be utilized for advanced salary classifica-
tion if such hours are in accordance with (a) the teacher's
current classification of certification and of training, (b) a
designated instructional shortage area documented by the
employing county superintendent, or (c) an identified teaching
deficiency documented through the state approved county
personnel evaluation system.

CHAPTER 72

(Com. Sub. for H. B. 1027—By Delegate McKinley)

[Passed February 29, 1984; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-seven, article one,
chapter three of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to restrictions on
presence and conduct at polls; additional time to vote for
disabled persons.

Be it enacted by the Legislature of West Virginia:

That section thirty-seven, article one, chapter three of the code
of West Virginia, one thousand nine hundred thirty-one, as amended,
be amended and reenacted to read as follows:
ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-37. Restrictions on presence and conduct at polls.

1 No person, except the election officers and voters while going to the election room to vote and returning therefrom, shall be or remain within sixty feet of such room while the polls are open; but this section shall not apply to persons living or carrying on business within that distance of the election room, while in the discharge of their legitimate business, or to persons whose business requires them to pass and repass within sixty feet of such room.

9 Not more than one voter for each compartment or booth at the precinct shall be allowed in the election room at one time, and no person shall approach nearer than five feet to any booth or compartment while the election is being held, except the voters to prepare their ballots, or the poll clerks when called on by a voter to assist in the preparation of his ballot, and no person, other than election officers and voters engaged in receiving, preparing, and depositing their ballots, shall be permitted to be within five feet of any ballot box, except by authority of the board of election commissioners, and then only for the purpose of keeping order and enforcing the law.

21 Not more than one person shall be permitted to occupy any booth or compartment at one time. No person shall remain in or occupy a booth or compartment longer than may be necessary to prepare his ballot, and in no event longer than five minutes, except that any person who claims a disability pursuant to section thirty-four of this article shall have additional time up to ten additional minutes to prepare his ballot. No voter, or person offering to vote, shall hold any conversation or communication with any person other than the poll clerks or commissioners of election, while in the election room.

32 The provisions of this section shall not apply to persons rendering assistance to blind voters as provided in section thirty-four of this article.
CHAPTER 73

(H. B. 1122—By Delegate Casey and Delegate Hatcher)

[Passed January 27, 1984; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article five, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the election of delegates to national conventions of political parties in accordance with a plan adopted by the party and filed with the secretary of state; certain provisions required in plan if permissible under rules of the national party; ballot notation; and providing for the election of delegates to the national convention of a political party when the party has not filed a plan for the election of such delegates with the secretary of state.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-2. Delegates to national conventions; alternate delegates.

(a) At the primary election to be held in the year one thousand nine hundred eighty-four, and in every fourth year thereafter, there shall be elected by the voters of each political party of the state, in accordance with a plan adopted by the state party, persons to be delegates to the national convention of the party to be held next after the date of such primary.

(b) The plan adopted by each political party of the state shall state the method, subject to compliance with their national party rules and not inconsistent with the provisions of this section, for the election of persons in each congressional district of the state as delegates to the national convention of the party, for the election or selection of persons in each congressional district of the state as alternate delegates to the national convention of the party and for
the selection of all remaining delegates and alternate delegates allocated to the party in their national convention. Not less than ninety days before the primary election to be held in the year one thousand nine hundred eighty-four, and in every fourth year thereafter, the governing body of each political party of the state shall certify the plan adopted by the party under signature of the state party chairman and file the plan with the secretary of state. Any questions regarding whether such plan was rightfully adopted by the party shall be resolved by the party based upon party rules.

(c) The plan adopted by each political party of the state shall, to the extent permissible under their national party rules, provide for the following:

(1) The voters of each political party shall elect in each congressional district in the state at the primary election next preceding the date on which the national convention of the party is to be held, the number of persons as delegates to the national convention of the party to which the district is entitled as delegates to the national convention. The persons receiving the highest number of votes as delegates in any congressional district, to the number to which the district is entitled, shall be elected delegates.

(2) After the election of delegates in each congressional district to the number to which the district is entitled, the persons receiving the next highest votes in each congressional district and having qualified, as may be provided in the plan adopted by the party, shall be elected as alternate delegates to the number of alternate delegates to which the district is entitled.

(3) In the event the number of persons elected in the primary election in a congressional district is less than the number to which the district is entitled as delegates and alternate delegates to the national convention of the political party, the governing body of the political party of the state shall appoint persons from the congressional district to serve as delegates or alternate delegates to the national convention of the party unless the rules of the party otherwise provide.

(4) The number of persons which each of the con-
gressional districts in the state are entitled to elect as dele-
gates to the national convention of the political party shall
be apportioned among the congressional districts in the same
proportion to the total number of delegates to the party's
national convention elected in all congressional districts in
the state as the population of the congressional district bears
to the total population of the state based upon the census of
population taken by the bureau of the census of the United
States department of commerce in the year one thousand
nine hundred eighty and in every tenth year thereafter.

(d) The official primary ballot at the primary election to be
held in the year one thousand nine hundred eighty-four and in
every fourth year thereafter, shall, following the names of all
candidates for delegates to the national convention of the
party, contain the words "For election in accordance with the
plan adopted by the party and filed with the secretary of
state."

(e) Unless and until a political party of the state has
adopted and certified a plan for the election of delegates
to the national convention of the party and filed the plan
with the secretary of state, there shall be elected by the voters
of the political party of the state at the primary election to
be held in the year one thousand nine hundred eighty-four,
and in each fourth year thereafter, the number of persons
to which the party is entitled as delegates-at-large, and by
the voters of each political party in each congressional district
in the state the number of delegates to which the district is
entitled, in the national convention of the party to be next held
after the date of such primary. The persons receiving the
highest number of votes in the state as delegates-at-large, to the
number to which the state is entitled, shall be elected dele-
gates. The persons receiving the highest number of votes as
delegates in any congressional district, to the number to
which the district is entitled, shall be elected delegates. Each
delegate so elected shall then appoint an individual to serve
as alternate delegate, and shall by registered letter notify the
secretary of state of such appointment within forty days after
the primary election.
AN ACT to amend and reenact section twenty-one, article five, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to primary elections and nominating procedures; party conventions to nominate presidential electors; candidates; organization; duties, and changing the state convention dates.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-21. Party conventions to nominate presidential electors; candidates; organization; duties.

1 Candidates for presidential electors shall be nominated by the delegated representatives of the political party assembled in a state convention to be held during the months of June, July or August next preceding any general election at which presidential electors are to be elected. The state executive committee of the political party, by resolution, shall designate the place and fix the date of such convention, shall prescribe the number of delegates thereto, and shall apportion the delegates among the several counties of the state in proportion to the vote cast in the state for the party’s candidate for governor at the last preceding general election at which a governor was elected. The state executive committee shall also ascertain and designate all offices for which candidates are to be nominated at such convention.

At least sixty days prior to the date fixed for holding any state convention, the chairman of the party’s state
Executive committee shall cause to be delivered to the party's county executive committee in each county of the state a copy of the resolutions fixing the time and place for holding the state convention and prescribing the number of delegates from each county to the convention. Within ten days after receipt of the copy of such resolutions, the party executive committee of each county shall meet and, by resolution, shall apportion the delegates to the state convention among the several magisterial districts of the county, on a basis of the vote received in the county by the candidate of the party for governor at the last preceding general election at which a governor was elected, but in such apportionment of county delegates each magisterial district shall be entitled to at least one delegate to such state convention. The party's county executive committee shall call a meeting of the members of the political party in mass convention in the several magisterial districts of the county, which district meeting shall be held at least thirty days prior to the date fixed for the state convention and at which meeting the members of the political party in each magisterial district shall elect the number of delegates to which such district is entitled in the state convention.

The meeting place in the magisterial district shall be as central and convenient as can reasonably be selected, and all recognized members of the political party shall be entitled to participate in any such mass convention and in the selection of delegates. Notice of the time and place of holding the several magisterial district mass conventions and of the person who shall act as temporary chairman thereof shall be given by publication as a Class II-O legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county. The first publication shall be made not more than fifteen days and the second publication shall be made not less than five days prior to the date fixed for holding the convention. The notice published shall specify the number of delegates which each magisterial district in the county is entitled to elect to the state convention.
Upon assembling, the mass convention of each magisterial district shall choose a chairman and a secretary, who, within five days after the holding of such convention, shall certify to the chairman of the state executive committee of the political party and the chairman of the county committee of the political party, the names and addresses of the parties selected as delegates to the state convention.

All contests over the selection of delegates to conventions shall be heard and determined by the party executive committee of the county from which the delegates are chosen, and such county executive committee shall, upon written petition of any contest, meet for such hearings and determinations within ten days after the holding of such magisterial district mass convention. The circuit court of the county and the supreme court of appeals of the state shall have concurrent original jurisdiction to review, by mandamus or other proper proceeding, the decision of a county executive committee in any contest.

The delegates chosen and certified by and from the several magisterial districts in the state, and, in the event of any contest, those prevailing in the contest, shall make up the state convention. The number present of those entitled to participate in any convention shall cast the entire vote to which the county is entitled in such convention, and it shall require a majority vote to nominate any candidate for office.

All nominations made at state conventions shall be certified within fifteen days thereafter, by the chairman and the secretary of the convention, to the secretary of state, who shall certify them to the clerk of the circuit court of each county concerned, and the names of the persons so nominated shall be printed upon the regular ballot to be voted at the ensuing general election, except that the names of the presidential elector candidates shall not be printed thereon.

The delegates to any state convention may formulate
96 and promulgate such party platform or declaration of
97 party principles as to them shall seem advisable.

CHAPTER 75

(Com. Sub. for S. B. 263—By Senator Boettner)

[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal article four-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact article four-c of said chapter; to repeal article three-b, chapter thirty of said code; to amend and reenact section nine, article fourteen, chapter seventeen-c of said code; to amend and reenact section one, article two-c, chapter twenty-two of said code; to amend and reenact section two, article six-a, chapter forty-nine of said code; and to amend article six, chapter sixty-one of said code by adding thereto a new section, designated section twenty, all relating to emergency medical services; providing a short title; purpose; definitions; establishing office of emergency medical services; establishing emergency medical services advisory council and providing for powers and duties; powers and duties of director under article; exempting certain vehicles and aircraft; providing standards for emergency medical service personnel; requirements for training programs; extension of certificates and temporary certificates; providing for refusal or suspension and revocation of certificates or temporary certificates and appeal therefrom; establishing liability for the cost of ambulance service; providing violations and criminal penalties; authorizing injunctive relief; listing services that may be performed by emergency medical service personnel; giving certain powers to emergency service personnel during emergency communications failures and disasters; limiting liability of providers of emergency medical services and requiring insurance in lieu thereof; limiting liability for failure to obtain consent; providing for person in charge in case of emergencies; providing the offense of obstructing emergency medical services personnel
and a criminal penalty therefor; allowing service reciprocity agreements for mutual aid; giving the director authority to restrict services by out-of-state providers; giving the director of the department of health authority to make regulations; providing for severability; prohibiting the following of authorized emergency vehicles; providing for emergency service personnel in coal mines; mandating emergency medical service personnel to report suspected child abuse and neglect; and providing the offense of falsely reporting an emergency incident and a criminal penalty therefor.

Be it enacted by the Legislature of West Virginia:

That article four-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that article four-c of said chapter be amended and reenacted; that article three-b, chapter thirty be repealed; that section nine, article fourteen, chapter seventeen-c of said code be amended and reenacted; that section one, article two-c, chapter twenty-two of said code be amended and reenacted; that section two, article six-a, chapter forty-nine of said code be amended and reenacted; and that article six, chapter sixty-one of said code be amended by adding thereto a new section, designated section twenty, all to read as follows:

Chapter


17C. Traffic Regulations and Laws of the Road.


61. Crimes and Their Punishment.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 4C. EMERGENCY MEDICAL SERVICES ACT.

§ 16-4C-1. Emergency medical services act.

§ 16-4C-2. Purposes of article.

§ 16-4C-3. Definitions.

§ 16-4C-4. Office of emergency medical services created; staffing.

§ 16-4C-5. Emergency medical services advisory council; duties, composition, appointment, meetings, compensation and expenses.

§ 16-4C-6. Powers and duties of director.

§ 16-4C-7. Vehicles, aircraft and persons aboard them exempted from requirements of article.
§16-4C-8. Standards for emergency medical service personnel.
§16-4C-9. Suspension or revocation of certificate or temporary certificate.
§16-4C-10. Notice of refusal, suspension or revocation of certificate; appeals to director; judicial review.
§16-4C-11. Liability for cost of ambulance service.
§16-4C-12. Violations; criminal penalties.
§16-4C-13. Actions to enjoin violations; injunctive relief.
§16-4C-14. Services that may be performed by emergency medical services personnel.
§16-4C-16. Limitation of liability; mandatory errors and omissions insurance.
§16-4C-17. Limitation of liability for failure to obtain consent.
§16-4C-18. Authority of emergency medical services personnel in charge of emergencies.
§16-4C-19. Obstructing emergency medical service personnel.
§16-4C-20. Service reciprocity agreements for mutual aid.
§16-4C-21. Restriction for provision of emergency medical services by out-of-state emergency medical service personnel or providers of emergency medical services.
§16-4C-22. Authority of the director to make regulations.

§16-4C-2. Purposes of article.

1 The Legislature finds and declares: (1) That the safe and efficient operation of life-saving and life-preserving emergency medical service to meet the needs of citizens of this state is a matter of general public interest and concern; (2) that, in order to ensure provision of adequate emergency medical services within this state for the protection of the public health, safety and welfare, it is imperative that minimum standards for emergency medical service personnel be established and enforced by the state; (3) that emergency medical service personnel should meet minimum training standards promulgated by the director; (4) that it is the public policy of this state to enact legislation to carry out these purposes and comply with minimum standards for emergency medical service personnel as specified herein; and (5) that any patient who receives emergency medical service and who is unable to consent thereto should be liable for the reasonable cost of such service.

§16-4C-3. Definitions.

1 As used in this article, unless the context clearly requires a different meaning:
“Ambulance” means any privately or publicly owned vehicle or aircraft which is designed, constructed or modified; equipped or maintained; and operated for the transportation of patients.

“Ambulance service” means the transportation, and treatment at the site of pickup and en route, of a patient to or from a place where medical, hospital or clinical service is normally available.

“Council” means the emergency medical service advisory council created pursuant to section five of this article.

“Director” means the director of health.

“Emergency medical services” means all services which are set forth in P.L. 93-154 “The Emergency Medical Services Act of 1973” and those included in and made a part of the emergency medical services plan of the department of health inclusive of, but not limited to, caring for and giving life-saving or life-preserving treatment to a patient.

“Emergency medical service personnel” means any person certified by the director to provide emergency medical services as set out in section eight of this article and includes, but is not limited to, emergency medical service attendants, emergency medical technicians, emergency medical technicians-ambulance, emergency medical technicians-intermediate, mobile intensive care paramedics, emergency medical technician-paramedics, physicians, osteopathic physicians, persons certified to provide cardiopulmonary resuscitation, registered nurses and licensed practical nurses who have been trained in first aid, or other licensed or certified health providers who meet the standards and training requirements as determined by the director.

“Emergency medical service attendant” means a person certified by the director to render such emergency medical services as are authorized for such emergency medical service attendant in section eight of this article.

“Emergency medical technician” means a person certified by the director to render such emergency medical services as are authorized for such emergency medical technician in section eight of this article.
"Emergency medical technician-ambulance" means a person certified by the director to render such emergency medical services as are authorized for such emergency medical technician-ambulance in section eight of this article.

"Emergency medical technician-intermediate" means a person certified by the director to render such emergency medical services as are authorized for such emergency medical technician-intermediate in section eight of this article.

"Mobile intensive care paramedic" means a person certified by the director to render such emergency medical services as are authorized for such mobile intensive care paramedic in section eight of this article.

"Emergency medical technician-paramedic" means a person certified by the director to render such emergency medical services as are authorized for such emergency medical technician-paramedic in section eight of this article.

"Emergency medical service provider" means any authority, person, corporation, partnership or other entity, public or private, which owns or operates an ambulance and which provides emergency medical service in this state.

"Governing body" has the meanings ascribed to it as applied to a municipality in subdivision (1), subsection (b), section two, article one, chapter eight of this code.

"Line officer" means the emergency medical service personnel, present at the scene of an accident, injury or illness, who has taken the responsibility for patient care.

"Medical command" means the issuing of orders by a physician or osteopathic physician from a medical facility to emergency medical service personnel for the purpose of providing appropriate patient care.

"Municipality" has the meaning ascribed to it in subdivision (1), subsection (a), section two, article one, chapter eight of this code.

"Patient" means any sick, injured, wounded or otherwise
incapacitated or helpless person, or an expectant mother who needs medical, hospital or clinical service under an existing or imminent emergency situation.

“Service reciprocity” means the provision of emergency medical services to citizens of this state by emergency medical service personnel certified to render such services by a neighboring state.

“Small emergency medical service provider” means any emergency medical service provider which is made up of less than twenty emergency medical service personnel.

§16-4C-4. Office of emergency medical services created; staffing.

1 There is hereby created within state government under the director of the department of health an office to be known as the office of emergency medical services.

4 The director may employ such technical, clerical, stenographic and other personnel as may be necessary to carry out the purposes of this article. Such personnel may be paid from funds appropriated therefor or from such other funds as may be made available for carrying out the purposes of this article.

10 The office of emergency medical services as created by former section four, article four-d of this chapter, shall continue in existence as the office of emergency medical services established by this section.

§16-4C-5. Emergency medical services advisory council; duties, composition, appointment, meetings, compensation and expenses.

1 The emergency medical service advisory council, heretofore created and established by former section seven of this article, shall be continued for the purpose of developing, with the director, standards for emergency medical service personnel and for the purpose of providing advice to the office of emergency medical services and the director thereof, as established by section four of this article with respect to reviewing and making recommendations for and providing assistance to the establishment and
maintenance of adequate emergency medical services for all portions of this state.

The council shall have the duty to advise the director in all matters pertaining to his duties and functions in relation to carrying out the purposes of this article.

The council shall be composed of thirteen members appointed by the governor by and with the advice and consent of the Senate. Within twenty days of the effective date of this act the West Virginia professional paramedic and EMT association shall submit to the governor a list of six names of representatives from their association and a list of three names shall be submitted to the governor of representatives of their respective organizations by the West Virginia association of county officials, West Virginia state firemen's association, West Virginia hospital association, West Virginia state medical association, West Virginia chapter of the American college of emergency physicians, West Virginia emergency medical services administrators association and the state department of education. Within thirty days of the effective date of this act the governor shall appoint from the respective lists submitted two persons who represent the West Virginia professional paramedic and EMT association, and one person from the West Virginia association of county officials, West Virginia state firemen's association, West Virginia hospital association, West Virginia state medical association, West Virginia chapter of the American college of emergency physicians, West Virginia emergency medical services administrators association and the state department of education. The governor shall in addition appoint one person to represent emergency medical service providers operating within the state, one person to represent small emergency medical service providers operating within this state and two persons to represent the general public.

The council shall choose its own chairman and meet at the call of the director at least quarterly.

The members of such council may be reimbursed for any and all reasonable and necessary expenses actually incurred in the performance of their duties.
§16-4C-6. Powers and duties of director.

The director shall have the following powers and duties:

(a) In accordance with chapter twenty-nine-a of this code, to promulgate rules and regulations regarding the age, training, retraining, testing and certification and recertification of emergency medical service personnel: Provided, That the director may not promulgate any rule or regulation until it is approved by the emergency medical services advisory council. The council shall take no action unless a quorum is present.

(b) To apply for, receive and expend advances, grants, contributions and other forms of assistance from the state or federal government or from any private or public agencies or foundations to carry out the provisions of this article.

(c) To design, develop and annually review a statewide emergency medical services implementation plan. Such plan shall recommend aid and assistance and all other such acts as shall be necessary to carry out the purposes of this article:

(1) To encourage local participation by area, county and community officials and area and regional emergency medical services boards of directors; and

(2) To develop a system for monitoring and evaluating emergency medical services programs throughout the state.

(d) To provide professional and technical assistance and to make information available to regional and area emergency medical services boards of directors and other potential applicants or program sponsors of emergency medical services for purposes of developing a statewide system of such services.

(e) To assist local government agencies or area and regional emergency medical services boards of directors and other public or private entities in obtaining federal, state or other available funds and services.

(f) To cooperate and work with federal, state and local governmental agencies, private organizations and other
entities as may be necessary to carry out the purposes of this article.

(g) To acquire in the name of the state by grant, purchase, gift, devise or any other methods such appropriate real and personal property as may be reasonable and necessary to carry out the purposes of this article.

(h) To make grants and allocations of funds and property so acquired or which may have been appropriated to such agency to other agencies of state and local government as may be appropriate to carry out the purposes of this article.

(i) To expend and distribute by grant or bailment such funds and property to all such state and local agencies for the purpose of performing the duties and responsibilities of such agency all such funds which it may have so acquired or which may have been appropriated by the Legislature of this state.

(j) To develop a program to inform the public concerning emergency medical services programs.

(k) To review and disseminate information regarding federal grant assistance relating to emergency medical services.

(l) To prepare and submit to the governor and Legislature recommendations for legislation in the area of emergency medical services.

(m) To review and make recommendations for and to assist or aid in all projects and programs which provide for emergency medical services regardless of whether or not such projects or programs are funded through the office of emergency medical services. Such review and approval shall be required for all emergency medical services projects, programs or services for which application is made to receive state or federal funds for their operation after the effective date of this bill.

(n) To take all necessary and appropriate action to encourage and foster the cooperation of all emergency medical service providers and facilities within this state.
Nothing in this article shall be construed to allow the director to dissolve, invalidate or eliminate any existing EMS program or ambulance providers in service at the time of adoption of the amendment to this article in the regular session of the Legislature in the year one thousand nine hundred eighty-four, or to deny them fair access to federal and state funding and to medical facilities and training programs, nor require an EMS program serving any community and having thirty or fewer active volunteers to have more than one person who is certified as an emergency medical service personnel notwithstanding the provisions of section eight of this article or any other provision of this code.

§16-4C-7. Vehicles, aircraft and persons aboard them exempted from requirements of article.

(a) Privately owned vehicles and aircraft not ordinarily used in the business or service of transporting patients.

(b) Vehicles and aircraft used as ambulances in case of a catastrophe or emergency when the ambulances normally staffed by certified emergency medical service personnel based in the locality of the catastrophe or emergency are insufficient to render the service required.

(c) Ambulances based outside this state, except that emergency medical service personnel aboard any such ambulance receiving a patient within this state for transportation to a location within this state must comply with the provisions of this article and the rules promulgated pursuant to it except in the event of a catastrophe or emergency when the ambulances normally staffed by certified emergency medical service personnel based in the locality of the catastrophe or emergency are insufficient to render the services required.

(d) Ambulances owned by or operated under the direct control of a governmental agency of the United States.
(e) Vehicles and aircraft designed primarily for rescue operations which do not ordinarily transport patients.

§16-4C-8. Standards for emergency medical service personnel.

1. (1) After the first day of January, one thousand nine hundred eighty-five, every ambulance which provides ambulance service or emergency medical services shall carry two persons who are certified as emergency medical service personnel, one of which personnel shall be in the patient compartment at all times when a patient is being transported by such ambulance. As a minimum, of the personnel carried by any ambulance operated by any emergency medical service provider, one shall be trained in cardiopulmonary resuscitation and one shall be certified as an emergency medical service attendant.

2. (2) After the first day of July, one thousand nine hundred eighty-six, at least one of the emergency medical services personnel referred to in the immediately preceding subsection shall be minimally certified as an emergency medical technician-ambulance on any emergency call and such person shall be in the patient compartment at all times a patient is being transported.

As a minimum, the training for each class of emergency medical service personnel shall include

(a) Emergency medical service attendant: Shall have earned and possess valid certificates from the department or by authorities recognized and approved by the director in advanced first aid or equivalent training and cardiopulmonary resuscitation.

(b) Emergency medical technician: Shall have successfully completed the course on emergency care of the sick and injured established by the director or by authorities recognized and approved by the director.

(c) Emergency medical technician-ambulance: Shall have successfully completed the course for certification as an emergency medical technician-ambulance as established by the director or authorities recognized and approved by the director.
(d) Emergency medical technician-intermediate: Shall have successfully completed the course for certification as an emergency medical technician-ambulance and such other course of study and certification as may be established by the director.

(e) Mobile intensive care paramedic: Shall have successfully completed the course for certification as a mobile intensive care paramedic and such other course of study and certification as may be established by the director.

(f) Emergency medical technician-paramedic: Shall have completed the course for certification as an emergency medical technician-paramedic and such other course of study and certification as may be established by the director.

The foregoing shall not be considered to limit the power of the director to prescribe training, certification and recertification standards.

State and county continuing education and recertification programs for all levels of emergency medical service providers shall be available to emergency medical service providers at a convenient site within the county in which the emergency medical service provider operates, or in an adjacent county within thirty minutes travel time of the provider's primary place of operation. Such continuing education programs shall be provided free of charge by the department of health to all nonprofit emergency medical service providers.

(3) Any person desiring emergency medical services personnel certification shall apply to the director using forms and procedures prescribed by the director. Upon receipt of such application, the director shall determine if the applicant meets the requirements for certification and examine the applicant, as in his discretion, is necessary to make such a determination. If it is determined that the applicant meets all of the requirements, the director shall issue an appropriate emergency medical service personnel certificate to the applicant. Emergency medical service personnel certificates issued by the director shall be valid
for a period not to exceed three years from the date of their issuance unless sooner suspended or revoked by the director. Certificates may be renewed for additional periods not to exceed three years after review and determination by the director that such holder meets the requirements established for emergency medical service personnel.

The director may issue a temporary emergency medical service personnel certificate to an applicant, with or without examination of the applicant, when he finds such issuance to be in the public interest. Unless sooner suspended or revoked a temporary certificate shall be valid initially for a period not exceeding one hundred twenty days and it shall not be renewed thereafter unless the director finds such renewal to be in the public interest:

Provided, That the expiration date of any such temporary certificate issued shall be extended until the holder of such certificate is afforded at least one opportunity to take an emergency medical services personnel training course within the general area where he serves as an emergency medical service personnel, but the expiration date shall not be extended for any longer period of time or for any other reason.

The director may, on petition from an emergency medical service provider, squad, ambulance authority or county commission, grant an extension for compliance with paragraphs (1) and (2) of this section where circumstances prevent such emergency medical service provider, squad, ambulance authority or county commission from meeting the time frames indicated. Such extension shall be for no longer than twelve calendar months from the date of the request, and the request for extension must include such information as may be required by the director to determine if all reasonable efforts have been made to comply with this section. No petitioner shall be granted more than one extension under this section.

§16-4C-9. Suspension or revocation of certificate or temporary certificate.

(a) The director may at any time upon his own motion, and shall, upon the verified written complaint of any
person, cause an investigation to be conducted to determine whether there are any grounds for the suspension or revocation of a certificate or temporary certificate issued under the provisions of this article.

(b) The director shall suspend or revoke any certificate or temporary certificate when he finds the holder thereof has:

(1) Obtained a certificate or temporary certificate by means of fraud or deceit; or

(2) Been grossly incompetent and/or grossly negligent as defined by the director in accordance with rules and regulations or by prevailing standards of emergency medical services care; or

(3) Failed or refused to comply with the provisions of this article or any reasonable rule and regulation promulgated by the director hereunder or any order or final decision of the director.

(c) The director shall suspend or revoke any certificate or temporary certificate if he finds the existence of any grounds which would justify the denial of an application for such certificate or temporary permit if application were then being made for it.

§16-4C-10. Notice of refusal, suspension or revocation of certificate; appeals to director; judicial review.

An application for an original emergency medical service personnel certificate, for the renewal of an emergency medical service personnel certificate or for a temporary emergency medical service personnel certificate, shall be acted upon by the director and the director's certificate delivered or mailed, or a copy of any order of the director denying any such application delivered or mailed to the applicant, by the director within fifteen days after the date upon which such application including test scores, if applicable, was received by the director.

Whenever the director refuses to issue an emergency medical service personnel certificate or a temporary emergency medical service personnel certificate, or
suspends or revokes an emergency medical service personnel certificate, or a temporary emergency medical service personnel certificate, he shall make and enter an order to that effect, which order shall specify the reasons for such denial, suspension or revocation, and shall cause a copy of such order to be served in person or by certified mail, return receipt requested, on the applicant or certificate holder, as the case may be.

Whenever a certificate is suspended or revoked, the director shall in the order of suspension or revocation direct the holder thereof to return his certificate to the director. It shall be the duty of such certificate holder to comply with any such order following expiration of the period provided for an appeal to the director.

Any applicant or certificate holder, as the case may be, adversely affected by an order made and entered by the director may appeal to the director for an order vacating or modifying such order or for such order as the director should have entered. The person so appealing shall be known as the appellant. An appeal shall be perfected by filing a notice of appeal with the director within ten days after the date upon which the appellant received the copy of such order. The notice of appeal shall be in such form and contain such information as may be prescribed by the director, but in all cases shall contain a description of any order appealed from and the grounds for said appeal. The filing of the notice of appeal shall operate to stay or suspend execution of any order which is the subject matter of the appeal. All of the pertinent provisions of article five, chapter twenty-nine-a of this code apply to and govern the hearing on appeal and the administrative procedures in connection with and following such hearing, with like effect as if the provisions of said article five, chapter twenty-nine-a of this code were set forth in extenso herein.

The director shall set a hearing date which shall be not less than ten days after he received the notice of appeal unless there is a postponement or continuance. The director may postpone or continue any hearing on his own motion, or for good cause shown upon the application of the appellant. The appellant shall be given notice of said hearing in person
or by certified mail, return receipt requested. Any such hearing shall be held in Charleston, Kanawha County, West Virginia, unless another place is specified by the director.

After such hearing and consideration of all of the testimony, evidence and record in the case, the director shall make and enter an order affirming, modifying or vacating his initial order or shall make and enter any new order. Such order shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code, and a copy of such order and accompanying findings and conclusions shall be served upon the appellant, in person or by certified mail, return receipt requested. The order of the director shall be final unless vacated or modified upon judicial review thereof.

Any appellant adversely affected by a final order made and entered by the director is entitled to judicial review thereof. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code shall apply to and govern such review with like effect as if the provisions of said section four, article five, chapter twenty-nine-a of this code were set forth in extenso herein. The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals in accordance with the provisions of section one, article six, chapter twenty-nine-a of this code.

§16-4C-11. Liability for cost of ambulance service.

Any patient who receives ambulance service and who is unable to give his consent to or contract for the service, whether or not he has agreed or consented to liability for the service, shall be liable in implied contract to the entity providing the ambulance service for the cost thereof.

Any person who receives ambulance service upon his request for such service shall be liable for the cost thereof.

§16-4C-12. Violations; criminal penalties.

Any person who operates an ambulance with an insufficient number of emergency medical service personnel aboard when not lawfully permitted to do so, or
who represents himself as a certified emergency medical
service personnel knowing such representation to be untrue,
shall be guilty of a misdemeanor, and, upon conviction
thereof, shall be fined not less than one hundred dollars nor
more than one thousand dollars.

§16-4C-13. Actions to enjoin violations; injunctive relief.
1 Whenever it appears to the director that any person has
been or is violating or is about to violate any provisions of
this article or any final order of the director, the director
may apply in the name of the state, to the circuit court of the
county in which the violation or violations or any part
thereof has occurred, is occurring or is about to occur, for an
injunction against such person and any other persons who
have been, are or are about to be, involved in, or in any way
participating in, any practices, acts or omissions, so in
violation, enjoining such person or persons from any such
violation or violations. Such application may be made and
prosecuted to conclusion whether or not any such violation
or violations have resulted or shall result in prosecution or
conviction under the provisions of section twelve of the
article.
16 Upon application by the director, the circuit courts of this
state may by mandatory or prohibitory injunction compel
compliance with the provisions of this article and all final
orders of the director.
20 The circuit court may issue a temporary injunction in any
case pending a decision on the merits of any application
filed.
23 The judgment of the circuit court upon any application
permitted by the provisions of this section shall be final
unless reversed, vacated or modified on appeal to the
supreme court of appeals. Any such appeal shall be sought
in the manner and within the time provided by law for
appeals from circuit courts in other civil cases.

§16-4C-14. Services that may be performed by emergency
medical services personnel.
1 Notwithstanding any other provision of law, emergency
medical service personnel, by each class, may provide the
following care:
4 (1) Emergency medical services attendant — Render basic first-aid and cardiopulmonary resuscitation and other services as are established by the director.

7 (2) Emergency medical technician — Render care which may be performed by an emergency medical services attendant, and other services as are established by the director.

10 (3) Emergency medical technician-ambulance — Render the care permitted which may be performed by an emergency medical service attendant and an emergency medical technician, and in addition, other services as are established by the director.

13 (4) Emergency medical technician-intermediate — Render the care permitted which may be performed by an emergency medical service attendant, an emergency medical technician and emergency medical technician-ambulance, and in addition, upon the order of a medical command physician or surgeon and other services as are established by the director.

16 (5) Mobile intensive care paramedic — Render care which may be performed by an emergency medical service attendant, an emergency medical technician, emergency medical technician-ambulance, emergency medical technician-intermediate; and, in addition, upon order of a medical command physician or surgeon, perform any other services as are established by the director.

20 (6) Emergency medical technician-paramedic — Render care which may be performed by an emergency medical service attendant, an emergency medical technician, an emergency medical technician-ambulance, emergency medical technician-intermediate, mobile intensive care paramedic, and in addition, upon order of a medical command physician or surgeon, perform any other services as are established by the director.


1 (1) If radio or telephone communications between an
emergency medical technician-intermediate, a mobile
intensive care paramedic or an emergency medical
technician-paramedic and physician fail during an
emergency situation, such emergency medical technician-
intermediate, mobile intensive care paramedic or
emergency medical technician-paramedic may perform any
procedure for which such emergency medical technician-
intermediate, mobile intensive care paramedic or
emergency medical technician-paramedic is authorized by
section fourteen of this article if in the judgment of the
emergency medical technician-intermediate, mobile
intensive care paramedic or emergency medical technician-
paramedic the life of the patient is in immediate danger and
such care is required to preserve life.

(2) In the event of a disaster or other occurrence where
the communication system between emergency medical
technician-intermediate, mobile intensive care paramedic
or emergency medical technician-paramedic and physician
is unable to adequately convey individual direction to the
emergency medical technician-intermediate, mobile
intensive care paramedic or emergency medical technician-
paramedic, such emergency medical technician-
intermediate, mobile intensive care paramedic or
emergency medical technician-paramedic may perform
such services as are authorized by section fourteen of this
article without direct voice contact with a medical
command physician or written order of a medical command
physician, and may release immediate control of such
patient upon whom such services have been performed to
any emergency medical services personnel in order that
such emergency medical technician-intermediate, mobile
intensive care paramedic or emergency medical technician-
paramedic may provide immediate services to other
patients affected by such disaster or such other occurrence.

(3) In the event that services are provided under the
circumstances contemplated by this section, such
emergency medical technician-intermediate, mobile
intensive care paramedic or emergency medical technician-
paramedic shall, within five days of the providing of such
services, make a report to the director on forms prescribed
by the director of what services were performed, the
identity of the patient or patients upon whom such services were performed and the circumstances justifying the provision of such services and such other information as may be required by the director.

§16-4C-16. Limitation of liability; mandatory errors and omissions insurance.

1 (1) On and after the first day of July, one thousand nine hundred eighty-five, every person, corporation, ambulance service, emergency medical service provider, emergency ambulance authority, emergency ambulance service, or other persons which employ emergency medical services personnel with or without wages for ambulance service or provides ambulance service in any manner, shall obtain a policy of insurance insuring such person or entity and every employee, agent or servant thereof, against loss from the liability imposed by law for damages arising from any error or omission in the provision of emergency medical services as enumerated by this article, in an amount no less than one hundred thousand dollars per incident.

2 (2) No emergency medical services personnel or emergency medical services provider shall be liable for civil damages or injuries in excess of the amounts for which such persons or entities are actually insured, unless such damages or injuries are intentionally or maliciously inflicted.

3 (3) Every person or entity required to obtain a policy of insurance as contemplated by this section, shall furnish to the director on or before the first day of January of each calendar year proof of the existence of the policy of insurance required by this section.

4 (4) In the event that any such person or entity fails to secure a policy of insurance on or before the first day of July, one thousand nine hundred eighty-five, or before such person or entity undertakes the provision of emergency medical services or ambulance services, whichever shall occur last, and keep such policy of insurance in force thereafter, that person or entity is not entitled to the limited immunity created by subsection (2): Provided, That any physician or surgeon, who gives instructions to emergency
34 medical service personnel without being compensated therefor, or who treats any patient transported in an ambulance or treats any patient prior to such transport, without being compensated therefor, shall be entitled to the limited immunity provided in subsection (2) of this section.

§16-4C-17. Limitation of liability for failure to obtain consent.

1 No emergency medical services personnel may be subject to civil liability, based solely upon failure to obtain consent in rendering emergency medical services to any individual regardless of age where the patient is unable to give his consent for any reason, including minority, and where there is no other person reasonably available who is legally authorized to consent to the providing of such care or who is legally authorized to refuse to consent to the providing of such care.

10 Nothing in this article shall be construed to require medical treatment or transportation for any adult in contravention of his or her stated objection thereto upon religious grounds.

§16-4C-18. Authority of emergency medical services personnel in charge of emergencies.

1 When any department, agency or entity which provides emergency medical services under the authority of this article is responding to, operating at or returning from emergencies, any emergency medical services personnel serving in the capacity of an emergency medical services line officer in charge, shall control and direct the providing of emergency medical services. The emergency medical service personnel serving in the capacity of an emergency medical services line officer shall determine whether a patient shall be transported from the emergency scene, determine what care shall be rendered prior to such transport, determine what appropriate facility to which such patient shall be transported, and otherwise fully direct and control the providing of emergency medical services and patient care.

16 Nothing included in this section shall be construed to restrict or interfere with the authority of a fire officer in
18 charge to supervise or direct those fire department
19 personnel under his command or to restrict any person from
20 entering a hazardous area for which such fire officer has
21 assumed the responsibility.

§16-4C-19. Obstructing emergency medical service per-
sonnel.
1 Any person who knowingly or intentionally obstructs or
2 interferes with emergency medical services or rescue
3 personnel performing or attempting to perform functions or
4 duties as emergency medical services or rescue personnel
5 shall be guilty of a misdemeanor, and, upon conviction
6 thereof, shall be fined not more than one thousand dollars
7 or confined in the county jail for a period not exceeding one
8 year, or both fined and confined.

§16-4C-20. Service reciprocity agreements for mutual aid.
1 Any persons or entities providing lawful emergency
2 medical services under the provisions of this article are
3 hereby authorized in their discretion to enter into and
4 renew service reciprocity agreements, for such period as
5 they may deem advisable, with the appropriate emergency
6 medical services providers, county, municipal or other
7 governmental units or in counties contiguous to the state of
8 West Virginia in the state of Ohio, the commonwealth of
9 Pennsylvania, the state of Maryland, the commonwealth of
10 Virginia or the commonwealth of Kentucky, in order to
11 establish and carry into effect a plan to provide mutual aid
12 across state lines, through the furnishing of properly
13 certified personnel and equipment for the provision of
14 emergency medical services in this state and such counties
15 contiguous to this state upon written approval by the
16 director.

17 No such person or entity may enter into any such
18 agreement unless the agreement provides that each of the
19 parties to such agreement shall waive any and all claims
20 against the other parties thereto, which may arise out of
21 their activities outside of their respective jurisdictions
22 under such agreement and shall indemnify and save
23 harmless the other parties to such agreement from all
24 claims by third parties for property damages or personal
25 injuries which may arise out of the activities of the other
26 parties to such agreement outside their respective
27 jurisdictions under such agreement.

28 The director is hereby authorized to enter into service
29 reciprocity agreements with appropriate officials in other
30 states for the purpose of providing emergency medical
31 services to the citizens of this state by emergency medical
32 service personnel properly certified in their respective state
33 or states. A formal agreement between the director and an
34 authorized official of another state must be in effect prior to
35 such service being provided. Individual certification of
36 other state emergency medical service personnel is not
37 required for purposes of providing services to West Virginia
38 citizens following the creation of such agreement by the
39 responsible officials.

§16-4C-21. Restriction for provision of emergency medical
services by out-of-state emergency medical service personnel or providers of emergency medical services.

1 The director may issue an order on his own motion upon
2 written request of any emergency medical service provider
3 or county commission in this state, to restrict an out-of-state
4 provider of emergency medical services or an out-of-state
5 emergency medical service personnel to a particular
6 geographic area of the state of West Virginia or prohibit
7 such provider or personnel from providing emergency
8 medical services within the borders of this state when in the
9 opinion of the director such services are not required or do
10 not meet the standards set forth herein or those established
11 by rules and regulations as authorized by this article.

§16-4C-22. Authority of the director to make regulations.

1 The director is hereby authorized and empowered to
2 make regulations pursuant to the procedures established in
3 chapter twenty-nine-a of this code for the purpose of
4 carrying out the purposes of this article.
CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.

ARTICLE 14. MISCELLANEOUS RULES.

§17C-14-9. Following authorized emergency vehicles.

1 The driver of any vehicle other than one on official business may not follow any authorized emergency vehicle traveling in response to a fire alarm or other emergency closer than five hundred feet or drive into or park such vehicle within the block where such authorized emergency vehicle has stopped in answer to a fire alarm or other emergency.

CHAPTER 22. MINES AND MINERALS.

ARTICLE 2C. EMERGENCY MEDICAL PERSONNEL.

§22-2C-1. Emergency personnel in coal mines.

1 (a) Emergency medical services personnel shall be employed on each shift at every mine that: (1) Employs more than ten employees and (2) more than eight persons are present on the shift. Said emergency medical services personnel shall be employed at their regular duties at a central location, or when more than one such person is required pursuant to subsection (b) or (c) at locations, convenient for quick response to emergencies; and further shall have available to them at all times such equipment as shall be prescribed by the director, in consultation with the director of the department of health.

12 (b) Until the first day of July, one thousand nine hundred eighty-five, emergency medical services personnel shall be defined as a medical service attendant as defined in article four-c, chapter sixteen of this code, paramedic as defined in article three-b, chapter thirty of this code, or physician assistant as defined in article three-a, chapter thirty of this code. At least one emergency medical services personnel shall be employed at a mine for every seventy employees or any part thereof who are engaged at one time, in the extraction, production or preparation of coal.

22 (c) After the first day of July, one thousand nine hundred eighty-five, emergency medical services personnel
shall be defined as a person who is certified as an emergency medical technician-mining, emergency medical technician, emergency medical technician-ambulance, emergency medical technician-intermediate, mobile intensive care paramedic, emergency medical technician-paramedic as defined in section three, article four-c, chapter sixteen of this code, or physician assistant as defined in section sixteen, article three-a, chapter thirty of this code. At least one emergency medical services personnel shall be employed at a mine for every fifty employees or any part thereof who are engaged at any time, in the extraction, production or preparation of coal.

(d) A training course designed specifically for certification of emergency medical technician-mining shall be developed at the earliest practicable time by the director of health in consultation with the board of miner training, education and certification. The training course for initial certification as an emergency medical technician-mining shall not be less than sixty hours, which shall include, but is not limited to, mast trouser application, basic life support skills and emergency room observation or other equivalent practical exposure to emergencies as prescribed by the director of the department of health.

(e) The maintenance of a valid emergency medical technician-mining certificate may be accomplished without taking a three year recertification examination provided that such emergency medical technician-mining personnel completes an eight hour annual retraining and testing program prescribed by the director of health in consultation with the board of miner training, education and certification.

(f) All emergency medical services personnel currently certified as emergency medical service attendant, emergency medical technician shall receive certification as emergency medical technicians without further training and examination for the remainder of their three year certification period; such emergency medical service attendant, emergency medical technician may upon expiration of such certification become certified as an emergency medical technician-mining upon completion of
the eight hour retraining program referred to in subsection (e) above.

CHAPTER 49. CHILD WELFARE.

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

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

1 When any medical, dental or mental health professional, Christian Science practitioner, religious healer, school teacher or other school personnel, social service worker, child care or foster care worker, emergency medical services personnel, peace officer or law-enforcement official has the reasonable cause to suspect that a child is neglected or abused or observes the child being subjected to conditions that are likely to result in abuse or neglect, such person shall immediately report the circumstances or cause a report to be made to the state department of human services: 

Provided, That any person required to report under this article who is a member of the staff of a public or private institution, school, facility or agency shall immediately notify the person in charge of such institution, school, facility or agency or a designated agent thereof, who shall report or cause a report to be made. However, nothing in this article is intended to prevent individuals from reporting on their own behalf.

In addition to those persons and officials specifically required to report situations involving suspected abuse or neglect of children, any other person may make a report if such person has reasonable cause to suspect that a child has been abused or neglected in a home or institution or observes the child being subjected to conditions or circumstances that would reasonably result in abuse or neglect.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 6. CRIMES AGAINST THE PEACE.
§61-6-20. Falsely reporting an emergency incident.

1 A person is guilty of reporting a false emergency incident when, knowing the information reported, conveyed or circulated is false or baseless, he:

4 (1) Initiates or circulates a false report or warning of or impending occurrence of a fire, explosion, crime, catastrophe, accident, illness or other emergency under circumstances in which it is likely that public alarm or inconvenience will result or that firefighting apparatus, ambulance apparatus, one or more rescue vehicles or other emergency apparatus might be summoned; or

11 (2) Reports, by word or action, to any official or quasi-official agency or organization having the function of dealing with emergencies involving danger to life or property, an alleged occurrence or impending occurrence of a fire, explosion, crime, catastrophe, accident, illness or other emergency in which it is likely that public alarm or inconvenience will result or that firefighting apparatus, ambulance apparatus, one or more rescue vehicles or other emergency apparatus might be summoned, which did not occur, does not in fact exist; or

21 (3) Reports to a law-enforcement officer or agency the alleged occurrence of any offense or incident which did not in fact occur or an allegedly impending occurrence of an offense or incident which is not in fact about to occur or false information relating to an actual offense or incident or to the alleged implication of some person therein; or

27 (4) Without just cause, calls or summon by telephone, fire alarm system or otherwise, any firefighting apparatus, ambulance apparatus, rescue vehicles or other emergency vehicles.

Any person who violates this section is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five hundred dollars or confined in the county jail not more than six months, or both fined and confined.
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 the employee suggestion award board; composition of 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 or his designee, the commissioner of the department of labor or his designee, 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 or his designee. 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.
thousand nine hundred thirty-one, as amended; to amend
and reenact section one, article three-a of said chapter forty-
four; to further amend said article three-a by adding thereto
a new section, designated section four-a; and to amend and
reenact section forty-three of said article three-a, all
relating to waiver of final settlement of estates; county
election on optional system for settlement of estates;
providing for settlement by short form; and applications by
fiduciary supervisor to county commission for additional
funds.

Be it enacted by the Legislature of West Virginia:

That section twenty-nine, article two, chapter forty-four of the
code of West Virginia, one thousand nine hundred thirty-one, as
amended, be amended and reenacted; that section one, article
three-a of said chapter forty-four be amended and reenacted;
that said article three-a be further amended by adding thereto a
new section, designated section four-a; and that section forty-
three of said article three-a 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 DECEDE NT S.

§44-2-29. Waiver of final settlement.

1 In all estates of decedents subject to administration under
2 this article where an inheritance tax release has been filed
3 with the clerk and more than ninety days has elapsed since
4 the filing of any notice required by section one of this
5 article, a final settlement may be waived by a waiver
6 containing an affidavit made by the personal
7 representative, that the time for filing of claims has expired,
8 that no known and unpaid claims exist against the estate,
9 and that all heirs have each been advised of the share or
10 shares to which each is entitled from the estate and signed
11 (1) in the case of an estate having a sole beneficiary, by such
12 sole beneficiary or (2) in the case of multiple beneficiaries,
13 every beneficiary.
In the case of a beneficiary under a disability, the duly qualified personal representative of such beneficiary, may sign in lieu of such beneficiary. A personal representative signing such waiver shall be responsible to his or her cestui que trust for any loss resulting from such waiver.

The waiver shall be recorded as in the case of and in lieu of a settlement.

ARTICLE 3A. OPTIONAL PROCEDURE FOR PROOF AND ALLOWANCE OF CLAIMS AGAINST ESTATES OF DECEDENTS; COUNTY OPTION.

§44-A-1. Election to make article applicable.


§44-A-1. Election to make article applicable.

(a) Any county commission which has not heretofore elected to proceed under provisions of this article may do so in accord with this section.

(b) If at any time the county commission, by order entered of record, makes a preliminary determination to proceed under the provisions of this article, it shall in such order fix a time for public hearing not less than thirty nor more than forty-five days after the entry of such order and cause to be published as a Class II-O legal advertisement, as provided in section two, article three, chapter fifty-nine of the code, setting forth the reasons for the hearing, its date, place and time, and the fact that the county commission has made a preliminary determination to proceed under this article. The notice shall also recite that within fifteen days after the public hearing the court, after consideration of the following factors, will make a final determination whether to proceed under this article:

(1) The relatively expeditious and efficient administration and settlement of estates;

(2) The relative cost and convenience to the public and to the estates;

(3) Whether the fees provided under this article would be insufficient to fund the salary and expenses of a
fiduciary supervisor as described in this article of this
chapter;

(4) Whether the county commission and the public
interest is served by the availability of the unsupervised
administration of estates having sole beneficiaries based
upon the local needs of the county;

(5) The availability of physical facilities necessary for
the administration of this article.

(c) At the hearing the county commission shall receive
both written and oral comment from any citizen upon the
desirability of proceeding under the provisions of this
article. It may limit the time for oral presentations and
permit additional written presentations to be filed up to
three days after the hearing.

(d) Within sixty days of the entry of its preliminary
determination order, the court shall enter an order either
withdrawing its preliminary determination or finally
confirming such determination, which order confirming
shall be effective the first day of the next month which is
more than twenty days next following entry of such order,
and shall order that the provisions of this article are
thereafter applicable to proceedings held in such county.

(e) The county commission shall make such orders for
the closing of estates opened prior to the effective date of
the order confirming the commission’s determination that
the provisions of this article be applicable to proceedings in
the county as it may deem expedient which are not
inconsistent with the express provisions of this chapter.

§44-3A-4a. Short form settlement.

In all estates of decedents administered under the
provisions of this article where an inheritance tax release
has been filed with the clerk and more than one hundred
twenty days has elapsed since the filing of any notice
required by section four, an estate may be closed by a short
form settlement filed in compliance with this section.

The fiduciary may file with the fiduciary supervisor a
proposed short form settlement which shall contain an
affidavit made by the fiduciary that the time for filing claims has expired, that no known and unpaid claims exist against the estate and showing the allocation to which each distributee and beneficiary is entitled in the distribution of the estate and contain a representation that the property to which each distributee or beneficiary is entitled has been or upon approval of the settlement will be delivered thereto, or that each distributee and beneficiary has agreed to a different allocation. The application shall contain a waiver signed by each distributee and beneficiary.

Such waiver may be signed in the case of a distributee or beneficiary under a disability by the duly qualified personal representative of such distributee or beneficiary. A personal representative signing such waiver shall be responsible to his or her cestui que trust for any loss resulting from such waiver.

The fiduciary supervisor shall examine the affidavit and waiver and determine that the allocation to the distributees and beneficiaries set forth in the affidavit is correct and all proper parties signed the waiver, both shall be recorded as in the case of and in lieu of settlement. If the fiduciary supervisor identifies any error the fiduciary supervisor shall within five days of the filing of such settlement give the fiduciary notice as in the case of any other incorrect settlement.

If the short form settlement is proper the fiduciary supervisor shall proceed as in the case of any other settlement.

§44-3A-43. County fiduciary fund.

(a) The county commission, or tribunal in lieu thereof, shall create a special county fund pursuant to the provisions of section nine, article one, chapter seven of this code called the "County Fiduciary Fund." All moneys received by the fiduciary supervisor shall be deposited in said fund and the county commission or tribunal shall pay from said fund all salaries and expenses of the fiduciary supervisor and all other expenses associated with the probate system, exclusive of the fees of fiduciary commissioners or special fiduciary commissioners and exclusive of recording fees
which shall be collected by the fiduciary supervisor and paid to the clerk of the county commission. The said commission or tribunal is authorized to transfer any other county funds as may be available to said “County Fiduciary Fund.”

(b) Whenever the fiduciary supervisor finds that the funds appropriated and personnel, facilities or equipment allotted to his or her office are insufficient to permit the full and timely performance of the duties of the office, the supervisor shall make application to the commission for additional appropriations from the fund: Provided, That if any such application has been made within the prior six months then the fiduciary supervisor need not make such additional application until at least six months shall have elapsed. The commission may, and if no such application has been previously made for at least six months shall, carefully review such application and subject to all other provisions of law for revisions of appropriations during a fiscal year, and may make available such additional funds, personnel, facilities and equipment as it deems appropriate for all or any of the purposes claimed to be needed by the fiduciary supervision upon such application. If it refuses to appropriate additional and unexpended funds in the fiduciary fund for use in the full and timely compliance by the fiduciary supervisor with the provisions of this article, then it shall by order state its reasons for refusing so to do. The fiduciary supervisor may apply to the circuit court of the county by application for writ of mandamus for a review of the order of the commission and the circuit court shall have jurisdiction to order the commission to appropriate such unexpended funds as may be suitable to assist the fiduciary supervisor in achieving full and timely compliance with the provisions of this article.

(c) Every county commission or tribunal in lieu thereof, which shall adopt and use the procedure set forth in this article, shall report to the legislature on or before the first day of the regular session thereof held in the following year, and on the first day of every regular session held in the next succeeding three years thereafter, as to the moneys received into or spent from the county fiduciary fund of the county to the date of such report, and of all moneys transferred into
said fund and spent from it or by such county commission for probate matters or other matters relating to the administration of estates and any applications made to it for additional funds pursuant to subsection (b) of this section. The tax commissioner shall prescribe by procedural rule the form and content of such report which shall be in sufficient detail so as to permit the identification of the activity or activities generating the income of such fund and to identify by function and purpose all expenditures with sufficient detail to enable the Legislature to determine the extent to which the probate system and other estate matters are functioning in an efficient and economical manner and the fiscal implications thereof. Such reports shall be filed by each such county commission or tribunal in lieu thereof with the tax commissioner no later than ten days prior to the first day of each said session of the Legislature and the tax commissioner shall thereafter properly collate and file such reports with the clerk of each house of the Legislature on or before the first day of each such regular session.

CHAPTER 78

(S. B. 402—By Senator Boettner)

[Passed March 9, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article six, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the establishment of common trust funds; investments; trust funds of banks or trust companies owned or controlled by a bank holding company.

Be it enacted by the Legislature of West Virginia:

That section six, article six, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 6. INVESTMENTS BY FIDUCIARIES.

§44-6-6. Establishment of common trust funds; investments.

(a) Any bank or trust company qualified to act as fiduciary in this state may establish common trust funds for the purpose of furnishing, or making available, investments to itself as fiduciary, or to itself and others, as cofiduciaries, and may, as such fiduciary or cofiduciary, invest funds which it lawfully holds for investment in interests in such common trust funds, if such investment is not prohibited by the instrument, judgment, decree or order creating its fiduciary status or relationship, and if, in the case of cofiduciaries, the bank or trust company procures the consent of its cofiduciaries to such investment: Provided, That unless such fiduciary acquiring or holding any interest in any common trust fund is specifically permitted by the instrument, judgment, decree or order creating the fiduciary status or relationship to invest in securities other than those described in section two of this article, or any amendments or reenactments thereof, such common trust funds shall be invested only in those securities described in said section two and subject to the limitations and conditions of said section, and any amendments or reenactments thereof, except that a common trust fund or funds may be established for the purchase of securities of the type described in said section two without regard to the percentage limitation specified in subparagraph (1), subdivision (h) of said section two, in which event the funds invested by a fiduciary in interests in such last mentioned common trust fund or funds shall not exceed the percentage limitation specified in said subparagraph (1) of subdivision (h) unless a larger investment is permitted by the instrument, judgment, decree or order creating the fiduciary status or relationship.

(b) Any bank or trust company qualified to act as a fiduciary in this state may establish and maintain common trust funds for the collective investment of funds held in any fiduciary capacity by it or by any bank or trust company qualified to act as fiduciary in this state which is owned or controlled by a bank holding company
which owns or controls such establishing bank or trust company. Any such commonly owned or controlled bank or trust company may, as fiduciary or cofiduciary with others, invest funds which it holds in common trust funds so established and maintained. The restrictions contained in subsection (a) of this section shall apply to the establishment, maintenance and investment of common trust funds under this subsection.

CHAPTER 79

(Com. Sub. for H. B. 1037—By Delegate Kidd and Delegate Shanholm)

(Passed March 10, 1984; in effect July 1, 1984. Approved by the Governor.)

AN ACT to amend and reenact section one, article one, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section twelve, article three of said chapter five-a, relating to nonprofit workshops and purchase of products of such workshops by the state; and employment of persons to identify, evaluate, coordinate and make contracts for such products.

Be it enacted by the Legislature of West Virginia:

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

Article
1. Department of Finance and Administration.
3. Purchasing Division.

ARTICLE 1. DEPARTMENT OF FINANCE AND ADMINISTRATION.

§5A-1-1. Definitions.

1 For the purpose of this chapter:
2 "Commissioner" means the commissioner of finance and administration and, as used in article two of this chapter, the director of the budget.
“Director” means the director of the division referred to in the heading of the article in which the word appears.

“Spending unit” means a department, agency or institution of the state government for which an appropriation is requested, or to which an appropriation is made by the Legislature.

“Spending officer” means the executive head of a spending unit, or a person designated by him.

“Commodities” means supplies, material, equipment, contractual services, and any other articles or things used by or furnished to a department, agency or institution of the state government.

“Contractual services” shall include telephone, telegraph, electric light and power, water and similar services.

“Printing” means printing, binding, ruling, lithographing, engraving and other similar services.

“Expendable commodities” means those commodities which, when used in the ordinary course of business, will become consumed or of no market value within the period of one year or less.

“Removable property” means any personal property not permanently affixed to or forming a part of real estate.

“Nonprofit workshops” means an establishment (a) where any manufacture or handiwork is carried on, (b) which is operated either by a public agency or by a cooperative or by a nonprofit private corporation or nonprofit association, in which no part of the net earnings thereof inures, or may lawfully inure, to the benefit of any private shareholder or individual, (c) which is operated for the primary purpose of providing remunerative employment to blind or severely disabled persons who cannot be absorbed into the competitive labor market, and (d) which shall be approved, as evidenced by a certificate of approval, by the state board of vocational education, division of vocational rehabilitation.
ARTICLE 3. PURCHASING DIVISION.

§5A-3-12. Publication of solicitations for sealed bids; purchase of products of nonprofit workshops; employee to assist in dealings with nonprofit workshops.

The director shall solicit sealed bids for the purchase of commodities and printing which is estimated to exceed five thousand dollars. No spending unit shall issue a series of requisitions which would circumvent this five thousand dollar maximum. Bids shall be obtained by public notice 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 county where the department or agency making the requisition is located. Such notice shall be so published within the fourteen days next preceding the final date of submitting bids. The notice may also be published by any other advertising medium the director may deem advisable. The director may also solicit sealed bids by sending requests by mail to prospective suppliers and by posting notice on a bulletin board in his office: Provided, That the director shall, without competitive bidding, purchase commodities and printing produced and offered for sale by nonprofit workshops, as defined in section one, article one of this chapter, which are located in this state: Provided, however, That such commodities and printing shall be of a price and quality comparable to other commodities and printing otherwise available.

Toward the end of effecting the making of contracts for commodities and printing of nonprofit workshops, the director shall employ a person whose primary responsibility shall be to identify all commodities and printing available for purchase from such nonprofit workshops, to evaluate the need of the state for such commodities and printing to coordinate the various nonprofit workshops in their production efforts and to make available to such workshops information about available opportunities within state government for purchase of commodities or printing which might be produced and sold by such workshops. Funds to employ such a person shall be included annually in the budget.
CHAPTER 80

(Com. Sub. for H. B. 1340—By Mr. Speaker, Mr. See, by request of the Executive)

[Passed March 10, 1984; in effect July 1, 1984. Approved by the Governor.]

AN ACT to amend and reenact section eight, article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the salary of the state fire administrator.

Be it enacted by the Legislature of West Virginia:

That section eight, article three, 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 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-8. Office of state fire administrator created; appointment; term of office; removal; compensation; employees; equipment.

1 (a) There is hereby created a state fire administrator who shall be appointed by the governor from a list of names submitted by the state fire commission.

2 (b) The state fire administrator shall serve at the will and pleasure of the governor.

3 (c) The annual salary of the state fire administrator shall be twenty thousand dollars. On and after the first day of July, one thousand nine hundred eighty-four, the salary of the state fire administrator shall be twenty-four thousand dollars annually. He may employ such technical, clerical, stenographic and other personnel and fix their compensation, and may incur such expenses as may be necessary in the performance of the duties of his office within the appropriation therefor. Employees of the state fire administrator's office shall be members of the state civil service system, and all appointments of the office shall be a part of the classified service under the civil service system.

4 (d) The state fire administrator and other personnel of
Chapter 81

(Com. Sub. for S. B. 128—By Senator Holliday)

(Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.)

AN ACT to amend and reenact section twelve, article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the state fire marshal, any full-time deputy fire marshal, any full-time assistant fire marshal and certain persons deputized by the state fire marshal for the purpose of making inspections, to issue citations for violations of fire and life safety regulations; limiting the deputization of members of volunteer fire departments to the chief and his designated assistant; semiannual reports of citations issued by certain persons; revocation of authority to issue citations; requiring completion of a law-enforcement training course and evidence of liability coverage before authorization of certain persons to issue a citation; and providing criminal penalties for violations.

Be it enacted by the Legislature of West Virginia:

That section twelve, article three, 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:


§29-3-12. Powers and duties of state fire marshal.

1 (a) Enforcement of laws.—The state fire marshal shall enforce all laws of the state having to do with:

2 (1) Prevention of fire.

4 (2) The storage, sale and use of any explosive,
5 combustible or other dangerous article in solid, flammable liquid or gas form.

7 (3) The installation and maintenance of equipment of all sorts intended to extinguish, detect and control fires.

9 (4) The means and adequacy of exit, in case of fire, from buildings and all other places in which persons work, live or congregate from time to time for any purpose, except buildings used wholly as dwelling houses for no more than two families.

14 (5) The suppression of arson.

15 (b) Assistance upon request.—Upon request, the state fire marshal shall immediately assist any chief of any recognized fire company or department.

18 (c) Enforcement of regulations.—The state fire marshal shall enforce the regulations promulgated by the state fire commission as authorized by section three of this article.

21 (d) Inspections generally.—The state fire marshal shall inspect all state, county and municipally owned institutions, all public and private schools, theaters, churches and other places of public assembly as to fire exits and reasonable safety standards and report his findings and recommendations to the proper administrative heads.

27 (e) Right of entry.—The state fire marshal may at all reasonable hours enter any building or premises, other than dwelling houses, for the purpose of making an inspection, which he may deem necessary to be made under the provisions of this article.

32 (f) Investigations.—The state fire marshal may at any time investigate as to the origin or circumstances of any fire or explosion or attempt to cause fire or explosion occurring in the state. The state fire marshal shall have the authority at all times of the day or night, in performance of the duties imposed by the provisions of this article, to investigate where any fires or attempt to cause fires shall have occurred, or which at the time may be burning. Notwithstanding the above provisions of this subsection, prior to entering any building or premises for the purposes
of such investigation, the state fire marshal shall obtain a
proper search warrant: Provided, That the same shall not be
necessary where there is permissive waiver or the state fire
marshal is an invitee of the individual having legal custody
and control of the property, building or premises to be
searched.

(g) Testimony.—The state fire marshal, in making an
inspection or investigation, when in his judgment such
proceedings are necessary, may take the statements or
testimony under oath of all persons who may be cognizant
of any facts or have any knowledge about the matter to be
examined and inquired into, and may have the statements
or testimony reduced to writing; and shall transmit a copy
of such statements or testimony so taken to the prosecuting
attorney for the county wherein the fire or explosion or
attempt to cause a fire or explosion occurred. Notwithstanding the above, no person shall be compelled to
testify or give any such statement under this subsection.

(h) Arrests; warrants; penalty.—When in their
judgment such examination as described in subsection (g)
of this section discloses that the fire or explosion or attempt
to cause a fire or explosion was of incendiary origin, the
state fire marshal, any full-time deputy fire marshal or any
full-time assistant fire marshal are hereby authorized and
empowered:

(1) To arrest the supposed incendiary anywhere within
the confines of the state of West Virginia, or have him
arrested, for any violation of the provisions of this article or
of the arson-related offenses of article three, chapter sixty-
one of this code: Provided, That any and all persons so
arrested shall be forthwith brought before the magistrate or
circuit court.

(2) To make complaint in writing before any court or
officer having jurisdiction and obtain, serve and execute an
arrest warrant when knowing or having reason to believe
that anyone has committed an offense under any provision
of this article or of the arson-related offenses of article
three, chapter sixty-one of this code. Proper return shall be
made on all arrest warrants before the tribunal having
jurisdiction over such violation.
(3) To make complaint in writing before any court or officer having jurisdiction and obtain, serve and execute a warrant for the search of any premises that may possess evidence or unlawful contraband relating to violations of this article or of the arson-related offenses of article three, chapter sixty-one of this code. Proper return shall be made on all search warrants before the tribunal having jurisdiction over such violation.

(i) Witnesses and oaths.—The state fire marshal is empowered and authorized to issue subpoenas and subpoenas duces tecum to compel the attendance of persons before him to testify in relation to any matter which is, by the provision of this article, a subject of inquiry and investigation by the state fire marshal and cause to be produced before him such papers as he may require in making such examination. The state fire marshal is hereby authorized to administer oaths and affirmations to persons appearing as witnesses before him. False swearing in any matter or proceeding aforesaid shall be deemed perjury and shall be punishable as such.

(j) Deputizing members of fire departments in this state.—The state fire marshal may deputize a member of any fire department, duly organized and operating in this state, who is approved by the chief of his department and who is properly qualified, to act as his assistant for the purpose of making inspections with the consent of the property owner or the person in control of such property and such investigations as may be directed by the state fire marshal, and the carrying out of such orders as may be prescribed by him, to enforce and make effective the provisions of this article and any and all regulations promulgated by the state fire commission under authority of this article: Provided, That in the case of a volunteer fire department, only the chief thereof or his single designated assistant may be so deputized.

(k) Written report of examinations.—The state fire marshal shall, at the request of the county commission of any county or the municipal authorities of any incorporated municipality in this state, make to them a written report of the examination made by him regarding any fire happening within their respective jurisdictions.
Report of losses by insurance companies.—It shall be the duty of each fire insurance company or association doing business in this state, within ten days after the adjustment of any loss sustained by it that exceeds fifteen hundred dollars, to report to the state fire marshal, upon forms furnished by him, such information regarding the amount of insurance, the value of the property insured and the amount of claim as adjusted, as in the judgment of the state fire marshal it is necessary for him to know. This report is in addition to any such information required by the state insurance commissioner. Upon the request of the owner or insurer of any property destroyed or injured by fire or explosion, or in which an attempt to cause a fire or explosion may have occurred, the state fire marshal shall make a written report to the person requesting the same of the result of the examination made by him regarding the property.

Issuance of permits and licenses.—The state fire marshal is authorized to issue permits and licenses as required in this article.

Issuance of citations for fire and life safety violations.—The state fire marshal, any full-time deputy fire marshal and any full-time assistant fire marshal are hereby authorized, and any person deputized pursuant to subsection (j) of this section who is approved by the chief of his department and who is properly qualified, may be authorized by the state fire marshal, to issue citations, in their respective jurisdictions, for fire and life safety violations of the state fire code and as provided for by the rules and regulations promulgated by the state fire commission in accordance with article three, chapter twenty-nine-a of this code: Provided, That a summary report of all citations issued pursuant to this section by persons deputized under subsection (j) of this section shall be forwarded semiannually to the state fire marshal in such form and containing such information as he may by regulation require, including the violation for which the citation was issued, the date of issuance, the name of the person issuing the citation and the person to whom the citation was issued. The state fire marshal may at any time revoke the authorization of a person deputized pursuant to
subsection (j) of this section to issue citations, if in the opinion of the state fire marshal, the exercise of such authority by such person is inappropriate.

Violations for which citations may be issued include, but are not limited to:

(1) Overcrowding places of public assembly;
(2) Locked or blocked exits in public areas;
(3) Failure to abate a fire hazard;
(4) Blocking of fire lanes or fire department connections; and
(5) Tampering with, or rendering inoperable except during necessary maintenance or repairs, on-premise firefighting equipment, fire detection equipment and fire alarm systems.

No person deputized pursuant to subsection (j) of this section may be authorized to issue a citation unless that person has satisfactorily completed a law-enforcement officer training course designed specifically for fire marshals. The course shall be approved by the law-enforcement training subcommittee of the governor's committee on criminal justice and highway safety and the state fire commission. In addition, no person deputized pursuant to subsection (j) of this section may be authorized to issue a citation until evidence of liability coverage of such person has been provided, in the case of a paid municipal fire department by the municipality wherein the fire department is located, or in the case of a volunteer fire department, by the county commission of the county wherein the fire department is located or by the municipality served by such volunteer fire department, and that evidence of liability coverage has been filed with the state fire marshal.

(o) **Penalties for violations.**—Any person who violates any fire and life safety regulation of the state fire code shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one hundred dollars or
imprisoned in the county jail not more than ninety days, or
both fined and imprisoned.

Each and every day during which any illegal erection, construction, reconstruction, alteration, maintenance or use continues after knowledge or official notice that same is illegal, shall be deemed a separate offense.

CHAPTER 82
(Com. Sub. for S. B. 27—By Mr. McGraw, Mr. President)

[Passed March 9, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section sixteen-a, relating to requiring smoke detectors in one- and two-family dwellings; specifying requirements for installation, operation, maintenance and use of such smoke detectors; authorizing installation of certain fire sprinkler systems in lieu of smoke detectors; mandating local authorities investigating fires to issue smoke detector installation orders; specifying a criminal penalty; effect of violation on civil actions or proceedings; effect on other laws; date for compliance.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-16a. Smoke detectors in one- and two-family dwellings; penalty.

(a) Within all one- and two-family dwellings, including mobile homes used for residential occupancy, which are not occupied by the owner thereof, a smoke detector
shall be installed outside of each separate sleeping area in the immediate vicinity of the sleeping area. The smoke detector shall be capable of sensing visible or invisible particles of combustion. Such smoke detector shall meet the specifications and be installed as provided for in the National Fire Protection Association Standard 74, "Standard for the Installation, Maintenance and Use of Household Fire Warning Equipment," 1980 edition, and the manufacturer's specifications. When activated, the smoke detector shall provide an alarm suitable to warn the occupants of the danger of fire.

(b) The owner of each dwelling described in subsection (a) of this section shall provide, install and replace the smoke detectors required by this section; in each dwelling described in subsection (a) which is not occupied by the owner thereof, the tenant in any such dwelling shall perform routine maintenance on the smoke detectors within such dwelling.

(c) Where a dwelling is not occupied by the owner and is occupied by an individual who is deaf or hearing impaired, the owner shall, upon written request by or on behalf of such individual, provide and install a smoke detector with a light signal sufficient to warn the deaf or hearing-impaired individual of the danger of fire.

(d) An automatic fire sprinkler system installed in accordance with the National Fire Protection Association Standard 13D, "Standard for the Installation of Sprinkler Systems in Residential Occupancies," 1983 edition, may be provided in lieu of smoke detectors.

(e) After investigating a fire in any dwelling described in subsection (a) of this section, the local investigating authority shall issue to the owner a smoke detector installation order in the absence of the required smoke detectors.

(f) Any person who violates any provision of this section is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than ten dollars nor more than twenty dollars.
(g) A violation of this section shall not be deemed by virtue of such violation to constitute evidence of negligence or contributory negligence or comparative negligence in any civil action or proceeding for damages.

(h) A violation of this section shall not constitute a defense in any civil action or proceeding involving any insurance policy.

(i) Nothing in this section shall be construed to limit the rights of any political subdivision in this state to enact laws imposing upon owners a greater duty with regard to the installation, repair and replacement of smoke detectors than is required by this section.

(j) Owners of dwellings described in subsection (a) shall comply with the provisions of this section no later than the first day of July, one thousand nine hundred eighty-five.

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CHAPTER 83

(H. B. 1206—By Delegate Knight and Delegate McKinley)

[Passed March 6, 1984; 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-d, relating to continuing and reestablishing the United States geological survey program within the department of natural resources.

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-d, to read as follows:
CHAPTER 84

(S. B. 743—By Senator Chace, et al.)

[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five-g, relating generally to the creation and administration of a hazardous waste emergency response fund; legislative findings and declarations related thereto; definitions of certain terms; designated revenues to be deposited in such fund; assessment of certain fees on generators of hazardous waste; exclusion of certain wastes from such assessments; maximum revenue to be collected from certain fees; interest and surcharge to be imposed on unpaid fees; fee schedules to be established by the director; notice of fee schedules to generators by certified mail; expenditures from the fund by the director for certain purposes; promulgation of certain rules and regulations by director; civil actions to recover certain expenditures from the fund and venue for such actions; civil actions to recover unpaid fees
and venue for such actions; assistance from attorney general or prosecuting attorney in civil actions brought by the director; authorization to enter into agreements with federal government; authorization to accept donations to the fund and to invest the fund; the state hazardous waste contingency plan; and promulgation of rules and regulations by the director relating to such contingency plan.

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-g, to read as follows:

ARTICLE 5G. HAZARDOUS WASTE EMERGENCY RESPONSE FUND.

§20-5G-1. Findings; purpose.

1 The Legislature recognizes that large quantities of hazardous waste are generated within the state, and that emergency situations involving hazardous waste can and will arise which may present a hazard to human health, safety or the environment. The Legislature also recognizes that some hazardous waste has been stored, treated or disposed of at sites in the state in a manner insufficient to protect human health, safety or the environment. The Legislature further recognizes that the federal government has enacted the Comprehensive Environmental Response, Compensation and Liability Act of 1980, which provides for federal assistance to respond to hazardous substance emergencies and to remove and remedy the threat of damage to the public health or welfare or to
the environment, and declares that West Virginia desires
to produce revenue for matching the federal assistance
provided under the federal act. Therefore, the Legislature
hereby creates a hazardous waste emergency fund to pro-
vide state funds for responding to hazardous waste emer-
gencies, matching federal financial assistance for restoring
hazardous waste sites and other costs or expenses in-
curred in the administration of this article.


1     As used in this article, unless the context clearly re-
2     quires a different meaning:

3     (1) “Generator” means any person, corporation, part-
4     nership, association or other legal entity, by site location,
5     whose act or process produces hazardous waste as identi-
6     fied or listed by the director in regulations promulgated
7     pursuant to section six of such article, in an amount
8     greater than twelve thousand kilograms per year;

9     (2) “Cleanup” means such actions as may be necessary
10    to monitor, assess and evaluate the threat of release of
11    hazardous waste, the containment, collection, control,
12    identification, treatment, dispersal, removal or disposal
13    of hazardous waste or other such actions as may be
14    necessary to respond to hazardous waste emergencies or
15    to prevent, minimize or mitigate damage to the public
16    health, safety, welfare or to the environment, and in-
17    cludes, where necessary, replacement of existing, or pro-
18    vision of alternative, drinking water supplies that have
19    been contaminated with hazardous waste as a result of an
20    emergency;

21     (3) “Cleanup costs” shall mean all costs incurred by
22    the director, or with the approval of the director, by any
23    state agency or person participating in the cleanup of a
24    hazardous waste emergency or remedial action;

25     All other terms shall have the meaning as prescribed
26    in the regulations promulgated by the director pursuant
27    to the provisions of section six, article five-e of this chap-
28    ter.

(a) A special fund designated "The Hazardous Waste Emergency Response Fund," hereinafter referred to as "the fund," shall be established in the state treasury on the first day of July, one thousand nine hundred eighty-four.

(b) All generator fee assessments, any interest or surcharge assessed and collected by the director, interest accruing on investments and deposits of the fund, and any other moneys designated shall be paid into the fund.

§20-5G-4. Fee assessments; tonnage fees; due dates of payments; interest on unpaid fees.

(a) Each generator of hazardous waste within this state shall pay a fee based upon the amount of hazardous waste generated as reported to the director in the generator's most recent annual report submitted pursuant to article five-e of this chapter. The director shall establish a fee schedule according to the following: Full assessment for generated hazardous waste disposed or treated off-site; ninety percent of the full assessment for generated hazardous waste either treated or disposed on-site; seventy-five percent of the full assessment for generated hazardous waste treated off-site so that such waste is rendered nonhazardous; and twenty-five percent of the full assessment for generated hazardous waste treated on-site so that such waste is rendered nonhazardous: Provided, That the generator fee assessment shall not apply to the following: (1) Those wastes listed in paragraph (A), subdivision two, subsection (a) section six, article five-e of this chapter on the effective date of this article; (2) sludge from any publicly owned treatment works in the state; (3) any discharge to waters of the state of hazardous waste pursuant to a valid water pollution control permit issued under federal or state law; (4) any hazardous wastes beneficially used or reused or legitimately recycled or reclaimed; (5) hazardous wastes which are created or retrieved pursuant to an emergency or remedial action plan; (6) hazardous wastes whose sole charac-
teristic as a hazardous waste is based on corrosivity and which are subjected to on-site elementary neutralization in containers or tanks.

(b) Each generator of hazardous waste within the state subject to a fee assessment under subsection (a) of this section shall pay a fee based on its annual tonnage of generated hazardous waste. For calendar year one thousand nine hundred eighty-five, the total fees assessed shall be sufficient to produce revenue of five hundred thousand dollars. At the end of each fiscal year, any unexpended balance of such collected fees shall not be transferred to the general revenue fund, but shall remain in the fund. For subsequent years, the director shall vary the fees annually to a level necessary to produce a fund of at least one million dollars at the beginning of each calendar year, but in no event shall the fees established be set to produce revenue exceeding five hundred thousand dollars in any year. When the fund's unobligated balance exceeds one million five hundred thousand dollars at the end of the calendar year, generator assessments under this article shall cease until such time as the fund's unobligated balance at the end of any year is less than one million dollars.

(c) Generator fee assessments shall be due and payable to the department of natural resources on the fifteenth day of January, one thousand nine hundred eighty-five, and each succeeding year thereafter. Such payments shall be accompanied by information in such form as the director may prescribe.

(d) If the fees or any portion thereof are not paid by the date prescribed, interest shall accrue upon the unpaid amount at the rate of ten percent per annum from the date due until payment is actually made. Such interest payments shall be deposited in the fund. If any generator fails to pay the fees imposed before April one of the year in which they are due, there shall be imposed in addition to the fee and interest determined to be owed a surcharge equivalent to the total amount of the fee which shall also be collected and deposited in the fund.
§20-5G-5. Director's responsibilities; fee schedules; authorized expenditures; other powers of director; authorizing civil actions; assistance of attorney general or prosecuting attorney.

(a) The director shall collect all fees assessed pursuant to this article and administer the fund. The fee schedule shall be published in the state register by the first day of August of each year. Each generator who filed an annual report with the director pursuant to article five-e of this chapter shall be notified and provided with a copy of the fee schedule by certified mail. In the event the fee schedule is not published by the first day of August, the date prescribed for payment in section four of this article shall be advanced by the same number of days that the publication of the fee schedule is delayed. The interest and surcharge provisions of section four of this article shall be similarly advanced.

(b) The director is authorized to enter into agreements and contracts and to expend the moneys in the fund for the following purposes:

(1) Responding to hazardous waste emergencies when, based on readily available information, the director determines that immediate action may prevent or mitigate significant risk of harm to human health, safety or the environment from hazardous wastes in situations for which no federal funds are immediately available for such response cleanup or containment: Provided, That the director shall apply for and diligently pursue available federal funds for such emergencies at the earliest possible time: Provided, however, That funds shall not be expended under this subsection to clean up or contain off-site releases of hazardous waste which are classified as such only as a result of such releases;

(2) Reimbursing any person for reasonable clean-up costs incurred with the authorization of the director in responding to a hazardous waste emergency pursuant to authorization of the director;

(3) Financing the nonfederal share of the clean-up and
site reclamation activities pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as well as future operation and maintenance costs for these sites; and

(4) Financing any and all preparations necessary for responding to hazardous waste activities and emergencies within the state, including, but not limited to, the purchase or lease of hazardous waste emergency response equipment: Provided, That after the fifteenth of January, one thousand nine hundred eighty-seven, no funds shall be expended under this subdivision unless the fund is greater than one million dollars and any expenditure will not reduce the fund below one million dollars.

(c) Prior to making expenditures from the fund pursuant to subdivision (1), (2) or (3), subsection (b) of this section, the director will make reasonable efforts to secure agreements to pay the costs of cleanup and remedial actions from owners or operators of sites or other responsible persons.

(d) The director is authorized to promulgate and revise rules and regulations in compliance with chapter twenty-nine-a of this code to implement and effectuate the powers, duties and responsibilities vested in him under this article. Prior to the assessment of any fees under this article, the director shall promulgate rules or regulations which account for the mixture of hazardous and nonhazardous constituents in the hazardous waste which is generated. The director shall not assess a fee on the nonhazardous portion, including, but not limited to, the weight of water.

(e) The director is authorized to recover through civil action or cooperative agreements with responsible persons the full amount of any funds expended for purposes enumerated in subdivision (1), (2) or (3), subsection (b) of this section. All moneys expended from the fund which are so recovered shall be deposited in the fund. Any civil action instituted pursuant to this subsection may be brought in either Kanawha County or the county in which
the hazardous waste emergency occurs or the county in which remedial action is taken.

(f) The director is authorized to institute a civil action against any generator for failure to pay any fee assessed pursuant to this article. Any action instituted against a generator pursuant to this subsection may be brought in either Kanawha County or the county in which the generator does business. The generator shall pay all attorney fees and costs of such action if the director prevails.

(g) Upon request by the director, the attorney general or prosecuting attorney for the county in which an action was brought shall assist the director in any civil action instituted pursuant to this section and any proceedings relating thereto.

(h) The director is authorized to enter into contracts or cooperative agreements with the federal government to secure to the state the benefits of funding for action taken pursuant to the requirements of the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980.

(i) The director is authorized to accept gifts, donations, contributions, bequests or devises of money, security or property for deposit in the fund.

(j) The director is authorized to invest the fund to earn a reasonable rate of return on the unexpended balance.


No later than eighteen months after the effective date of this article, the director shall promulgate rules or regulations, in compliance with chapter twenty-nine-a of this code, establishing a state hazardous waste contingency plan which shall set forth procedures and standards for responding to hazardous waste emergencies, for conducting remedial cleanup and maintenance of hazardous waste sites and for making expenditures from the fund after the date of promulgation of the plan. The plan shall include:
(a) Methods for discovering, reporting and investigating sites at which hazardous waste may present significant risk of harm to the public health and safety or to the environment;

(b) Methods and criteria for establishing priority responses and for determining the appropriate extent of cleanup, containment and other measures authorized by this article;

(c) Appropriate roles for governmental, interstate and nongovernmental entities in effectuating the plan;

(d) Methods for identifying, procuring, maintaining and storing hazardous waste response equipment and supplies; and

(e) Methods to identify the most appropriate and cost-effective emergency and remedial actions in view of the relative risk or danger presented by each case or event.

CHAPTER 85
(S. B. 674—By Mr. McGraw, Mr. President, and Senator Burdette)

[Passed March 7, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, 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, relating to authorizing county, municipal and combined boards of health to retain and make available child safety car seats; to collect reasonable rental and deposit fees for the use of such child safety seats; to conduct public information and educational activities to make the public aware of the need and potential benefits of using such child safety seats; and granting civil and criminal immunity to such boards, their agents and employees making such child safety seats available.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 2. LOCAL HEALTH OFFICERS.**

§16-2-6. Local boards of health authorized to make available child safety car seats; requirements for renting and loaning such seats; immunity from liability.

(a) Any county, municipal or combined board of health, whether created and maintained pursuant to the provisions of this article or article two-a of this chapter, shall be authorized to:

(1) Retain and make available child safety car seats;

(2) Collect such reasonable rental and security deposit fees to cover the expenses of retaining and making available child safety car seats;

(3) Conduct public information and education activities designed to convey the need for and potential benefit of the use of child safety car seats and prevent misuse of child safety car seats.

(b) Any county, municipal or combined board of health offering a child safety car seat program pursuant to this section shall:

(1) Thoroughly examine each seat before it is rented or loaned out and document, in writing, such examination;

(2) Provide written and verbal instructions for proper use of the seat to each borrower prior to renting or loaning out a seat to such borrower;

(3) Require each borrower to demonstrate correct use of child safety car seat prior to renting or loaning the seat to such borrower;

(4) Require each borrower to sign a statement indicating that he or she understands how to use the child safety car seat correctly and has so demonstrated; and
(5) Comply with any other requirements which the state board of health may, by regulation, prescribe.

(c) A county, municipal or combined board of health offering a child safety car seat program shall not make available for loan or rental any child safety car seat which the board knows or has reason to believe was in use in a vehicle which was involved in a moderate or severe crash.

(d) This section is not intended to relieve any driver of a motor vehicle of his or her legal duty as prescribed by chapter seventeen-c, article fifteen, section forty-six of this code, to provide for the protection of a child by properly placing, maintaining and securing such child in a child passenger restraining system meeting applicable federal motor vehicle safety standards.

(e) Any county, municipal or combined board of health or employee or agent thereof which offers a child safety car seat program pursuant to this section shall be immune from civil or criminal liability in any action resulting from the improper use or malfunctioning or inadequate maintenance of a child safety car seat or from the improper placement, maintenance or securing of a child in a child safety car seat.

CHAPTER 86

(S. B. 675—By Mr. McGraw, Mr. President, and Senator Chace)

[Passed March 6, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article two-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding language to clarify that additional services not defined under this section, may be included as part of “home health services.”

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2C. HOME HEALTH SERVICES.

§16-2C-1. Definitions.

1 For the purposes of this article:

2 “Home health services” shall mean and include, but not be limited to, the following services furnished to an individual who is under the care of a physician, such services to be provided on a visiting basis in a place of residence used as the individual’s home: (1) Part-time or intermittent nursing care provided by or under the supervision of a registered professional nurse; (2) physical, occupational or speech therapy; (3) medical social services under the direction of a physician; (4) part-time or intermittent services of a home health aide.

12 “Department” shall mean the state department of health.

14 “Local boards” shall mean local health boards established pursuant to the provisions of article two or two-a of this chapter.

CHAPTER 87

(P. B. 406—By Senator Chace)

[Passed March 2, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five-e, relating to service providers in legally unlicensed health care facilities; stating the purpose of the article; defining terms; requiring registration of the service providers with the state director of health; prescribing the form of such registration; specifying information to be provided on the registration form; requiring the director of health to make
publicly available an annual list of registered service providers; authorizing inspections by the director of health; providing modes of enforcement; and specifying criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5E. REGISTRATION OF SERVICE PROVIDERS IN LEGALLY UNLICENSED HEALTH CARE FACILITIES.

§16-5E-1. Purpose.

§16-5E-2. Definitions.

§16-5E-3. Registration of service providers required; form of registration; information to be provided.

§16-5E-4. Public availability of registry.

§16-5E-5. Inspections; right of entry.

§16-5E-6. Enforcement; criminal penalties.

§16-5E-1. Purpose.

1 It is the policy of this state to encourage the availability of appropriate noninstitutional surroundings for the elderly and for the care of persons in need of nursing care or personal assistance. The registration of providers of services to such consumers in unlicensed facilities will help to identify where the services are available and to ensure that individuals in unlicensed facilities are receiving care appropriate to their needs.

§16-5E-2. Definitions.

1 As used in this article, unless a different meaning appears from the context:

3 (a) The term "consumer" means an individual who is provided services, whether or not for a fee, by a service provided, but consumer does not include a person receiving services provided by another who is related to him or her or the spouse thereof by blood or marriage, within the degree of consanguinity of second cousin;
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(b) The term "director" means the director of the West Virginia state department of health or his designee;

c) The term "nursing care" means those procedures commonly employed in providing for the physical, emotional and rehabilitational needs of the ill or otherwise incapacitated which require technical skills and knowledge beyond that which the untrained person possesses, including, but not limited to, such procedures as: Irrigations; catheterization; application of dressings; supervision of special diets; objective observation of changes in patient condition as a means of analyzing and determining nursing care required and the need for further medical diagnosis and treatment; special procedures contributing to rehabilitation; administration of medication by any method ordered by a physician, such as hypodermically, rectally or orally; and carrying out other treatments prescribed by a physician which involve a like level of complexity and skill in administration;

d) The term "personal assistance" means personal services, including, but not limited to, the following: Help in walking, bathing, dressing, feeding or getting in or out of bed, or supervision required because of the age or physical or mental impairment of the patient;

e) The term "service provider" means the individual administratively responsible for providing to consumers for a period of more than twenty-four hours, whether for compensation or not, services of:

(1) Nursing care for one or two consumers; or

(2) Personal assistance for five or fewer consumers.

§16-5E-3. Registration of service providers required; form of registration; information to be provided.

(a) Service providers shall register with the director. No fee may be charged for registration. Registration information shall be provided on a registration form or may be verbally communicated to the director for placement by the director on the form, but no provision of information shall be deemed to meet the registration require-
ment until the signature of the service provider is recorded on the registration form.

(b) Information required for registration shall include the following:

(1) Name, address and telephone number of the service provider;

(2) Addresses and telephone numbers where services are provided to consumers and the number of consumers provided service at each address; and

(3) The services, such as nursing care or personal assistance, provided to consumers at each address.

§16-5E-4. Public availability of registry.

The director shall publish and make available to the public on an annual basis a list of service providers registered in accordance with section three of this article.

§16-5E-5. Inspections; right of entry.

The director may employ inspectors to enforce the provisions of this article. These inspectors shall have the right of entry into any place where services are provided by a service provider, to determine the number of consumers therein and the adequacy of services being provided to them. The director may obtain a search warrant to inspect those premises that the director has reason to believe are being used to provide services.

§16-5E-6. Enforcement; criminal penalties.

(a) Any service provider who fails to register with the director within thirty days after personal service of written notice from the director of the registration requirements of this article, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five hundred dollars or imprisoned in the county jail not less than ten days.

(b) Any person who interferes with or impedes in any way the lawful enforcement of the provisions of this article is guilty of a misdemeanor, and, upon con-
11 conviction thereof, shall be fined not less than five hundred dollars or imprisoned in the county jail not less than ten days.

14 (c) The director may in his discretion bring an action to enforce compliance with the provisions of this article.

16 (d) The circuit court of Kanawha County shall have jurisdiction in all civil enforcement actions brought under this article and may order equitable relief without bond.

CHAPTER 88
(Com. Sub. for S. B. 407—By Senator Chace)

[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five-h; and to amend and reenact sections one and three, article seventeen, chapter twenty-seven of said code, all relating to establishment and licensure of adult group homes for four to ten persons capable of self-preservation; authority of director of health to issue licenses, promulgate regulations, inspect, investigate and revoke licenses for good cause; requiring assistance from department of human services when requested by director of health; enforcement; injunction; criminal penalties; relating to group residential facilities; definition of “behavioral disability”; license; application; regulations; revocation.

Be it enacted by the Legislature of West Virginia:

That chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article five-h; and that sections one and three, article seventeen, chapter twenty-seven of said code be amended and reenacted, all to read as follows:
CHAPTER 16. PUBLIC HEALTH.

ARTICLE SH. ADULT GROUP HOMES.

§16-5H-1. Definitions.

§16-SH-2. License from director of health; application; regulations; revocation; assistance from department of human services.

§16-SH-3. Enforcement; criminal penalties; injunction.

§16-5H-1. Definitions.

(a) The term “adult group home” means any residence or any part or unit thereof, however named, in this state which is advertised, offered, maintained or operated by the ownership or management, whether for a consideration or not, for the express or implied purpose of providing accommodations, personal assistance and supervision, for a period of more than twenty-four hours, to four to ten persons who are dependent upon the services of others by reason of physical or mental impairment, but who do not require nursing care or personal care home services and who are capable of self-preservation.

(b) The term “self-preservation” means that a person is, at least, capable of removing his or her physical self from situations involving imminent danger, such as fire.

§16-5H-2. License from director of health; application; regulations; revocation; assistance from department of human services.

No adult group home shall be established, maintained or operated unless a license therefor shall be first obtained from the director of health. The application for such license shall contain such data and facts as the director may reasonably require. The director may promulgate reasonable regulations for the operation of such facilities, and to carry out the requirements of this article, in accordance with the requirements of article three, chapter twenty-nine-a of this code. The director shall have the authority to investigate and inspect any such facility and may revoke the license of any such facility for good cause.
§16-5H-3. Enforcement; criminal penalties; injunction.

(a) Whoever establishes, maintains or operates, or is engaged in establishing, maintaining or operating an adult group home without a license granted under section two of this article, or who prevents, interferes with or impedes in any way the lawful enforcement of this article 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, at the discretion of the court. For each subsequent offense, the fine may be increased to not more than two hundred fifty dollars, with imprisonment in the county jail for a period of not more than ninety days, or both such fine and imprisonment, at the discretion of the court. Each day of a continuing violation after conviction shall be considered a separate offense.

(b) The director may in his discretion bring an action to enforce compliance with this article or any rule, regulation or order hereunder, whenever it shall appear to the director that any person has aided, abetted or caused, or is aiding, in violation of this article, or any rule, regulation or order hereunder, or whenever it shall appear to the director that any person has aided, abetted or caused, or is aiding, abetting or causing such an act or practice. Upon application by the director, the circuit court of the county in which the conduct has occurred shall have jurisdiction to grant, without bond, a permanent or temporary injunction, decree or restraining order.

CHAPTER 27. MENTALLY ILL PERSONS.

ARTICLE 17. GROUP RESIDENTIAL FACILITIES.

§27-17-1. Definitions.
§27-17-3. License from director of health; application; regulations; revocation.
§27-17-1. Definitions.

1 “Developmental disability” means a chronic disability of a person which: (1) Is attributable to a mental or physical impairment or combination of mental and physical impairments; (2) is likely to continue indefinitely; (3) results in substantial functional limitations in self-direction, capacity for independent living or economic self-sufficiency; and (4) reflects the person’s need for a combination and sequence of special, interdisciplinary or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated. “Behavioral disability” means a disability of a person which: (1) Is attributable to severe or persistent mental illness, emotional disorder or chemical dependency, and (2) results in substantial functional limitations in self-direction, capacity for independent living or economic self-sufficiency.

2 “Group residential facility” means a facility which: (1) Provides residential services and supervision for individuals who are developmentally disabled or behaviorally disabled; (2) is occupied as a residence by not more than eight individuals who are developmentally disabled and not more than three supervisors, or is occupied as a residence by not more than twelve individuals who are behaviorally disabled and not more than three supervisors; (3) is licensed by the department of health or the department of human services; and (4) complies with the state fire commission for residential facilities.

§27-17-3. License from director of health; application; regulations; revocation.

1 No group residential facility shall be established, maintained or operated unless a license therefor shall be first obtained from the director of health, except that a group residential facility for behaviorally disabled juveniles shall be deemed to satisfy all requirements of this section by obtaining a license from the commissioner of human services. The application for such license shall contain such data and facts as the director may require. The director may promulgate reasonable regulations for the
10 conduct of such facilities, including, but not limited to, a
11 statement of the rights of patients in group residential
12 facilities for the mentally and physically impaired to ensure
13 the adequate care and supervision of such patients, and
14 shall have the authority to investigate and inspect any such
15 facility, and may revoke the license of any such facility for
16 good cause after notice and hearing.

CHAPTER 89
(Com. Sub. for H. B. 1615—By Mr. Speaker, Mr. See, by request of the Executive)

[Passed March 5, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section sixteen, article twenty-nine-b, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the date on which the health care cost review authority must apply to the federal government for an agreement on reimbursement to hospitals.

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

That section sixteen, article twenty-nine-b, 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 29B. WEST VIRGINIA HEALTH CARE COST REVIEW AUTHORITY.**

§16-29B-16. Start-up period.

1 (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 conduct rate review and approval. Such data shall include necessary operating expenses, appropriate expenses incurred 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 subject to this article.

(d) Upon appointment, the board shall enter into negotiations with the health care financing administration within the United States department of health and human services to seek approval and assurances from, and enter into agreements with, the United States department of health and human services so that the aforementioned federal agency and affected state agencies allow 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) Within sixty days after the publication in the federal register of the interim regulations to implement section 1886(c) of the social security act, the board shall submit its application for purposes of entering into an agreement
49 with the secretary of the department of health and human
50 services so that the aforementioned federal agency agrees
51 to allow payment for services provided by hospitals subject
52 to the provisions of this article in accordance with rates
53 approved by the board.
54 (f) No later than the first day of June, one thousand
55 nine hundred eighty-three, every hospital shall provide to
56 the board a full and complete verified statement of services
57 offered as of the first day of February, one thousand nine
58 hundred eighty-three, together with a verified statement of
59 rates in effect as of the first day of February, one thousand
60 nine hundred eighty-three, for such services.

CHAPTER 90

(Com. Sub. for S. B. 431—By Senator Chernenko and Mr. McGraw, Mr. President)

[Passed March 14, 1984; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, six, seven, eight, nine, ten and thirteen, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto three new sections, designated sections eight-b, eight-c and thirteen-b, relating to horse and dog racing generally; providing additional definitions; increasing the authority of the racing commission; authority to impose penalties; providing minimum number of racing days; allowing Sunday racing; providing for local option elections; granting authority to racing associations to withhold certain commission; changing and reducing the pari-mutuel tax; providing for disposition of funds for payment of outstanding and unredeemed pari-mutuel tickets; and granting authority for racing commission to establish West Virginia thoroughbred development fund and to provide awards, purse supplements and moneys for capital improvements therefrom.
Be it enacted by the Legislature of West Virginia:

That sections three, six, seven, eight, nine, ten and thirteen, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto three new sections, designated sections eight-b, eight-c and thirteen-b, all to read as follows:

ARTICLE 23. HORSE AND DOG RACING.

PART II. DEFINITIONS: WEST VIRGINIA RACING COMMISSION—ORGANIZATION AND OPERATION.


PART IV. POWERS AND AUTHORITY OF RACING COMMISSION.


PART V. LICENSE AND PERMIT PROCEDURES.

§19-23-7. Application for license; forms; time for filing; disclosure required; verification; bond; application for permit.

§19-23-8. Consideration of application for license or permit; issuance or denial; contents of license or permit; grounds for denial of application; determination of racing dates; license or permit not transferable or assignable; limitation on license; validity of permit.

§19-23-8b. Horse or dog racing after six o'clock postmeridian on Sundays; application therefor; tentative approval; publication of notice; petition for local option election; local option election procedure; effect of such election.

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

§19-23-9. Pari-mutuel system of wagering authorized; license authorized to deduct commissions from pari-mutuel pools; retention of breakage; auditing; minors.

PART VII. TAXATION OF HORSE RACING AND PARI-MUTUEL WAGERING; DISPOSITION OF REVENUES.

§19-23-10. Daily license tax; pari-mutuel pools tax; how taxes paid; alternate tax; credits.

§19-23-13. Disposition of funds for payment of outstanding and unredeemed pari-mutuel tickets; publication of notice; irredeemable tickets; stake races for dog tracks.

§19-23-13b. West Virginia thoroughbred development fund; distribution; restricted races; nonrestricted purse supplements.
PART II. DEFINITIONS; WEST VIRGINIA RACING COMMISSION — ORGANIZATION AND OPERATION.


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

2 (1) "Horse racing" means any type of horse racing, including, but not limited to, thoroughbred racing and harness racing;

3 (2) "Thoroughbred racing" means flat or running type horse racing in which each horse participating therein is a thoroughbred and is mounted by a jockey;

4 (3) "Harness racing" means horse racing in which the horses participating therein are harnessed to a sulky, carriage or other vehicle, and shall not include any form of horse racing in which the horses are mounted by jockeys;

5 (4) "Horse race meeting" means the whole period of time for which a license is required by the provisions of section one of this article;

6 (5) "Dog racing" means any type of dog racing, including, but not limited to, greyhound racing;

7 (6) "Purse" means any purse, stake or award for which a horse or dog race is run;

8 (7) "Racing association" or "person" means any individual, partnership, firm, association, corporation or other entity or organization of whatever character or description;

9 (8) "Applicant" means any racing association making application for a license under the provisions of this article, or any person making application for a permit under the provisions of this article, or any person making application for a construction permit under the provisions of this article, as the case may be;

10 (9) "License" means the license required by the provisions of section one of this article;

11 (10) "Permit" means the permit required by the provisions of section two of this article;
(11) "Construction permit" means the construction permit required by the provisions of section eighteen of this article;

(12) "Licensee" means any racing association holding a license required by the provisions of section one of this article and issued under the provisions of this article;

(13) "Permit holder" means any person holding a permit required by the provisions of section two of this article and issued under the provisions of this article;

(14) "Construction permit holder" means any person holding a construction permit required by the provisions of section eighteen of this article and issued under the provisions of this article;

(15) "Hold or conduct" includes "assist, aid or abet in holding or conducting";

(16) "Racing commission" means the West Virginia racing commission;

(17) "Stewards" means the steward or stewards representing the racing commission, the steward or stewards representing a licensee and any other steward or stewards, whose duty it shall be to supervise any horse or dog race meeting, all as may be provided by reasonable rules and regulations of the racing commission, and such reasonable rules and regulations shall specify the number of stewards to be appointed, the method and manner of their appointment and their powers, authority and duties;

(18) "Pari-mutuel" means a mutuel or collective pool that can be divided among those who have contributed their wagers to one central agency, the odds to be reckoned in accordance to the collective amounts wagered upon each contestant running in a horse or dog race upon which the pool is made, but the total to be divided among the first three contestants on the basis of the number of wagers on these;

(19) "Pool" means a combination of interests in a joint wagering enterprise, or a stake in such enterprise;

(20) "Legitimate breakage" is the percentage left over in the division of a pool;
“To the dime” means that wagers shall be figured and paid to the dime;

“Code” means the code of West Virginia, one thousand nine hundred thirty-one, as heretofore and hereinafter amended;

“Accredited thoroughbred horse” means a thoroughbred horse that is either: (a) Foaled in West Virginia; or (b) sired by an accredited West Virginia sire; or (c) as a yearling, finished twelve consecutive months of verifiable residence in the state, except for thirty days grace for the horse to be shipped to and from horse sales where said horse is officially entered in the sales catalogue of a recognized thoroughbred sales company. No thoroughbred horse shall qualify under part (c) of this section after the first day of July, one thousand nine hundred ninety;

“Accredited West Virginia sire” is a sire that is permanently domiciled in West Virginia, stands a full season in West Virginia and is registered with the West Virginia thoroughbred breeders association;

“Breeder of an accredited West Virginia horse” is the owner of the foal at the time it was born in West Virginia;

“Raiser of an accredited West Virginia horse” is the owner of the yearling at the time it finished twelve consecutive months of verifiable residence in the state. During the period, the raiser will be granted one month of grace for his horse to be shipped to and from thoroughbred sales where the horse is officially entered in the sales catalogue of a recognized thoroughbred sales company. Prior to the horse being shipped out of the state for sales, the raiser must notify the racing commission of his intentions;

The “owner of an accredited West Virginia sire” is the owner of record at the time the offspring is conceived;

The “owner of an accredited West Virginia horse” means the owner at the time said horse earned designated purses to qualify for restricted purse supplements provided for in section thirteen-b of this article; and
"Fund" means the West Virginia thoroughbred development fund established in section thirteen-b of this article.

PART IV. POWERS AND AUTHORITY OF RACING COMMISSION.


The racing commission shall have full jurisdiction over and shall supervise all horse race meetings, all dog race meetings and all persons involved in the holding or conducting of horse or dog race meetings, and, in this regard, it shall have plenary power and authority:

1. To investigate applicants and determine the eligibility of such applicants for a license or permit or construction permit under the provisions of this article;

2. To fix, from time to time, the annual fee to be paid to the racing commission for any permit required under the provisions of section two of this article;

3. To promulgate reasonable rules and regulations implementing and making effective the provisions of this article and the powers and authority conferred and the duties imposed upon the racing commission under the provisions of this article, including, but not limited to, reasonable rules and regulations under which all horse races, dog races, horse race meetings and dog race meetings shall be held and conducted, all of which reasonable rules and regulations shall be promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code;

4. To register colors and assumed names and to fix, from time to time, the annual fee to be paid to the racing commission for any such registration;

5. To fix and regulate the minimum purse to be offered during any horse or dog race meeting;

6. To fix a minimum and a maximum number of horse races or dog races to be held on any respective racing day;

7. To enter the office, horse racetrack, dog racetrack, kennel, facilities and other places of business of any
licensee to determine whether the provisions of this article and its reasonable rules and regulations are being complied with, and for this purpose, the racing commission, its racing secretary, representatives and employees may visit, investigate and have free access to any such office, horse racetrack, dog racetrack, kennel, facilities and other places of business;

(8) To investigate alleged violations of the provisions of this article, its reasonable rules and regulations, orders and final decisions and to take appropriate disciplinary action against any licensee or permit holder or construction permit holder for the violation thereof or institute appropriate legal action for the enforcement thereof or take such disciplinary action and institute such legal action;

(9) By reasonable rules and regulations, to authorize stewards, starters and other racing officials to impose reasonable fines or other sanctions upon any person connected with or involved in any horse or dog racing or any horse or dog race meeting; and to authorize stewards to rule off the grounds of any horse or dog racetrack any tout, bookmaker or other undesirable individual deemed inimicable to the best interests of horse and dog racing or the pari-mutuel system of wagering in connection therewith;

(10) To require at any time the removal of any racing official or racing employee of any licensee, for the violation of any provision of this article, any reasonable rule and regulation of the racing commission or for any fraudulent practice;

(11) To acquire, establish, maintain and operate, or to provide by contract for the maintenance and operation of, a testing laboratory and related facilities, for the purpose of conducting saliva, urine and other tests on the horse or dog or horses or dogs run or to be run in any horse or dog race meeting, and to purchase all equipment and supplies deemed necessary or desirable in connection with the acquisition, establishment, maintenance and operation of any such testing laboratory and related facilities and all such tests;
(12) To hold up, in any disputed horse or dog race, the payment of any purse, pending a final determination of the results thereof;

(13) To require each licensee to file an annual balance sheet and profit and loss statement pertaining to such licensee's horse or dog racing activities in this state, together with a list of each such licensee's stockholders or other persons having any beneficial interest in the horse or dog racing activities of such licensee;

(14) To issue subpoenas for the attendance of witnesses and subpoenas duces tecum for the production of any books, records and other pertinent documents, and to administer oaths and affirmations to such witnesses, whenever, in the judgment of the racing commission, it is necessary to do so for the effective discharge of its duties under the provisions of this article;

(15) To keep accurate and complete records of its proceedings and to certify the same as may be appropriate;

(16) To take such other action as may be reasonable or appropriate to effectuate the provisions of this article and its reasonable rules and regulations;

(17) To provide breeders' awards, purse supplements and moneys for capital improvements at racetracks in compliance with section thirteen-b of this article.

The racing commission shall not interfere in the internal business or internal affairs of any licensee.

Part V. License and Permit Procedures.

§19-23-7. Application for license; forms; time for filing; disclosure required; verification; bond; application for permit.

(a) Any racing association desiring to hold or conduct a horse or dog race meeting, where the pari-mutuel system of wagering is permitted and conducted, during any calendar year, shall file with the racing commission an application for a license to hold or conduct such horse or dog race meeting. A separate application shall be filed for each
separate license sought for each horse or dog race meeting which such applicant proposes to hold or conduct. The racing commission shall prescribe blank forms to be used in making such application. Such application shall be filed on or before a day to be fixed by the racing commission and shall disclose, but not be limited to, the following:

1. If the applicant be an individual, the full name and address of the applicant;
2. If the applicant be a partnership, firm or association, the full name and address of each partner or member thereof, the name of the partnership, firm or association and its post-office address;
3. If the applicant be a corporation, its name, the state of its incorporation, its post-office address, the full name and address of each officer and director thereof, and if a foreign corporation, whether it is qualified to do business in this state;
4. The dates, totaling not less than two hundred, such applicant intends to hold or conduct such horse or dog race meeting (which may be on any day including Sundays);
5. The location of the horse or dog racetrack, place or enclosure where such applicant proposes to hold or conduct such horse or dog race meeting;
6. Whether the applicant, any partner, member, officer or director has previously applied for a license under the provisions of this article or for a similar license in this or any other state, and if so, whether such license was issued or refused, and, if issued, whether it was ever suspended or revoked; and
7. Such other information as the racing commission may reasonably require which may include information relating to any criminal record of the applicant, if an individual, or of each partner or member, if a partnership, firm or association, or of each officer and director, if a corporation.

(b) Such application shall be verified by the oath or affirmation of the applicant for such license, if an individual, or if the applicant is a partnership, firm,
association or corporation, by a partner, member or officer thereof, as the case may be. When required by the racing commission, an applicant for a license shall also furnish evidence satisfactory to the racing commission of such applicant's ability to pay all taxes due the state, purses, salaries of officials and other expenses incident to the horse or dog race meeting for which a license is sought. In the event the applicant is not able to furnish such satisfactory evidence of such applicant's ability to pay such expenses and fees, the racing commission may require bond or other adequate security before the requested license is issued.

(c) Any person desiring to obtain a permit, as required by the provisions of section two of this article, shall make application therefor on a form prescribed by the racing commission. The application for any such permit shall be accompanied by the fee prescribed therefor by the racing commission. Each applicant for a permit shall set forth in the application such information as the racing commission shall reasonably require.

§19-23-8. Consideration of application for license or permit; issuance or denial; contents of license or permit; grounds for denial of application; determination of racing dates; license or permit not transferable or assignable; limitation on license; validity of permit.

(a) The racing commission shall promptly consider any application for a license or permit, as the case may be. Based upon such application and all other information before it, the racing commission shall make and enter an order either approving or denying such application. The application shall be denied for any reason specified in subsection (b) of this section. If an application for a license is approved, the racing commission shall issue a license to conduct a horse or dog race meeting, and shall designate on the face of such license the kind or type of horse or dog racing for which the same is issued, the racing association to which the same is issued, the dates upon which such horse or dog race meeting is to be held or conducted (which may be any weekday, or weeknight, including Sundays), the location of the horse or dog racetrack, place or enclosure where such horse or dog
race meeting is to be held or conducted and such other information as the racing commission shall deem proper. If an application for a permit is approved, the racing commission shall issue a permit and shall designate on the face of such permit such information as the racing commission shall deem proper.

(b) The racing commission shall deny the application and refuse to issue the license or permit, as the case may be, which denial and refusal shall be final and conclusive unless a hearing is demanded in accordance with the provisions of section sixteen of this article, if the racing commission finds that the applicant (individually, if an individual, or the partners or members, if a partnership, firm or association, or the owners and directors, if a corporation):

(1) Has knowingly made false statement of a material fact in the application or has knowingly failed to disclose any information called for in the application;

(2) Is or has been guilty of any corrupt or fraudulent act, practice or conduct in connection with any horse or dog race meeting in this or any other state;

(3) Has been convicted, within ten years prior to the date of such application, of an offense which under the law of this state, of any other state or of the United States of America, shall constitute a felony or a crime involving moral turpitude;

(4) Has failed to comply with the provisions of this article or any reasonable rules and regulations of the racing commission;

(5) Has had a license to hold or conduct a horse or dog race meeting or a permit to participate therein denied for just cause, suspended or revoked in any other state;

(6) Has defaulted in the payment of any obligation or debt due to this state under the provisions of this article;

(7) Is, if a corporation, neither incorporated under the laws of this state nor qualified to do business within this state;
(8) In the case of an application for a license, has failed
to furnish bond or other adequate security, if the same is
required by the racing commission under the provisions of
section seven of this article;

(9) In the case of an application for a permit, is
unqualified to perform the duties required for the permit
sought; or

(10) In the case of an application for a permit, is, for just
cause, determined to be undesirable to perform the duties
required of such applicant.

(c) In issuing licenses and fixing dates for horse or dog
race meetings at the various horse racetracks and dog
racetracks in this state, the racing commission shall
consider the horse racing circuits and dog racing circuits
with which the horse racetracks and dog racetracks in this
state are associated or contiguous to, and shall also consider
dates which are calculated to increase the tax revenues
accruing from horse racing and dog racing.

(d) A license issued under the provisions of this article is
neither transferable nor assignable to any other racing
association and shall not permit the holding or conducting
of a horse or dog race meeting at any horse or dog racetrack,
place or enclosure not specified thereon. However, if the
specified horse or dog racetrack, place or enclosure
becomes unsuitable for the horse or dog race meeting
because of flood, fire or other catastrophe, or cannot be used
for any reason, the racing commission may, upon
application, authorize the horse or dog race meeting, or any
remaining portion thereof, to be conducted at any other
racetrack, place or enclosure available for that purpose,
provided that the owner of such racetrack, place or
enclosure willingly consents to the use thereof.

(e) No type of horse racing or dog racing shall be
conducted by a licensee at any race meeting other than that
type for which a license was issued.

(f) Each permit issued under the provisions of this
section shall be for the period ending December thirty-first
of the year for which it was issued, and shall be valid at all
horses or dog race meetings during the period for which it was issued, unless it be sooner suspended or revoked in accordance with the provisions of this article. A permit issued under the provisions of this article is neither transferable nor assignable to any other person.

§19-23-8b. Horse or dog racing after six o’clock postmeridian on Sundays; application therefor; tentative approval; publication of notice; petition for local option election; local option election procedure; effect of such election.

(a) Notwithstanding any other provisions of this code to the contrary, a racing association licensed under the provisions of section one of this article and operating a horse or dog racetrack in a county in which Sunday racing has been approved under provisions of section eight-a of this article may make applications to the racing commission for permission to conduct horse or dog racing after the hour of six o’clock postmeridian on Sundays.

(b) The racing commission, if it finds such application to be in order, may grant tentative approval of such application and, if it grants tentative approval, shall prepare and publish a notice to the public that the racing commission has granted tentative approval of the application and that the racing commission will make final confirmation of such application at the expiration of sixty days from the date of the first publication of such notice, which date shall be specified in said notice, unless within that time a petition for a local option election has been filed in accordance with subsection (c) of this section with the county commission of the county in which such racetrack is located. Such notice shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which the racetrack is located: Provided, That prior to granting tentative approval hereunder, the racing commission shall solicit public comment from the citizens of the county wherein the horse racing track or dog racing track is located and shall take such comment into consideration in deciding whether or not to grant tentative approval.
(c) The county commission, upon the written petition of qualified voters residing within the county equal to at least fifteen percent of the number of persons who voted in that county in the next preceding general election, which petition may be in any number of counterparts, shall order an election to determine whether it is the will of the voters of said county that racing be permitted after the hour of six o'clock postmeridian on Sundays in the county.

(d) No election to determine whether it is the will of the voters of a county that racing be permitted after the hour of six o'clock postmeridian on Sundays in the county may be held at a general or primary election or within sixty days of any such election or in conjunction with any other election.

(e) The ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following:

"Shall the West Virginia Racing Commission be authorized to approve horse racing on Sundays after the hour of six p.m. in ................ County, West Virginia?

□ Yes □ No

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

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

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

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

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

(a) Notwithstanding any other provision of law to the
counter, no license for dog racing may be issued for dog
racing in any county wherein horse racing has been
conducted at any time during the fifteen years preceding
the application for such license, unless first approved by the
voters of the county in which the proposed dog racing track
is to be located. The county commission of any county in
which horse racing has been conducted at any time during
such fifteen-year period and in which a proposed dog racing
track is to be located is hereby authorized to call a local
option election for the purpose of determining the will of
the qualified voters within said county as to whether the
racing commission may approve an application for a license
for dog racing if the application and the applicant are
otherwise in compliance with the provisions of this article
and this code.

(b) The county commission may order an election to
determine whether it is the will of the voters of said county
that dog racing be permitted in said county.

(c) Any election to determine whether it is the will of the
voters of said county that dog racing be permitted in said
county shall be held at a general or primary election.

(d) The county commission shall give notice of such
election by publication of such notice as a Class II-0 legal
advertisement in accordance with the provisions of article
three, chapter fifty-nine of this code. Such notice shall be
published within twenty-one consecutive days next
preceding the date of said election.
(e) The ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following:

"Shall the West Virginia Racing Commission be authorized to approve dog racing in ............. County, West Virginia? □ Yes □ No

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

Each individual qualified to vote in said county shall be qualified to vote at the local option election. The votes in said local option election shall be counted and returns made by the election officers and the results certified by the commissioners of election to the county commission, which shall canvass the ballots, all in accordance with the laws of this state relating to general elections insofar as the same are applicable. The county commission shall, without delay, canvass the votes cast at such local option election and certify the results thereof to the racing commission, and shall transmit a certified copy of said results to the secretary of state.

(f) The racing commission may, after the certification of the results of such local option election, thereafter approve an application for a license for dog racing if a majority of the voters voting at such local option election vote yes.

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

(h) If at such election a majority of the voters of said county shall approve dog racing in said county, it is lawful for the county commission, after five years from such approval, and it shall be the duty of the county commission upon a petition in writing of qualified voters residing within the county equal to at least fifteen percent of the number of persons who voted in that county in the next preceding general election, which petition may be in any number of counterparts, to order an election to determine whether it is the will of the voters of said county that dog
67 racing be discontinued in said county. The provisions of
68 subsections (c), (d) and (e) of this section shall govern said
69 election. The ballot, or the ballot labels where voting
70 machines are used, shall have printed thereon substantially
71 the following:
72 “Shall racing of dogs in ............... County, West
73 Virginia be discontinued?
74 □ Yes □ No
75 (Place a cross mark in the square opposite your choice.)”

§19-23-9. Pari-mutuel system of wagering authorized; licensee
authorized to deduct commissions from pari-mutuel pools; retention of breakage; auditing;
minors.

1 (a) The pari-mutuel system of wagering upon the results
2 of any horse or dog race at any horse or dog race meeting
3 conducted or held by any licensee is hereby authorized, if
4 and only if such pari-mutuel wagering is conducted by such
5 licensee within the confines of such licensee’s horse
6 racetrack or dog racetrack, and the provisions of section
7 one, article ten, chapter sixty-one of this code, relating to
8 gaming, shall not apply to the pari-mutuel system of
9 wagering in manner and form as provided for in this article
10 at any horse or dog race meeting within this state where
11 horse or dog racing shall be permitted for any purse by any
12 licensee. A licensee shall permit or conduct only the pari-
13 mutuel system of wagering within the confines of such
14 licensee’s racetrack at which any horse or dog race meeting
15 is conducted or held.

16 (b) A licensee is hereby expressly authorized to deduct a
17 commission from the pari-mutuel pools, as follows:

18 (1) The commission deducted by any licensee from the
19 pari-mutuel pools on thoroughbred horse racing, except
20 from thoroughbred horse racing pari-mutuel pools
21 involving what is known as multiple betting in which the
22 winning pari-mutuel ticket or tickets are determined by a
23 combination of two or more winning horses, shall not
24 exceed seventeen and one-fourth percent of the total of such
25 pari-mutuel pools for the day. Out of such commission, as is
26 mentioned in this subdivision, the licensee (i) shall pay the
pari-mutuel pools tax provided for in subsection (b), section ten of this article, (ii) shall make a deposit into a special fund to be established by the licensee and to be used for the payment of regular purses offered for thoroughbred racing by the licensee, which deposits out of pari-mutuel pools for each day during the months of January, February, March, October, November and December shall be seven and seventy-five one-thousandths percent of such pari-mutuel pools, and which, out of pari-mutuel pools for each day during all other months, shall be six and five hundred seventy-five one-thousandths percent of such pari-mutuel pools, (iii) shall, after allowance for the exclusion given by subsection (b), section ten of this article, make a deposit into a special fund to be established by the racing commission and to be used for the payment of breeders' awards and capital improvements as authorized by section thirteen-b of this article, which deposits out of pari-mutuel pools shall, from the effective date of this section and for fiscal year one thousand nine hundred eighty-five, be four-tenths percent; for fiscal year one thousand nine hundred eighty-six, be seven-tenths percent; for fiscal year one thousand nine hundred eighty-seven, be one percent; for fiscal year one thousand nine hundred eighty-eight, be one and one-half percent; and for fiscal year one thousand nine hundred eighty-nine, and each year thereafter, be two percent of such pools, and (iv) shall pay one tenth of one percent of such pari-mutuel pools into the general fund of the county commission of the county in which the racetrack is located, except if within a municipality, then to such municipal general fund. The remainder of the commission shall be retained by the licensee.

The commission deducted by any licensee from the pari-mutuel pools on thoroughbred horse racing involving what is known as multiple betting in which the winning pari-mutuel ticket or tickets are determined by a combination of two winning horses shall not exceed nineteen percent and by a combination of three or more winning horses shall not exceed twenty-five percent of the total of such pari-mutuel pools for the day. Out of such commission, as is mentioned in this paragraph, the licensee (i) shall pay the pari-mutuel pools tax provided for in subsection (b), section ten of this
article, (ii) shall make a deposit into a special fund to be established by the licensee and to be used for the payment of regular purses offered for thoroughbred racing by the licensee, which deposits out of pari-mutuel pools for each day during the months of January, February, March, October, November and December for pools involving a combination of two winning horses shall be seven and ninety-five one-hundredths percent and out of pari-mutuel pools for each day during all other months shall be seven and forty-five one-hundredths percent of such pari-mutuel pools; and involving a combination of three or more winning horses for the months of January, February, March, October, November and December the deposits out of such fund shall be ten and ninety-five one-hundredths percent of such pari-mutuel pools; and which, out of pari-mutuel pools for each day during all other months, shall be ten and forty-five one-hundredths percent of such pari-mutuel pools, (iii) shall, after allowance for the exclusion given by subsection (b), section ten of this article, make a deposit into a special fund to be established by the racing commission and to be used for the payment of breeders' awards and capital improvements as authorized by section thirteen-b of this article, which deposits out of pari-mutuel pools shall, from the effective date of this section and for fiscal year one thousand nine hundred eighty-five, be four-tenths percent; for fiscal year one thousand nine hundred eighty-six, be seven-tenths percent; for fiscal year one thousand nine hundred eighty-seven, be one percent; for fiscal year one thousand nine hundred eighty-eight, be one and one-half percent; and for fiscal year one thousand nine hundred eighty-nine, and each year thereafter, be two percent of such pools, and (iv) shall pay one tenth of one percent of such pari-mutuel pools into the general fund of the county commission of the county in which the racetrack is located, except if within a municipality, then to such municipal general fund. The remainder of the commission shall be retained by the licensee.

The deposits into special fund established by the racing commission to be used for payments of breeders' awards and other expenses authorized by section thirteen-b of this article shall be reduced by fifty percent in the event the
average daily pari-mutuel pool for any calendar year is less than the average daily pari-mutuel pool for the calendar year ended the thirty-first day of December, one thousand nine hundred eighty-three, in amount equal to eleven percent of the average daily pari-mutuel pool for said calendar year ended the thirty-first day of December, one thousand nine hundred eighty-three. Of the amounts so reduced, fifty percent shall be paid into the special purse fund established in section nine-b of this article.

The commission deducted by the licensee under subdivision (1), subsection (b) of this section may be reduced only by mutual agreement between the licensee and a majority of the trainers and horse owners licensed by subsection (a), section two of this article or their designated representative. Such reduction in licensee commissions may be for a particular race, racing day or days or for a horse race meeting. Fifty percent of such reduction shall be retained by licensee from the amounts required to be paid into the special fund established by the licensee under the provisions of subdivision (1), subsection (b) of this section. The racing commission shall promulgate such reasonable rules and regulations as are necessary to implement the foregoing provisions.

(2) The commission deducted by any licensee from the pari-mutuel pools on harness racing shall not exceed seventeen and one-half percent of the total of such pari-mutuel pools for the day. Out of such commission the licensee shall pay the pari-mutuel pools tax provided for in subsection (c), section ten of this article, and shall pay one tenth of one percent into the general fund of the county commission of the county in which the racetrack is located, except if within a municipality, then to such municipal general fund. The remainder of the commission shall be retained by the licensee.

(3) The commission deducted by any licensee from the pari-mutuel pools on dog racing shall not exceed sixteen and thirty-one-hundredths percent of the total of such pari-mutuel pools for the day. Out of such commission, the licensee shall pay the pari-mutuel pools tax provided for in subsection (d), section ten of this article, and shall pay one
tenth of one percent of such pari-mutuel pools into the
general fund of the county commission of the county in
which the racetrack is located, except if within a
municipality, then to such municipal general fund. The
remainder of the commission shall be retained by the
licensee.

(c) In addition to any such commission, a licensee of
horse race or dog race meetings shall also be entitled to
retain the legitimate breakage, which shall be made and
calculated to the dime, and from such breakage, the licensee
of a horse race meeting (excluding dog race meetings), shall
deposit daily fifty percent of the total of such breakage
retained by the licensee into the special fund created
pursuant to the provisions of subdivision (1), subsection (b)
of this section for the payment of regular purses.

(d) The director of audit, and any other auditors
employed by the racing commission who shall also be
certified public accountants or experienced public
accountants, shall have free access to the space or enclosure
where the pari-mutuel system of wagering is conducted or
calculated at any horse or dog race meeting for the purpose
of ascertaining whether or not the licensee is deducting and
retaining only a commission as provided in this section and
is otherwise complying with the provisions of this section.
They shall also, for the same purposes only, have full and
free access to all records and papers pertaining to such
pari-mutuel system of wagering, and shall report to the
racing commission in writing, under oath, whether or not
the licensee has deducted and retained any commission in
excess of that permitted under the provisions of this section
or has otherwise failed to comply with the provisions of this
section.

(e) No licensee shall permit or allow any individual
under the age of eighteen years to wager at any horse or dog
racetrack, knowing or having reason to believe that such
individual is under the age of eighteen years.

(f) Notwithstanding the foregoing provisions of
subdivision (1), subsection (b) of this section, to the con-
trary, a thoroughbred licensee qualifying for and paying
the alternate reduced tax on pari-mutuel pools provided in
section ten of this article shall distribute the commission authorized to be deducted by subdivision (1), subsection (b), section nine of this article as follows: (i) The licensee shall pay the alternate reduced tax provided in section ten of this article; (ii) shall pay one tenth of one percent of such pari-mutuel pools into the general fund of the county commission of the county in which the racetrack is located, except if within a municipality, then to such municipal general fund; (iii) one half of the remainder of the commission shall be paid into the special fund established by the licensee and to be used for the payment of regular purses offered for thoroughbred racing by the licensee; and (iv) the amount remaining after the payments required above shall be retained by the licensee.

PART VII. TAXATION OF HORSE RACING AND PARI-MUTUEL WAGERING; DISPOSITION OF REVENUES.

§19-23-10. Daily license tax; pari-mutuel pools tax; how taxes paid; alternate tax; credits.

(a) Any racing association conducting thoroughbred racing at any horse racetrack in this state shall pay each day upon which horse races are run a daily license tax of two hundred fifty dollars. Any racing association conducting harness racing at any horse racetrack in this state shall pay each day upon which horse races are run a daily license tax of one hundred fifty dollars. Any racing association conducting dog races shall pay each day upon which dog races are run a daily license tax of one hundred fifty dollars. In the event thoroughbred racing, harness racing, dog racing, or any combination of the foregoing are conducted on the same day at the same racetrack by the same racing association, only one daily license tax in the amount of two hundred fifty dollars shall be paid for that day. Any such daily license tax shall not apply to any local, county or state fair, horse show or agricultural or livestock exposition at which horse racing is conducted for not more than six days.

(b) Any racing association licensed by the racing commission to conduct thoroughbred racing and permitting and conducting pari-mutuel wagering under the provisions of this article shall, in addition to the
22. aforementioned daily license tax, pay to the racing
23. commission, from the commission deducted each day by
24. such licensee from the pari-mutuel pools on thoroughbred
25. racing, a tax calculated on the total daily contribution of all
26. such pari-mutuel pools conducted or made at any and every
27. thoroughbred race meeting of the licensee licensed under
28. the provisions of this article, which tax, on the pari-mutuel
29. pools conducted or made each day during the months of
30. January, February, March, October, November and
31. December shall, from the effective date of this section and
32. for fiscal year one thousand nine hundred eighty-five, be
33. calculated at two and six-tenths percent; for fiscal year one
34. thousand nine hundred eighty-six, be calculated at two and
35. three-tenths percent; for fiscal year one thousand nine
36. hundred eighty-seven, be calculated at two percent of such
37. pool; for fiscal year one thousand nine hundred eighty-eight,
38. be calculated at one and one-half percent; and for fiscal year
39. one thousand nine hundred eighty-nine, and each year
40. thereafter, be calculated at one percent of such pool; and, on
41. the pari-mutuel pools conducted or made each day during
42. all other months, shall, from the effective date of this section
43. and for fiscal year one thousand nine hundred eighty-five, be
44. calculated at three and six-tenths percent; for fiscal year one
45. thousand nine hundred eighty-six, be calculated at three and
46. three-tenths percent; for fiscal year one thousand nine
47. hundred eighty-seven, be calculated at three percent of such
48. pool; for fiscal year one thousand nine hundred eighty-eight,
49. be calculated at two and one-half percent; and for fiscal year
50. one thousand nine hundred eighty-nine, be calculated at two
51. percent of such pool: Provided, That any such racing
52. association operating a horse racetrack in this state having
53. an average daily pari-mutuel pool on horse racing of two
54. hundred eighty thousand dollars or less per day for the race
55. meetings of the preceding calendar year shall, in lieu of
56. payment of the pari-mutuel pool tax, calculated as
57. hereinbefore in this subsection provided, be permitted to
58. conduct pari-mutuel wagering at such horse racetrack on
59. the basis of a daily pari-mutuel pool tax fixed as follows: On
60. the daily pari-mutuel pool not exceeding three hundred
61. thousand dollars the daily pari-mutuel pool tax shall be two
62. thousand dollars plus the otherwise applicable percentage
63. rate imposed by this subsection of the daily pari-mutuel
pool, if any, in excess of three hundred thousand dollars:

Provided, however, That if an association or licensee qualifying for the foregoing alternate tax conducts more than one racing performance, each consisting of up to ten races in a calendar day, such association or licensee shall pay both the daily license tax imposed in subsection (a) and the foregoing alternate tax for each such performance:

Provided further, That a licensee qualifying for the foregoing alternate tax is excluded from participation in the fund established by section thirteen-b of this article.

(c) Any racing association licensed by the racing commission to conduct harness racing and permitting and conducting pari-mutuel wagering under the provisions of this article shall, in addition to the aforementioned daily license tax, pay to the racing commission, from the commission deducted each day by the licensee from the pari-mutuel pools on harness racing, as a tax, three percent of the first one hundred thousand dollars wagered, or any part thereof; four percent of the next one hundred fifty thousand dollars; and five and three-fourths percent of all over that amount wagered each day in all such pari-mutuel pools conducted or made at any and every harness race meeting of the licensee licensed under the provisions of this article.

(d) Any racing association licensed by the racing commission to conduct dog racing and permitting and conducting pari-mutuel wagering under the provisions of this article shall, in addition to the aforementioned daily license tax, pay to the racing commission, from the commission deducted each day by such licensee from the pari-mutuel pools on dog racing, as a tax, four percent of the first fifty thousand dollars or any part thereof of such pari-mutuel pools, five percent of the next fifty thousand dollars of such pari-mutuel pools, six percent of the next one hundred thousand dollars of such pari-mutuel pools, seven percent of the next one hundred fifty thousand dollars of such pari-mutuel pools, and eight percent of all over three hundred fifty thousand dollars wagered each day.

(e) All daily license and pari-mutuel pools tax payments
required under the provisions of this section shall be made to the racing commission or its agent after the last race of each day of each horse or dog race meeting, and the pari-mutuel pools tax payments shall be made from all contributions to all pari-mutuel pools to each and every race of the day.

(f) Every association of licensee subject to the provisions of this article, including the changed provisions of sections nine and ten hereof, shall annually submit to the racing commission and the Legislature financial statements, including a balance sheet, income statement, statement of change in financial position and an audit of any electronic data system used for pari-mutuel tickets and betting, prepared in accordance with generally accepted auditing standards, as certified by an experienced public accountant or a certified public accountant.

§19-23-13. Disposition of funds for payment of outstanding and unredeemed pari-mutuel tickets; publication of notice; irredeemable tickets; stake races for dog tracks.

(a) All moneys held by any licensee for the payment of outstanding and unredeemed pari-mutuel tickets, if not claimed within ninety days after the close of the horse or dog race meeting in connection with which the tickets were issued, shall be turned over by the licensee to the racing commission within fifteen days after the expiration of such ninety-day period, and the licensee shall give such information as the racing commission may require concerning such outstanding and unredeemed tickets. All such moneys shall be deposited by the racing commission in a banking institution of its choice in a special account to be known as "West Virginia Racing Commission Special Account—Unredeemed Pari-Mutuel Tickets." Notice of the amount, date and place of such deposit shall be given by the racing commission, in writing, to the state treasurer. The racing commission shall then cause to be published a notice to the holders of such outstanding and unredeemed pari-mutuel tickets, notifying them to present such tickets for payment at the principal office of the racing commission within ninety days from the date of the publication of such
notice. Such notice shall be published within fifteen days following the receipt of said moneys by the commission from the licensee as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which such horse or dog race meeting was held.

(b) Any such pari-mutuel tickets that shall not be presented for payment within ninety days from the date of the publication of the notice shall thereafter be irredeemable, and the moneys theretofore held for the redemption of such pari-mutuel tickets shall become the property of the racing commission, and shall be expended as follows:

(1) To the owner of the winning horse in any horse race at a horse race meeting held or conducted by any licensee, provided that the owner of such horse is at the time of such horse race a bona fide resident of this state, a sum equal to ten percent of the purse won by such horse. The commission may require proof that the owner was, at the time of the race, a bona fide resident of this state. Upon proof by the owner that he filed a personal income tax return in this state for the previous two years and that he owned real or personal property in this state and paid taxes in this state on said property for the two previous years, he shall be presumed to be a bona fide resident of this state; and

(2) To the breeder (that is, the owner of the mare) of the winning horse in any horse race at a horse race meeting held or conducted by any licensee, provided that the mare foaled in this state, a sum equal to ten percent of the purse won by such horse; and

(3) To the owner of the stallion which sired the winning horse in any horse race at a horse race meeting held or conducted by any licensee, provided that the mare which foaled such winning horse was served by a stallion standing and registered in this state, a sum equal to ten percent of the purse won by such horse; and

(4) When the moneys in the special account, known as the “West Virginia Racing Commission Special Account—Unredeemed Pari-Mutuel Tickets,” will more than satisfy
the requirements of subdivisions (1), (2) and (3), subsection (b) of this section, the West Virginia racing commission shall have the authority to expend the excess moneys from unredeemed horse racing pari-mutuel tickets as purse money in any race conditioned exclusively for West Virginia bred or sired horses, and to expend the excess moneys from unredeemed dog racing pari-mutuel tickets in supplementing purses and establishing stake races and dog racing handicaps at the dog tracks.

(c) Nothing contained in this article shall prohibit one person from qualifying for all or more than one of the aforesaid awards, or for awards under section thirteen-b of this article.

(d) The cost of publication of the notice provided for in this section shall be paid from the funds in the hands of the state treasurer collected from the pari-mutuel pools tax provided for in section ten of this article, when not otherwise provided in the budget; but no such costs shall be paid unless an itemized account thereof, under oath, be first filed with the state auditor.

§19-23-13b. West Virginia thoroughbred development fund; distribution; restricted races; nonrestricted purse supplements.

The racing commission shall deposit moneys required to be withheld by an association or licensee in subsection (b), section nine of this article in a banking institution of its choice in a special account to be known as "West Virginia Racing Commission Special Account—West Virginia Thoroughbred Development Fund." Notice of the amount, date and place of such deposit shall be given by the racing commission, in writing, to the state treasurer. The purpose of the fund is to promote better breeding and racing of thoroughbred horses in the state through awards and purses for accredited breeders/raisers, sire owners and thoroughbred race horse owners. A further objective of the fund is to aid in the rejuvenation and development of the present horse tracks now operating in West Virginia for capital improvements, operations or increased purses between the first day of July, one thousand nine hundred
eighty-four, and the thirty-first day of October, one thousand nine hundred ninety-two.

The fund shall be established forthwith and operate on an annual basis.

(a) Funds will be expended for awards and purses in the following manner:

(i) Fifteen percent of the fund shall be available for distribution for events taking place between the first day of July, one thousand nine hundred eighty-four, and the thirty-first day of December, one thousand nine hundred eighty-five;

(ii) Fifty percent of the fund shall be available for distribution for events taking place between the first day of January, one thousand nine hundred eighty-six, and the thirty-first day of December, one thousand nine hundred eighty-six;

(iii) Seventy-five percent of the fund shall be available for distribution for events taking place between the first day of January, one thousand nine hundred eighty-seven, and the thirty-first day of December, one thousand nine hundred eighty-seven; and

(iv) One hundred percent of the fund shall be available thereafter.

(b) Awards and purses will be distributed as follows:

(i) The breeders/raisers of accredited thoroughbred horses that earn a purse at any West Virginia meet will receive a bonus award calculated at the end of the year as a percentage of the fund dedicated to the breeders/raisers, which shall be sixty percent of the fund available for distribution in any one year. The total amount available for the breeders'/raisers' awards shall be distributed according to the ratio of purses earned by an accredited race horse to the total amount earned in such races by all accredited race horses for that year as a percentage of the fund dedicated to the breeders/raisers. However, no breeder/raiser may receive from the fund dedicated to breeders'/raisers' awards an amount in excess of the earnings of the
accrued horse at West Virginia meets. In addition, should a horse’s breeder and raiser qualify for the same award on the same horse, they will each be awarded one half of the proceeds. Of the funds available for distribution in any one year to breeders/raisers, neither the breeders as a group nor the raisers as a group shall, until January first, one thousand nine hundred ninety-four, qualify for more than sixty and one-tenth percent of such funds.

(ii) The owner of a West Virginia sire of an accredited thoroughbred horse that earns a purse in any race at a West Virginia meet will receive a bonus award calculated at the end of the year as a percentage of the fund dedicated to sire owners, which shall be fifteen percent of the fund available for distribution in any one year. The total amount available for the sire owners’ awards shall be distributed according to the ratio purses earned by the progeny of accredited West Virginia stallions in such races for a particular stallion to the total purses earned by the progeny of all accredited West Virginia stallions in such races. However, no sire owner may receive from the fund dedicated to sire owners an amount in excess of thirty percent of the accredited earnings for each sire.

(iii) The owner of an accredited thoroughbred horse that earns a purse in any race at a West Virginia meet will receive a restricted purse supplement award calculated at the end of the year, which shall be twenty-five percent of the fund available for distribution in any one year, based on the ratio of the earnings in such races of a particular race horse to the total amount earned by all accredited race horses in such races during that year as a percentage of the fund dedicated to purse supplements. However, the owners may not receive from the fund dedicated to purse supplements an amount in excess of forty percent of the total accredited earnings for each accredited race horse.

(iv) In no event shall purses earned at a meet held at a track which did not make a contribution to the thoroughbred development fund out of the daily pool on the day the meet was held, qualify or count toward eligibility for an award under this section.

(v) Any balance in the breeders/raisers, sire owners and
purse supplement funds after yearly distributions shall revert back into the general account of the fund for distribution in the next year.

Distributions shall be made on the fifteenth of each February for the preceding year's achievements.

(c) The remainder, if any, of the fund that is not available for distribution in the above program in any one year is reserved for regular purses, marketing expenses and for capital improvements in the amounts and under the conditions provided hereinafter. Fifty percent of such remainder shall be reserved for payments into the regular purse fund established in subsection (b), section nine of this article. Up to five hundred thousand dollars per year shall be available for (1) capital improvements at the eligible licensed horse racing tracks in the state, and (2) marketing and advertising programs above and beyond two hundred fifty thousand dollars for the eligible licensed horse racing tracks in the state: Provided, That moneys shall be expended for capital improvements or marketing and advertising purposes as described above only in accord with a plan filed with and receiving the prior approval of the racing commission, and on a basis of fifty percent participation by the licensee and fifty percent participation by moneys from the fund, in the total cost of approved projects: Provided, however, That funds approved for one track may not be used at another track unless the first track ceases to operate or is viewed by the commission as unworthy of additional investment due to financial or ethical reasons.

(d) Each pari-mutuel thoroughbred horse track shall provide at least the following restricted races in accordance with the following time schedules:

(i) July first, one thousand nine hundred eighty-four, to December thirty-first, one thousand nine hundred eighty-four—one restricted race per eight racing days;

(ii) January first, one thousand nine hundred eighty-five, to December thirty-first, one thousand nine hundred eighty-five—one restricted race per seven racing days;

(iii) January first, one thousand nine hundred eighty-
(iv) January first, one thousand nine hundred eighty-seven, to December thirty-first, one thousand nine hundred eighty-seven—one restricted race per five racing days;

(v) January first, one thousand nine hundred eighty-eight, to December thirty-first, one thousand nine hundred eighty-eight—one restricted race per four racing days;

(vi) January first, one thousand nine hundred eighty-nine, to December thirty-first, one thousand nine hundred eighty-nine—one restricted race per three racing days; and

(vii) Thereafter, one restricted race per two racing days.

Restricted races shall be funded by each racing association from moneys placed in the general purse fund. The purses shall be twenty percent larger than the purses for similar type races at each track. The racing schedules, purse amounts and types of races are subject to the approval of the West Virginia racing commission.

(e) No association or licensee qualifying for the alternate tax provision of subsection (b), section ten of this article shall be eligible for participation in any of the provisions of this section.

CHAPTER 91
(S. B. 679—By Senator Tucker)

[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five-i, relating to the licensing of hospices; purpose; definitions; application; fees; inspections; suspension; revocation; rules and regulations; violations; penalties and injunctions.

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 article, designated article five-i, to read as follows:

ARTICLE 51. HOSPICE LICENSURE ACT.

§16-51-1. Purpose of short title.
§16-51-2. Definitions.
§16-51-3. Hospices to obtain license; application; fees and inspections.
§16-51-4. Suspension; revocation.
§16-51-5. State board of health to establish rules and regulations.
§16-51-6. Violations; penalties; injunction.

§16-51-1. Purpose and short title.

1 This article shall be known as the "Hospice Licensure Act." The purpose of this act is to establish licensing requirements for hospices. It is the intent of the Legislature to establish, promote and make available within this state a comprehensive hospice care program for the treatment of physical, emotional and mental symptoms of terminal illness, as described in article five-d, chapter sixteen of this code.

§16-51-2. Definitions.

1 (a) "Bereavement services" means support services designed to assist individuals to experience, respond emotionally to and adjust to the death of another person.

4 (b) "Director" means the director of the West Virginia department of health.

6 (c) "Hospice" means a coordinated program of home and inpatient care provided directly or through an agreement under the direction of an identifiable hospice administration which provides palliative and supportive medical and other health services to terminally ill individuals and their families. Hospice utilizes a medically directed interdisciplinary team. A hospice program of care provides care to meet the physical, psychological, social, spiritual and other special needs which are experienced during the final stages of illness, and during dying and bereavement.

17 (d) "Interdisciplinary team" means the hospice client and the client's family, the attending physician and the following hospice personnel: Physician, nurse, social
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20 worker, clergy and trained volunteer. Providers of
21 supportive services such as mental health, pharmaceutical
22 and any other appropriate allied health services may also be
23 included on the team as the needs of the individual dictate.
24 (e) "Palliative services" means treatment directed at
25 controlling pain, relieving other symptoms and focusing on
26 the special needs of the individual and family as they
27 experience the stress of the dying process, rather than
28 treatment designed for investigation and intervention for
29 the purpose of cure or prolongation of life.
30 (f) "Terminally ill" means that an individual has a
31 medical prognosis that his life expectancy is six months or
32 less.
33 (g) The board of health may define in regulation any
34 term or phrase used in this article which is not expressly
35 defined.

§16-5I-3. Hospices to obtain license; application; fees and
inspections.

1 (a) No person, partnership, association or corporation,
2 or any governmental unit or any division, department,
3 board or agency thereof may operate a hospice unless such
4 operation first obtains a license from the state director of
5 health in accordance with the provisions of this article and
6 the rules and regulations lawfully promulgated hereunder:
7 Provided, That this section shall not prevent any hospice
8 which has been or is granted a certificate of need, as defined
9 in article two-d of this chapter from operating until such
10 time as the rules and regulations required by section four of
11 this article become effective and the director grants or
12 denies an application for a license filed by such hospice.
13 Any hospice in operation prior to the effective date of such
14 rules and regulations which desires to continue operating as
15 a hospice shall apply for a license under this article within
16 thirty days after the date such rules and regulations become
17 effective.
18 (b) Any person, partnership, association or corporation
19 or any governmental unit or any division, department,
20 board or agency thereof desiring a license hereunder shall
file with the director an application in such form as the
director shall prescribe and furnish accompanied by a fee to
be determined by the board of health, based upon the
number of persons served by the hospice. The director shall
inspect the hospice prior to issuing a license. Upon receipt
and review of an application for license, the director shall
issue a license if the hospice is in compliance with the
provisions of this article and with the rules and regulations
lawfully promulgated hereunder. The license is not
transferable or assignable.

(c) A license shall expire one year from the date of
issuance. Sixty days prior to the expiration date, an
application for renewal shall be submitted on forms
furnished by the director. A license shall be renewed if the
director determines that the applicant is in compliance with
this article and with all rules promulgated hereunder.

(d) The director shall inspect all hospices that are
subject to rules adopted pursuant to this article no less than
annually in order to determine compliance with the
provisions of this article and with rules and regulations
adopted hereunder.

§16-5I-4. Suspension; revocation.

(a) The director is authorized to suspend or revoke a
license issued hereunder if the provisions of this article or of
the rules and regulations are violated.

(b) 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 hospice concerned is located. The
licensee shall be entitled to be represented by legal counsel
at the hearing.

(c) If a license is revoked as herein provided, a new
application for a license shall be considered by the director
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
18 proper inspection has been made and all provisions of this 
19 article and rules and regulations promulgated hereunder 
20 have been satisfied.
21 (d) All of the pertinent provisions of article five, chapter 
22 twenty-nine-a of this code shall apply to and govern any 
23 hearing authorized and required by the provisions of this 
24 article, and the administrative procedure in connection 
25 with and following any such hearing, with like effect as if 
26 the provisions of said article five were set forth in extenso in 
27 this section.
28 (e) Any applicant or licensee who is dissatisfied with the 
29 decision of the director as a result of the hearing provided in 
30 this section may, within thirty days after receiving notice of 
31 the decision, appeal to the circuit court, in term or in 
32 vacation, of Kanawha County for judicial review of the 
33 decision.
34 (f) The court may affirm, modify or reverse the decision 
35 of the director and either the applicant or licensee or the 
36 director may appeal from the court’s decision to the 
37 supreme court of appeals.

§16-51-5. State board of health to establish rules and 
regulations.

1 The state board of health, after soliciting the advice and 
2 recommendations of the West Virginia continuum of care 
3 board, shall promulgate reasonable rules and regulations 
4 for the licensure of hospice programs as it finds necessary in 
5 order to ensure adequate care, treatment, health, safety, 
6 welfare and comfort of hospice patients. These rules and 
7 regulations shall include, but not be limited to:
8 (a) The qualifications and supervision of licensed and 
9 nonlicensed personnel;
10 (b) The provision and coordination of inpatient care and 
11 in-home treatment services, including the development of a 
12 written plan of care;
13 (c) The management, operation, staffing and equipping 
14 of the hospice program;
15 (d) The clinical and business records kept by the 
16 hospice;
(e) The procedures for the review of utilization and quality of patient care; and

(f) Such other requirements as the board of health determines to be appropriate.

§16-51-6. Violations; penalties; injunction.

(a) Any person, partnership, association or corporation and any local governmental unit or any division, department, board or agency thereof which establishes, conducts, manages or operates a hospice without first obtaining a license therefor as herein provided, or which violates any provisions of this article or any rule or regulation lawfully promulgated thereunder, shall be guilty of a misdemeanor, and, upon conviction thereof, shall for the first offense be fined not more than one hundred dollars, or imprisoned in the county jail for not more than ninety days, or both fined and imprisoned. For each subsequent offense the fine may be increased to not more than five hundred dollars, with imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment. Each day of continuing violation after conviction shall be considered a separate offense.

(b) 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 governmental unit or any division, department, board or agency thereof, to restrain or prevent the establishment, conduct, management or operation of any hospice or violation of any provisions of this article or any rule or regulation lawfully promulgated thereunder, without first obtaining a license therefor in the manner hereinbefore provided.

CHAPTER 92

(Com. Sub. for S. B. 585—By Senator Chace and Senator Tonkovich)

[Passed March 8, 1964; in effect July 1, 1964. 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-a, relating to creation of the West Virginia hospital finance authority and the board thereof; the powers of said authority, including the power to lend money to hospitals for the acquisition or construction of hospital facilities, which include capital improvements and equipment, or for refinancing hospital indebtedness; the power to borrow money and issue bonds or notes, including refunding bonds or notes, to accomplish the purposes of the authority; power to enter into loan agreements; contracts, indentures, security agreements and other agreements, which may include provisions for the appointment of receivers; exemption from taxation of property of the authority and of any bonds or notes, and the interest thereon, issued by the authority; and other rights, powers and duties of the authority.

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-a, to read as follows:

ARTICLE 29A. WEST VIRGINIA HOSPITAL FINANCE AUTHORITY ACT.

§16-29A-1. Short title.
§16-29A-2. Declaration of policy and responsibility; purpose and intent of article; findings.
§16-29A-3. Definitions.
§16-29A-4. Creation of authority and board; status and members of board.
§16-29A-6. Hospital loans.
§16-29A-8. Trustee for bondholders; contents of trust agreement.
§16-29A-9. Use of funds by authority; restrictions thereon.
§16-29A-10. Security for bonds and notes.
§16-29A-11. Enforcement of payment and validity of bonds and notes.
§16-29A-12. Pledges; time; liens; recordation.
§16-29A-14. Purchase and cancellation of notes or bonds.
§16-29A-15. Vested rights; impairment.
§16-29A-16. Bonds and notes not debt of state, county, municipality or any political subdivision; expenses incurred pursuant to article.
§16-29A-17. Negotiability of bonds and notes.
§16-29A-21. Nondiscrimination; hospital facilities.
§16-29A-22. Personal liability; persons executing bonds or notes.
§16-29A-23. Financial interest in contracts prohibited; penalty.
§16-29A-24. Meetings and records of authority to be kept public.
§16-29A-25. Cumulative authority as to powers conferred; applicability of other statutes and charters.
§16-29A-26. Liberal construction.

§16-29A-1. Short title.

1 This article shall be known and may be cited as the “West Virginia Hospital Finance Authority Act.”

§16-29A-2. Declaration of policy and responsibility; purpose and intent of article; findings.

1 It is hereby declared to be the public policy of the state of West Virginia and a responsibility of the state of West Virginia, for the benefit of the people of the state and the improvement of their health, welfare and living conditions, to provide hospitals within the state with appropriate means at reasonable cost to maintain, expand, enlarge and establish health care, hospital and other related facilities and to provide hospitals with the ability to refinance indebtedness. This article shall provide a method to enable hospitals in the state to provide or maintain at reasonable cost pursuant to reasonable terms the facilities, structures and services needed to accomplish the purposes of this article, all to the public benefit and good, to the extent and in the manner provided in this article.

15 The Legislature finds and hereby declares that the responsibility of the state as outlined above cannot be effectively met without the hospital loan program as provided for in this article.

§16-29A-3. Definitions.

1 As used in this article, unless the context clearly requires a different meaning:

3 (1) “Authority” means the West Virginia hospital finance authority created by section four of this article, the duties, powers, responsibilities and functions of which are specified in this article;
(2) "Board" means the West Virginia hospital finance board created by section four of this article, which shall manage and control the authority;

(3) "Bond" means a revenue bond issued by the authority to effect the purposes of this article;

(4) "Construction" means and includes reconstruction, enlargement, improvement and providing furnishings or equipment;

(5) "Direct provider of health care" means a person or organization whose primary current activity is the provision of health care to individuals and includes a licensed or certified physician, osteopath, dentist, nurse, podiatrist or physician's assistant or an organization comprised of these health professionals or employing these health professionals;

(6) "Hospital" means a corporation, association, institution or establishment located within the state for the care of those who require medical treatment, which may be a public or private corporation or association. "Hospital" specifically includes corporations or other organizations engaged solely in some phase of hospital activity or in providing a supporting service to hospitals or public or private nonprofit corporations which operate or own hospital facilities;

(7) "Hospital facilities" means any real or personal property suitable and intended for, or incidental or ancillary to, use by a hospital and includes: Outpatient clinics; laboratories; laundries; nurses, doctors or interns residences; administration buildings; facilities for research directly involved with hospital care; maintenance, storage or utility facilities; parking lots and garages; and all necessary, useful or related equipment, furnishings and appurtenances and all lands necessary or convenient as a site for the foregoing and specifically includes any capital improvements to any of the foregoing. "Hospital facilities" specifically includes office facilities not less than eighty percent of which are intended for lease to direct providers of health care and which are geographically or functionally related to one or more other hospital facilities, if the authority determines that the financing of the office
facilities is necessary to accomplish the purposes of this
article;

(8) "Hospital loan" means a loan made by the authority
to a hospital;

(9) "Note" means a short-term promise to pay a
specified amount of money, payable and secured as
provided pursuant to this article and issued by the
authority to effect the purposes of this article;

(10) "Project costs" means the total of the reasonable or
necessary costs incurred for carrying out the works and
undertakings for the acquisition or construction of hospital
facilities under this article. "Project costs" includes, but is
not limited to, all of the following costs: The costs of
acquisition or construction of the hospital facilities; studies
and surveys; plans, specifications, architectural and
engineering services; legal, organization, marketing or
other special services; financing, acquisition, demolition,
construction, equipping and site development of new and
rehabilitated buildings; rehabilitation, reconstruction,
repair or remodeling of existing buildings; interest and
carrying charges during construction and before full
earnings are achieved and operating expenses before full
earnings are achieved or a period of one year following the
completion of construction, whichever occurs first, and a
reasonable reserve for payment of principal of and interest
on bonds or notes of the authority. "Project costs" shall also
include reimbursement of a hospital for the foregoing costs
expended by a hospital from its own funds or from money
borrowed by the hospital for such purposes before issuance
and delivery of bonds or notes by the authority for the
purpose of providing funds to pay the project costs. "Project
costs" also specifically includes the refinancing of any
existing debt of a hospital necessary in order to permit the
hospital to borrow from the authority and give adequate
security for the hospital loan. The determination of the
authority with respect to the necessity of refinancing and
adequate security for a hospital loan is conclusive; and

(11) "Revenue" means any money or thing of value
collected by, or paid to, the authority as principal of or
interest, charges or other fees on hospital loans, or any other
collections on hospital loans made by the authority to
hospitals to finance in whole or in part the acquisition or
construction of any hospital facilities, or other money or
property which is received and may be expended for or
pledged as revenues pursuant to this article.

§16-29A-4. Creation of authority and board; status and
members of board.

The West Virginia hospital finance authority is hereby
created. The authority is a body corporate and a
governmental instrumentality of the state. The exercise by
the authority of the powers conferred by this article and the
carrying out of its purposes and duties shall be deemed and
held to be, and are hereby determined to be, essential
governmental functions and for a public purpose.

The authority shall be controlled, managed and operated
by the seven-member board known as the West Virginia
hospital finance board, which is hereby created. The board
shall consist of the director of the state department of
health and the state treasurer as members ex officio of the
board. The other five members of the board shall be
appointed by the governor, by and with the advice and
consent of the Senate, and shall serve terms of two, three,
four, five and six years, respectively. The successor of each
such appointed member shall be appointed for a term of six
years in the same manner as the original appointments were
made, except that any person appointed to fill a vacancy
occurring prior to the expiration of the term for which his
predecessor was appointed shall be appointed only for the
remainder of such term. No more than three of the
appointed board members shall at any one time belong to
the same political party. Appointed board members may be
reappointed to serve additional terms.

All members of the board shall be citizens of the state.
Each appointed member of the board, before entering upon
his duties, shall comply with the requirements of article
one, chapter six of this code and give bond in the sum of
twenty-five thousand dollars in the manner provided in
article two, chapter six of this code. The governor may
remove any board member for cause as provided in article
six, chapter six of this code. The director of the state department of health and the state treasurer may each appoint a deputy to serve as a member of the board in their respective absences. Such deputy shall be a person in the office of the director of the state department of health or the state treasurer, as the case may be, and shall serve at his pleasure.

Four members of the board shall constitute a quorum, and the affirmative vote of four members shall be necessary for any action taken by vote of the board. No vacancy in the membership of the board shall impair the rights of a quorum by such vote to exercise all the rights and perform all the duties of the board and the authority.

Annually, the board shall elect one of its appointed members as chairman and another as vice chairman and shall appoint a secretary-treasurer, who need not be a member of the board. The person appointed as secretary-treasurer, including a board member if he is so appointed, shall give bond in the sum of fifty thousand dollars in the manner provided in article two, chapter six of this code.

Members of the board shall not receive compensation for services but shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of their duties. Any payments for compensation and expenses shall be paid from the funds of the authority, after appropriations and authorization by the Legislature, and no liability or obligation shall be incurred by the authority beyond the extent to which moneys are available from funds of the authority.

There shall also be a director of the authority appointed by the board.


The authority is hereby granted, has and may exercise all the powers necessary or appropriate to carry out and effectuate the purposes of this article, including the following:

(a) To sue and be sued in its own name and plead and be impleaded in its own name; to have a seal and alter the same
at its pleasure; to make, execute and deliver contracts, indentures, agreements, conveyances and other instruments necessary or convenient to the exercise of its powers; to adopt and, from time to time, amend and repeal bylaws necessary and proper for the legislation 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; and to maintain a principal office. Any actions against the authority shall be brought in the circuit court of Kanawha County, in which the principal office of the authority shall be located. When the cost under any contract or agreement to be entered by the authority, other than compensation for personal services, involves an expenditure of more than three 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, and 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: Provided, That a contract, indenture or agreement for a hospital loan is not subject to the foregoing requirements, and the authority may enter into such contract, indenture or 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 as necessary to best effectuate the purposes of this article: Provided, however, That a contract or agreement entered into by a hospital to which any hospital loan is made is not subject to the foregoing requirements. 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.
(b) To solicit and accept gifts, grants, loans and other aids from any person, corporation or governmental agency.

(c) To make hospital loans, to participate in the making of hospital loans, to undertake commitments, to execute and be the beneficiary under deeds of trust, to enter into security agreements, to sell hospital loans and the security therefor at public or private sale, to modify or alter hospital loans and security therefor, to discharge hospital loans and security therefor, to order a trustee’s sale under a deed of trust or commence an action to protect or enforce a right conferred upon it by a law, deed of trust, hospital loan, contract, indenture or other agreement and to bid for and purchase property which was the subject of a deed of trust at a trustee’s sale or at any other sale and to acquire or take possession of that property and in that event complete, administer, pay the principal of and interest on any obligations incurred in connection with such property, dispose of and otherwise deal with the property in a manner necessary or desirable to protect the interest of the authority in the property. The hospital loans made by the authority may be secured by deeds of trust or security agreements, as applicable, or not, as the authority determines.

(d) To lend money to hospitals for the purpose of refinancing any outstanding indebtedness of a hospital if the authority determines the refinancing is necessary to realize the purposes of this article. A hospital loan made pursuant to this subsection shall not exceed the amount of the principal of and interest and redemption premium, if any, on the indebtedness to be refinanced which has not been repaid, plus the marketing, financing, legal and other costs incurred in connection with the refinancing and the issuance of bonds or notes of the authority issued in whole or in part to provide funds to make the hospital loan described in this subdivision, including the costs of funding a bond reserve and paying capitalized interest on the bonds or notes for a period not to exceed one year after the issuance of such bonds or notes. The determination of the authority under this subsection shall be conclusive.

(e) To charge, impose and collect fees and charges in
connection with its hospital loans, commitments and servicing, including reimbursement of the costs of financing by the authority, service charges, insurance premiums and an allocable share of the operating expenses of the authority and to make provision for increasing the same, if necessary, as the authority determines is reasonable and approved by the board.

(f) To acquire, hold and dispose of real or personal property necessary or appropriate for the accomplishment of the purposes of this article.

(g) To procure insurance against a loss in connection with its property, assets or activities.

(h) To borrow money for its purpose, including its initial operating expense, and issue its bonds or notes for the money and provide for the rights of the holders of the bonds or notes and to secure the bonds or notes by a deed of trust on or an assignment or pledge of any or all of its properties, including any part of the security for its hospital loans. The state shall not be liable on any bonds or notes of the authority; the bonds or notes shall not be a debt of the state; and each bond or note shall contain on its face a statement to that effect.

(i) To invest any funds not required for immediate use or disbursement, at its discretion, in any of the following:

(1) Direct obligations of, or obligations the timely payment of the principal of and interest on which is guaranteed by, the United States of America;

(2) Bonds, debentures, notes or other evidences of indebtedness issued by any of the following agencies: Banks for cooperatives; federal intermediate credit banks; federal home loan bank system; Export-Import Bank of the United States; federal farm credit banks; federal land banks; federal financing banks; the Federal National Mortgage Association or the Government National Mortgage Association;

(3) Public housing bonds issued by public agencies or municipalities and fully secured as to the payment of both principal and interest by a pledge of annual contributions under an annual contributions contract or contracts with
the United States of America; or temporary notes issued by public agencies or municipalities or preliminary loan notes issued by public agencies or municipalities, in each case fully secured as to the payment of both principal and interest by a requisition or payment agreement with the United States of America;

(4) Certificates of deposit secured by obligations of the type specified in subparagraph (1);

(5) Direct obligations of, or obligations the timely payment of the principal of and interest on which is guaranteed by, the state of West Virginia;

(6) Direct and general obligations of any other state within the territorial United States, to the payment of the principal of and interest on which the full faith and credit of such state is pledged: Provided, That at the time of their purchase, such obligations are rated in either of the two highest rating categories by a nationally recognized bond rating agency;

(7) Any fixed interest bond, note or debenture of any corporation organized and operating within the United States: Provided, That such corporation has a minimum net worth of fifteen million dollars and its securities or its parent corporation's securities are listed on one or more of the national stock exchanges: Provided, however, That (i) such corporation has earned a profit in eight of the preceding ten fiscal years as reflected in its statements, (ii) such corporation has not defaulted in the payment of principal of or interest on any of its outstanding funded indebtedness during its preceding ten fiscal years, and (iii) the bonds, notes or debentures of such corporation to be purchased are rated "AA" or the equivalent thereof or better than "AA" or the equivalent thereof by at least two or more nationally recognized rating services such as Standard and Poor's, Dun & Bradstreet or Moody's;

(8) Fully collateralized or insured bankers acceptances or time deposits drawn on and accepted by commercial banks; and

(9) Repurchase agreements of commercial banks or trust companies fully secured by obligations of the type
specified in subparagraph (1) and having on the date of such agreement a fair market value equal to at least one hundred percent of the principal amount of such repurchase agreement.

(j) To engage necessary personnel and to engage the services of private consultants for rendering professional and technical assistance and advice.

(k) To establish or increase reserves from moneys received or to be received by the authority to secure or to pay the principal of and interest on bonds issued by the authority pursuant to this article.

(l) To do all acts necessary and proper to carry out the powers expressly granted to the authority in this article.

§16-29A-6. Hospital loans.

The authority may lend money to hospitals for the acquisition, construction, improvement or alteration of hospital facilities. A hospital loan shall not be made unless the authority is reasonably satisfied that there will be made available to the hospital from the hospital loan and other sources all the funds necessary to pay all project costs; that the hospital facilities will produce revenues sufficient, together with any other revenues pledged, to meet the principal of and interest on the hospital loan, other costs, expenses and charges in connection with the hospital loan and other charges or obligations of the hospital which may be prior or equal to the hospital loan, promptly as they become due; and that the hospital is otherwise soundly financed. The hospital loan may be secured by a deed of trust on or a security interest in, as applicable, property of the hospital, including the hospital facilities, and may provide for the appointment of a receiver to operate the hospital facilities in case of default. A hospital loan made pursuant to this section shall not exceed the project costs as determined by the authority. A hospital loan shall be secured in a manner, be repaid in a period not exceeding fifty years and bear interest at a rate, all as determined by the authority, which interest rate may be decreased or increased so that it shall in no event be less than the rate paid by the authority on notes, renewal notes or bonds.
issued to fund the hospital loan. Such terms and provisions shall be set forth in a loan agreement between the authority and the hospital.


(a) The authority periodically may issue its negotiable bonds and notes in a principal amount which, in the opinion of the authority, shall be necessary to provide sufficient funds for the making of hospital loans, including temporary loans during the construction of hospital facilities, for the payment of interest on bonds and notes of the authority during construction of hospital facilities for which the hospital loan was made and for a reasonable time thereafter and for the establishment of reserves to secure those bonds and notes.

(b) The authority periodically may issue renewal notes, may issue bonds to pay notes and, if it considers refunding expedient, to refund or to refund in advance bonds or notes issued by the authority by the issuance of new bonds, pursuant to the requirements of section thirteen of this article.

(c) Except as may otherwise be expressly provided by the authority, every issue of its notes or bonds shall be special obligations of the authority, payable solely from the property, revenues or other sources of or available to the authority pledges therefor.

(d) The bonds and the notes shall be authorized by resolution of the authority, 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 seven years from the date of issue of such original note, and in the case of any such bond not exceeding fifty 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 or places and be subject to such terms of redemption as the authority may authorize. The bonds and notes of the authority may be sold by the authority, at public or private sale, at or not less than the
price the authority determines. The bonds and notes shall be executed by the chairman and vice chairman of the board, both of whom may use facsimile signatures. The official seal of the authority or a facsimile thereof shall be affixed to or printed on each bond and note and attested, manually or by facsimile signature, by the secretary-treasurer of the board, and any coupons attached to any bond or note shall bear the signature or facsimile signature of the chairman 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 authority 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.

(e) A resolution authorizing bonds or notes or an issue of bonds or notes under 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:

1. Pledging and creating a lien on all or any part of the fees and charges made or received or to be received by the authority, all or any part of the moneys received in payment of hospital loans and interest on hospital loans and all or any part of other moneys received or to be received, to secure the payment of the bonds or notes or of any issue of bonds or notes, subject to those agreements with bondholders or note holders which then exist;

2. Pledging and creating a lien on all or any part of the assets of the authority, including notes, deeds of trust and obligations securing the assets, to secure the payment of the bonds or notes or of any issue of bonds or notes, subject to those agreements with bondholders or note holders which then exist;

3. Pledging and creating a lien on any loan, grant or contribution to be received from the federal, state or local government or other source;

4. The use and disposition of the income from hospital
loans owned by the authority and payment of the principal
of and interest on hospital loans owned by the authority;
(5) The setting aside of reserves or sinking funds and the
regulation and disposition thereof;
(6) Limitations on the purpose to which the proceeds of
sale of bonds or notes may be applied and pledging the
proceeds to secure the payment of the bonds or notes or of
any issue of the bonds or notes;
(7) Limitations on the issuance of additional bonds or
notes and the terms upon which additional bonds or notes
may be issued and secured;
(8) 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 consent thereto and the manner in which the
consent may be given; and
(9) Vesting in a trustee or trustees the property, rights,
powers, remedies and duties which the authority considers
necessary or convenient.

§16-29A-8. Trustee for bondholders; contents of trust agree-
ment.
1 In the discretion of the authority, any bonds, including
2 refunding bonds, or notes issued by the authority may be
3 secured by a trust agreement between the authority and a
4 corporate trustee, which trustee may be any trust company
5 within or without the state. Any such trust agreement may
6 contain provisions as set forth in section seven of this article
7 with respect to the resolution. All expenses incurred in
8 carrying out the provisions of any trust agreement may be
9 treated as a part of the costs of the operation of the hospital
10 loan program provided for hereunder. Any such trust
11 agreement, indenture or resolution authorizing the
12 issuance of bonds or notes may provide the method whereby
13 the general administrative overhead expenses of the
14 authority shall be allocated among the several hospitals to
15 which hospital loans have been made.

§16-29A-9. Use of funds by authority; restrictions thereon.
1 All moneys, properties and assets acquired by the
authority, whether as proceeds from the sale of bonds or notes or as revenues or otherwise, shall be held by it in trust for the purposes of carrying out its powers and duties and shall be used and reused in accordance with the purposes and provisions of this article. Such moneys shall at no time be commingled with other public funds. Such moneys, except as otherwise provided in any resolution authorizing the issuance of bonds or notes or in any trust agreement securing the same, or except when invested pursuant to subsection nine, section five of this article, shall be kept in appropriate depositories and secured as provided and required by law. The resolution authorizing the issuance of such bonds or notes of any issue or the trust agreement securing such bonds or notes shall provide that any officer to whom, or any banking institution or trust company to which, such moneys are paid, shall act as trustee of such moneys and hold and apply them for the purposes hereof, subject to the conditions this article and such resolution or trust agreement provide.

§16-29A-10. Security for bonds and notes.

A resolution authorizing the issuance of bonds or notes under this article may provide that the principal of and interest on the bonds or notes issued shall be secured by a lien on any or all of the fees and charges made or received, or to be received, by the authority from the hospital in connection with the hospital loan, on any or all of the money received in payment of the hospital loan and interest on the hospital loan, on any or all of investment earnings or profits on any of these sources or on any or all of the security held for that payment, and on other funds or assets of the authority pledged for such purpose.

§16-29A-11. Enforcement of payment and validity of bonds and notes.

(a) The provisions of this article and any resolution, indenture, deed of trust or security agreement shall continue in effect until the principal of and interest on the bonds or notes of the authority have been fully paid, and the duties of the authority under this article and any resolution, indenture, deed of trust or security agreement shall be enforceable by any bondholder or noteholder by
mandamus, trustee's sale under the deed of trust or other appropriate action in any court of competent jurisdiction.

(b) The resolution authorizing the bonds or notes shall provide that such bonds or notes shall contain a recital that they are issued pursuant to this article, which recital shall be conclusive evidence of their validity and of the regularity of their issuance.

§16-29A-12. Pledges; time; liens; recordation.

Any pledge made by the authority shall be valid and binding from the time the pledge is made. The money or property so pledged and thereafter received by the authority 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 authority, irrespective of whether such parties have notice thereof.


Any bonds issued hereunder and at any time outstanding may at any time and from time to time be refunded by the authority by the issuance of its refunding bonds 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 of the authority; 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 so 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 article 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, shall be subject to the provisions contained in section seven of this article and shall be secured in accordance with the provisions of sections seven and eight of this article.

§16-29A-14. Purchase and cancellation of notes or bonds.

1 The authority, subject to such agreements with noteholders or bondholders as may then exist, shall have power, out of any funds available therefor, to purchase bonds, including refunding bonds, or notes of the authority.

2 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 applicable on the first date after such purchase, such bonds or notes shall be cancelled.

3 redemption plus accrued interest to such date. Upon such purchase, such bonds or notes shall be canceled.

§16-29A-15. Vested rights; impairment.

1 The state pledges and agrees with the holders of any bonds or notes issued under this article that the state will not limit or alter the rights vested in the authority to fulfill the terms of any agreements 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 authority is authorized to include this pledge and agreement of the state in any agreement with the holders of such bonds or notes.

§16-29A-16. Bonds and notes not debt of state, county, municipality or any political subdivision; expenses incurred pursuant to article.

1 Bonds, including refunding bonds, and notes issued
under the authority 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
this 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 this article 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 this article, which bonds or refunding bonds
shall be payable solely from revenues and funds pledged for
their payment as authorized by this article. 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
this article shall be payable solely from funds provided
under the authority of this article. Such article does not
authorize the authority to incur indebtedness or liability
on behalf of or payable by the state or any county,
municipality or any other political subdivision thereof.

§16-29A-17. 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 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 authority 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.


1 The exercise of the powers granted to the authority by
2 this article will be in all respects for the benefit of the people
3 of the state for the improvement of their health, safety,
4 convenience and welfare and is a public purpose. As the
5 operation and maintenance of hospital facilities will
6 constitute the performance of essential governmental
7 functions, the authority shall not be required to pay any
8 taxes or assessments upon any property acquired or used by
9 the authority or upon the income therefrom. All bonds and
10 notes of the authority, and all interest and income thereon,
11 shall be exempt from all taxation by this state and any
12 county, municipality, political subdivision or agency
13 thereof, except inheritance taxes.


1 Before the authority makes a hospital loan to any
2 hospital, and as a condition precedent to the authority's
3 making any such hospital loan, a certificate of need shall be
4 obtained pursuant to article two-d of this chapter, or a
5 determination shall be secured from the agency issuing the
6 certificate of need that a certificate is not necessary for the
7 hospital facilities with respect to which the hospital loan is
8 proposed to be made: Provided, That if a certificate of need
9 is not necessary for a specific project or projects, then the
health care cost review authority created by section five, article twenty-nine-b of this chapter must be consulted by the authority concerning the availability of financial resources to both repay the loan and to fund the ongoing operations of the project or projects. The opinion of the health care cost review authority, while not determinative on the question of the issuance of the hospital loan, shall be entitled to substantial weight before the authority and shall be overcome only by clear and convincing evidence to the contrary. This section shall not apply to refinancing of present indebtedness or to refunding or advance refunding of bonds or notes.

§16-29A-21. Nondiscrimination; hospital facilities.

The authority shall require that use of hospital facilities assisted under this article shall be open to all, regardless of race, religion, sex or creed, and that contractors and subcontractors engaged in the construction or alteration of such hospital facilities shall provide an equal opportunity for employment, without discrimination as to race, religion, sex or creed. The hospital to which any hospital loan is made shall covenant with the authority that the nondiscrimination provisions shall be enforced.

§16-29A-22. Personal liability; persons executing bonds or notes.

Neither the members or officers of the board nor officers or employees of the authority nor any person executing the bonds or notes shall be liable personally on the bonds or notes or be subject to any personal liability or accountability by reason of the issuance thereof.

§16-29A-23. Financial interest in contracts prohibited; penalty.

No officer, member or employee of the board or the authority shall be financially interested, directly or indirectly, in any contract of any person with the authority, or in the sale of any property, real or personal, to or from the authority. This section does not apply to contracts or purchases of property, real or personal, between the authority and any governmental agency. If any officer, member or employee of the board or the authority has such
financial interest in a contract or sale of property prohibited hereby, he shall be 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.

§16-29A-24. Meetings and records of authority to be kept public.

All meetings of the authority shall be open to the public, and the records of the authority shall be open to public inspection at all reasonable times, except as otherwise provided in this section. All final actions of the authority shall be journalized, and such journal shall also be open to the inspection of the public at all reasonable times. Any records or information relating to secret processes or secret methods of manufacture or production which may be obtained by the authority or other persons acting under authority of this article are confidential and shall not be disclosed.

§16-29A-25. Cumulative authority as to powers conferred; applicability of other statutes and charters.

This article shall be construed as granting cumulative authority for the exercise of the various powers herein conferred, and neither the powers nor any bonds or notes issued hereunder shall be affected or limited by any other statutory or charter provision now or hereafter in force, other than as may be provided in this article, it being the purpose and intention of this article to create full, separate and complete additional powers. The various powers conferred herein may be exercised independently and notwithstanding that no bonds or notes are issued hereunder.

§16-29A-26. Liberal construction.

This article, being necessary for and to secure the public health, safety, convenience and welfare of the citizens of the state, shall be liberally construed to effect the public purposes hereof.
AN ACT to amend and reenact sections one, two, five, seven and eight, article six, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto seven new sections, designated sections nine, ten, eleven, twelve, thirteen, fourteen and fifteen, all relating to adult protective services; definitions; redefining an “emergency situation”; establishing and continuing the system of adult protective services within the department of human services; authorizing the commissioner of such department to promulgate regulations; setting forth goals to be attained; establishing procedures for emergency situations; when peace officer or employees of such department may remove or offer transportation to an incapacitated adult; proceedings for remedial treatment; requiring department to develop a comprehensive plan to achieve goals; prohibiting the department from compelling acceptance of services; providing for confidentiality of records and exceptions; mandating and permitting certain persons to report incidents of abuse, neglect or emergency situations; when cases of abuse and neglect are to be reported to a medical examiner or coroner; establishing procedures for reporting cases of neglect, abuse or emergency situations; availability of reports; limitations; establishing immunity from liability for persons making good faith reports; abrogating certain privileged communications; when failure to report is a crime; establishing crimes relating to the abuse or neglect of, or creation of an emergency situation for, an incapacitated adult; providing for criminal penalties; and creating exceptions when treatment is rendered by spiritual means in accordance with the tenets and practices of a recognized church or religious denomination or organization.

Be it enacted by the Legislature of West Virginia:

That sections one, two, five, seven and eight, article six,
chapter 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 seven new sections, designated sections nine, ten, eleven, twelve, thirteen, fourteen and fifteen, all to read as follows:

ARTICLE 6. SOCIAL SERVICES FOR ADULTS.

§9-6-1. Definitions.

§9-6-2. Adult protective services; rules and regulations; organization and duties.

§9-6-5. Emergency immediate remedial treatment; procedure.

§9-6-7. Comprehensive system of adult protective services; compulsory assistance prohibited.

§9-6-8. Confidentiality of records.

§9-6-9. Mandatory reporting of incidences of abuse, neglect or emergency situation.

§9-6-10. Mandatory reporting to medical examiner or coroner; postmortem investigation.

§9-6-11. Reporting procedures.

§9-6-12. Reporting person's immunity from liability.

§9-6-13. Abrogation of privileged communications.

§9-6-14. Failure to report; penalty.

§9-6-15. Abuse or neglect of incapacitated adult; creation of emergency situation; penalties.

§9-6-1. Definitions.

The following words and terms, when used in this article, shall have the same meaning hereinafter ascribed to them unless the context clearly indicates a different meaning:

(1) "Adult protective services agency" shall mean any public or nonprofit private agency, corporation, board or organization furnishing protective services to adults;

(2) "Abuse" shall mean the infliction or threat to inflict physical pain or injury on or the imprisonment of any incapacitated adult;

(3) "Neglect" shall mean (i) the failure to provide the necessities of life to an incapacitated adult with intent to coerce or physically harm such incapacitated adult or (ii) the unlawful expenditure or willful dissipation of the funds or other assets owned or paid to or for the benefit of an incapacitated adult;

(4) "Incapacitated adult" shall mean any person who by
reason of physical, mental or other infirmity is unable to 
18 independently carry on the daily activities of life necessary 
19 to sustaining life and reasonable health;

(5) "Emergency" or "emergency situation" shall mean a 
21 situation or set of circumstances which presents a 
22 substantial and immediate risk of death or serious injury to 
23 an incapacitated adult.

§9-6-2. Adult protective services; rules and regulations; 
organization and duties.

1 There is hereby established and continued within the 
2 department of human services the system of adult 
3 protective services heretofore existing. The commissioner 
4 shall by regulation prescribe the organization and duties of 
5 and procedures which shall be used by the department to 
6 effectuate the purposes of this article, which regulations 
7 may be amended and supplemented from time to time. The 
8 commissioner shall design and arrange such regulations to 
9 attain, or move toward the attainment of the following 
10 goals, to the extent that the commissioner believes feasible 
11 under the provisions of this article within the state 
12 appropriations and other funds available:

(1) Assisting adults who are abused, neglected or 
14 incapacitated in achieving or maintaining self-sufficiency 
15 and self-support, and preventing, reducing and eliminating 
16 their dependency on the state;

(2) Preventing, reducing and eliminating neglect and 
18 abuse of adults who are unable to protect their own 
19 interests;

(3) Preventing and reducing institutional care of adults 
21 by providing less intensive forms of care, preferably in the 
22 home;

(4) Referring and admitting abused, neglected or 
24 incapacitated adults to institutional care only where other 
25 available services are inappropriate; and

(5) Providing services and monitoring to adults in 
27 institutions designed to assist adults in returning to 
28 community settings.
Such regulations shall provide for the means by which the department shall cooperate with federal, state and other agencies to fulfill the objectives of the system of adult protective services.

§9-6-5. Emergency immediate remedial treatment; procedure.

Whenever a circuit court shall find in an action to abate an emergency situation that there is probable cause to believe that an incapacitated adult is in an emergency situation, and that the person or persons having the immediate care, custody and control of such incapacitated adult refuses to take necessary steps to alleviate such emergency, or that such incapacitated adult is without the actual care, custody and control of any persons, it may issue an order of attachment for such incapacitated adult and direct that the peace officer executing the same deliver such incapacitated adult in his custody to a hospital or other safe place except a jail, for immediate remedial treatment to reduce or avoid the risk of death or serious injury. In the event that an order of attachment is issued pursuant to this section, any peace officer executing the order, and such employees of the department the peace officer directs to accompany him, may enter into the place of abode to remove such incapacitated person, notwithstanding the residence therein of other persons.

If any employee or officer of the department shall by direct observation of an incapacitated adult not in the immediate care, custody or control of another have reasonable cause to believe that such incapacitated person is then and there in an emergency situation, then such officer or employee may offer transportation to a hospital or other safe place, other than a jail, to such incapacitated adult for immediate remedial treatment to reduce or avoid the risk of death or serious injury.

Immediately upon delivery of any incapacitated person to such hospital or other safe place, such officer or employee shall apply to the circuit court for and the court shall appoint, and in the case of an attachment the court shall contemporaneously with its issuance appoint, a guardian ad litem who shall not be an employee of the state, nor be an interested party nor be selected by nor in the employ of any
interested party, to represent the interests of such incapacitated adult, and the court shall fix a time, not later than one judicial day later, to determine if such remedial treatment shall continue or such incapacitated adult should be released. A copy of that attachment and notice of such hearing shall be served on any person in whose actual care, custody and control such incapacitated adult is found. If further remedial treatment is required, application shall be promptly made to the county commission or such other proper tribunal for appropriate relief: Provided, That the commitment for further remedial treatment may be continued until proceedings for such appropriate relief be concluded: Provided, however, That application for release from such remedial treatment may be made and granted at any time that the emergency ceases.

§9-6-7. Comprehensive system of adult protective services; compulsory assistance prohibited.

The department shall develop a plan for a comprehensive system of adult protective services including social casework, medical and psychiatric services, home care, day care, counseling, research and others to achieve the goals of this article.

It shall offer such services as are available and appropriate in the circumstances to persons who, other than for compensation, have or intend to have the actual, physical custody and control of an incapacitated adult and to such incapacitated adults or to adults who may request and be entitled to such protective services: Provided, That except as expressly provided in this article, the department may not directly or indirectly compel the acceptance of such services by any person or discriminate against a person who refuses such services.

§9-6-8. Confidentiality of records.

Except as otherwise provided in this section, all records of the department and all protective services agencies concerning an adult under this article shall be confidential and shall not be released, except in accordance with the provisions of section eleven of this article.

Unless the adult concerned is receiving adult protective
services or unless there are pending proceedings with regard to such adult, the records shall be destroyed two years following their preparation. A circuit court or the supreme court of appeals may subpoena such records, but shall, before permitting their use in connection with any court proceeding, review the same for relevancy and materiality to the issues in the proceeding, and may issue such order to limit the examination and use of such records or any part thereof, having due regard for the purposes of this article and the requirements of the litigation as shall be just.

§9-6-9. Mandatory reporting of incidences of abuse, neglect or emergency situation.

If any medical, dental or mental health professional, christian science practitioner, religious healer, social service worker, peace officer or law-enforcement officer has reasonable cause to believe that an incapacitated adult is neglected, abused or in an emergency situation, or if such person observes an incapacitated adult being subjected to conditions that are likely to result in abuse, neglect or an emergency situation, the person shall immediately report the circumstances or cause a report to be made to the department's local protective services agency: Provided, That nothing in this article is intended to prevent individuals from reporting on their own behalf.

In addition to those persons and officials specifically required to report situations involving suspected abuse or neglect of an incapacitated adult or the existence of an emergency situation, any other person may make such a report.

§9-6-10. Mandatory reporting to medical examiner or coroner; postmortem investigation.

Any person or official who is required under section nine of this article to report cases of suspected abuse or neglect and who has probable cause to believe that an incapacitated adult has died as a result of abuse or neglect shall report that fact to the appropriate medical examiner or coroner. Upon the receipt of such a report, the medical examiner or coroner shall cause an investigation to be made and shall
report the findings to the local law-enforcement agency, the
local prosecuting attorney, the department's local adult
protective services agency and, if the institution making a
report is a hospital, to the hospital.

§9-6-11. Reporting procedures.

A report of neglect or abuse of an incapacitated adult or
of an emergency situation involving such an adult shall be
made immediately by telephone to the department's local
adult protective services agency and shall be followed by a
written report within forty-eight hours. The department
shall, upon receiving any such report, take such action as
may be appropriate and shall maintain a record thereof.
The department shall receive such telephonic reports on its
twenty-four hour, seven-day-a-week, toll-free number
established to receive calls reporting cases of suspected or
known adult abuse or neglect.

A copy of any report of abuse, neglect or emergency
situation shall be made available immediately to the
appropriate law-enforcement agency and the prosecuting
attorney, or in case of a death, to the appropriate medical
examiner or coroner's office: Provided, That the
department shall omit from such report in the first instance,
the name of the person making a report, when requested by
such person. Reports of known or suspected institutional
abuse or neglect of an incapacitated adult or the existence
of an emergency situation in an institution shall be made,
received and investigated in the same manner as other
reports provided for in this article. In the case of a report
regarding an institution, the department shall immediately
cause an investigation of the institution to be conducted.

§9-6-12. Reporting person's immunity from liability.

Any person who in good faith makes or causes to be made
any report permitted or required by this article shall be
immune from any civil or criminal liability which might
otherwise arise solely out of making such report.

§9-6-13. Abrogation of privileged communications.

The privileged status of communications between
husband and wife, and with any person required to make
§9-6-14. Failure to report; penalty.

Any person subject to the mandatory reporting provisions of this article who knowingly fails to make any report required herein or any person who knowingly prevents another person from making such a report is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one hundred dollars or imprisoned in the county jail for not more than ten days, or both fined and imprisoned.

§9-6-15. Abuse or neglect of incapacitated adult; creation of emergency situation; penalties.

(a) Any person having actual care, custody or control of an incapacitated adult who abuses or neglects such adult, or who knowingly permits another person to abuse or neglect or create an emergency situation for an incapacitated adult, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five hundred dollars nor more than fifteen hundred dollars, or imprisoned in the county jail for not less than ninety days nor more than one year, or both fined and imprisoned.

(b) Any person having actual care, custody or control of an incapacitated adult who with the intent to abuse or neglect such adult willfully creates an emergency situation for an incapacitated adult, is guilty of a felony, and, upon conviction thereof, shall, in the discretion of the court, be confined in the penitentiary for not less than two nor more than ten years or be confined in the county jail for not more than twelve months and fined not more than fifteen hundred dollars.

(c) Nothing in this article shall be construed to mean an adult is abused or neglected for the sole reason that his or her independent decision is to rely upon treatment by spiritual means in accordance with the tenets and practices
of a recognized church or religious denomination or
organization in lieu of medical treatment. No person shall
be found guilty of the offenses set forth in this section and
section fourteen of this article solely for the reason that he
or she relies upon treatment by spiritual means in
accordance with the tenets and practices of a recognized
church or religious denomination or organization in lieu of
medical treatment: Provided, That nothing in this section
shall limit the right of any person to utilize the remedies
provided in this article or elsewhere in law to afford
protection to an incapacitated adult in the care, custody or
control of another person which other person refuses to
provide medical treatment solely for the reason that such
other person relies upon treatment by spiritual means in
accordance with the tenets and practices of a recognized
church or religious denomination or organization in lieu of
medical treatment, unless such incapacitated adult shall,
by his or her independent decision, rely upon such
treatment by spiritual means.

CHAPTER 94
(H. B. 1025—By Delegate Steptoe and Delegate J. Martin)

[Passed February 8, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section forty-b, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to permitting persons holding a Class A-1 small arms hunting license to use a pistol or revolver with a barrel length of four inches or more; requiring the promulgation of certain regulations with respect thereto; and the disposition of fees collected in connection to such licensure.

Be it enacted by the Legislature of West Virginia:

That section forty-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.

§20-2-40b. Class A-1 small arms hunting license.

Notwithstanding the provisions of section two, article seven, chapter sixty-one of this code, a Class A-1 license shall be a small arms hunting license. If a person is otherwise qualified, a Class A-1 license may be issued by the department, pursuant to rules and regulations promulgated by the director, which regulations shall include provision for the establishment of a voluntary program available to citizens of the state pertaining to safety and proficiency in the use of a revolver or pistol, to a person twenty-one years of age or older who holds a valid Class A or Class AB license, or to a person who is a resident and sixty-five years of age or older, but a Class A-1 license shall never be issued to a person who has been convicted of a misdemeanor in any way associated with the use of firearms or dangerous weapons or who has been convicted of any felony nor shall the clerk of the county commission issue Class A-1 licenses as provided in section thirty-two, article two of this chapter.

A Class A-1 license shall entitle the licensee to hunt, as otherwise permitted by the provisions of this chapter, but only during small game and big game seasons as established annually by the director, with either a revolver or pistol which has a barrel at least four inches in length. A Class A-1 license shall entitle the licensee to carry or have in his possession one, and only one, revolver or pistol when going to and from his home or residence and a place of hunting and while hunting in the place: Provided, That such Class A-1 license shall not be valid unless the licensee have in his possession a valid Class A or Class AB license or be a resident and sixty-five years of age or older: Provided, however, That at all times, when not actually hunting, the revolver or pistol shall be unloaded.

While hunting, the licensee shall carry the revolver or pistol outside of his person in an unconcealed and easily visible place. At all other times the revolver or pistol shall be cased or dismantled in a way to cause it not to operate. When being transported in a vehicle it shall be kept in a locked
compartment of the vehicle which shall not be accessible from the inside of such vehicle.

The fee shall be five dollars for a Class A-1 license. All such fees collected shall be deposited in the state treasury and credited to the law-enforcement division of the department of natural resources. Such fees shall be paid out of the state treasury on order of the director and used solely for law-enforcement purposes.

CHAPTER 95
(Com. Sub. for S. B. 187—By Senator Williams)
[Passed March 8, 1984; 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 two new sections, designated sections forty-six-f and forty-six-g, relating to providing the director authority to issue a special Class R resident deer stamp and Class RR nonresident deer stamp, respectively, to allow the holder to hunt for and kill an additional deer; establishing fees; and providing for promulgation of rules and regulations governing issuance and use of such stamps.

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, by adding thereto two new sections, designated sections forty-six-f and forty-six-g, to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-46f. Class R special resident deer hunting stamp for an additional deer.

§20-2-46g. Class RR special nonresident deer hunting stamp for an additional deer.

§20-2-46f. Class R special resident deer hunting stamp for an additional deer.

1 The director shall have the authority to issue a special
2 Class R resident deer stamp when he deems it essential for
3 the proper management of the wildlife resources. This
4 stamp will allow the holder to hunt for and kill an
5 additional deer as designated by the director. The fee for a
6 Class R resident deer stamp shall be ten dollars.

7 The director shall promulgate rules and regulations
8 governing the issuance and use of said stamp.

§20-2-46g. Class RR special nonresident deer hunting stamp
for an additional deer.

1 The director shall have the authority to issue a special
2 Class RR nonresident deer stamp when he deems it essential
3 for the proper management of the wildlife resources. This
4 stamp will allow the holder to hunt for and kill an
5 additional deer as designated by the director. The fee for a
6 Class RR nonresident deer stamp shall be twenty-five
7 dollars.

8 The director shall promulgate rules and regulations
9 governing the issuance and use of said stamp.

CHAPTER 96
(H. B. 1682—By Delegate Riffle)

[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen-c, article three,
chapter thirty-three of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to the premium
tax paid by insurance companies; when report and remittance
due.

Be it enacted by the Legislature of West Virginia:

That section 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.
§33-3-14c. 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 premium 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. The tax remittance shall be postmarked on or by the twenty-fifth day of the month succeeding the quarter in which the taxes accrue, or in the case of the fourth quarter, postmarked on or before the first day of March.

Any insurer failing or refusing to pay estimated taxes and whose taxes are not postmarked by the preceding dates for quarterly filing 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.
the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto three new sections, designated sections twenty-three, twenty-four and twenty-five, all relating to the authorized investments of insurers and authorizing the insurance commissioner to adopt certain rules and regulations relating thereto.

Be it enacted by the Legislature of West Virginia:

That article eight, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto three new sections, designated section twenty-three, twenty-four and twenty-five, all to read as follows:

ARTICLE 8. INVESTMENTS.

§33-8-23. Repurchase agreements.


§33-8-25. Securities not otherwise specified.

§33-8-23. Repurchase agreements.

(a) Subject to the limitations and restrictions contained herein, an insurer may make loans to or purchases of securities from a solvent bank, savings and loan association, credit union or securities broker registered under the Securities Exchange Act of 1934 under an agreement, commonly called repurchase agreement, which agreement provides for the purchase by the insurer of securities and which agreement matures within ninety days or less and provides for the repurchase by such entity of the same or similar securities purchased by the insurer, provided:

(1) Such loan collateral or securities purchased would otherwise be authorized as investments under the provisions of this chapter, and the total market value of such securities equals or exceeds the amount of such loan or purchase when it is made; and

(2) Such loan collateral or securities purchased from any one bank, savings and loan association, credit union or securities broker does not exceed the greater of five percent of the insurer's assets or five percent of the amount of capital, surplus and undivided profits of such bank, savings and loan association, credit union or securities broker.
(b) The insurance commissioner may promulgate reasonable rules, regulations and orders consistent with and implementing the provisions of this article.


(a) Subject to the rules and regulations promulgated by the commissioner and the limitations contained in subsections (b) and (d) of this section with respect to assets owned by an insurer, any insurer may, for purposes of protecting such assets against the risk of changing asset values or interest rates and for risk reduction only, buy put options or sell call options and terminate the same, buy or sell interest rate futures contracts and options on interest rate futures contracts, or utilize such other instruments or devices as are consistent with this article and are traded on an established exchange regulated by the securities and exchange commission or the commodities futures trading corporation.

(b) An insurer may engage in the purchase of put options or sale of call options and terminate such options, only with regard to:

(1) Securities owned by the insurer; or

(2) Securities which the insurer may obtain through exercise of warrants or conversion rights held by the insurer.

(c) Subject to the rules and regulations promulgated by the commissioner and the limitations contained in subsection (d) of this section with respect to cash flows reasonably anticipated to be available for investment purposes within the succeeding twelve months, which anticipation cannot exceed an amount equal to ten percent of such insurer's admitted assets, an insurer may, for purposes of protecting such cash flows against the risk of changing asset values or interest rates and for risk reduction only, buy or sell interest rate futures contracts and options on interest rate futures contracts or utilize such other instruments or devices as are consistent with this article and are traded on an established exchange regulated by the securities and exchange commission or the commodities futures trading corporation.
(d) An insurer may engage in the practices authorized by this article only if prior thereto the board of directors of such insurer has adopted a written policy which specifies:

(1) The types of risk-limiting practices approved for such insurer;

(2) The aggregate maximum limits in such instruments, which maximum limits must be reasonably related to the insurer's business needs and its capacity to fulfill its obligations thereunder;

(3) The specific assets or class of assets or cash flows for which risk-limiting practice may be employed; and

(4) That the insurer's accounting or investment records shall specifically identify the assets or cash flows for which each risk-limiting practice is used.

(e) The commissioner is hereby authorized to adopt such reasonable rules and regulations, not inconsistent with the provisions of this article, which prescribe reasonable limits, standards and guidelines with respect to such risk-limiting devices and plans related thereto.

§33-8-25. Securities not otherwise specified.

Notwithstanding any expressed or implied prohibitions, an insurance company may, after the effective date of this amendment, invest any of its funds and accumulations in investments which do not otherwise qualify under any other provision of this article: Provided, That the amount of any one such investment under this section shall not exceed one percent of the admitted assets of any such insurance company; and that the investment authorized by this section shall not exceed the lesser of (a) five percent of its admitted assets or (b) the amount of its capital and surplus in excess of two hundred thousand dollars as shown on its last annual statement prior to the date of the acquisition of such investment as filed with the commissioner.
AN ACT to amend chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twelve-a, relating to the contractual relationship between insurance companies and agents; declaration of purpose; definitions; termination of contractual relationship; notice; good cause; notice of cancellation void in certain cases; violation of provisions of this article; and providing a statute of limitations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12A. CONTRACTUAL RELATIONSHIP BETWEEN INSURANCE COMPANIES AND AGENTS.

§33-12A-1. Declaration of purpose.


§33-12A-3. Termination of contractual relationship; notice; good cause.

§33-12A-4. Notice of cancellation void in certain cases.

§33-12A-5. Violation of provisions of this article; statute of limitations.

§33-12A-1. Declaration of purpose.

1 It is hereby found and determined by the Legislature that it is essential to the best interests of the citizens of this state that the contractual relationship between insurance agents and insurance companies be established; and that this article is enacted for the purpose of prohibiting arbitrary and capricious cancellation of such contractual relationships.


1 As used in this article:

2 (a) “Insurance company” means any individual, firm
or corporation engaged in the business of selling insurance in this state, excepting only: (1) Clubs or associations organized under the laws of this state which sell insurance to their members and (2) companies engaged exclusively in the sale of life or accident and sickness insurance.

(b) "Insurance agent" means any individual, firm or corporation appointed by an insurance company, as defined herein, whose exclusive activity in this field is in behalf of a single insurance company and who is authorized by that company to solicit insurance or to negotiate insurance on its behalf, and who is authorized by the insurance company to effectuate and countersign insurance contracts on its behalf.

§33-12A-3. Termination of contractual relationship; notice; good cause.

No insurance company may cancel, refuse to renew or otherwise terminate a written contractual relationship with any insurance agent who has been employed or appointed pursuant to that written contract by such insurance company for a period of more than five years, except for "good cause," as prescribed herein. If an insurance company proposes to cancel, fail to renew or otherwise terminate a contractual relationship with the agent, the company shall so notify the agent by certified mail at least ninety days prior to the date upon which the company proposed to cancel, fail to renew or terminate the contractual relationship. Such notice shall include a statement of the grounds upon which the insurance company bases its decision to cancel, refuse to renew or terminate any contractual relationship.

The following matters are "good cause" for an insurance company to terminate the contractual relationship with its agent:

(a) Criminal misconduct or gross negligence relating to the business or premises of the insurance agency;

(b) Fraud or moral turpitude;
(c) Abandonment or unattendance of the business or premises of the insurance agency for such period of time as may unreasonably interfere with the transacting of business;

(d) The failure by the agent to pay moneys over to the company for insurance contracts sold by the agency;

(e) The death or disability of the agent; and

(f) Upon the company becoming insolvent or discontinuing any line of insurance for any business purpose: Provided, That the insurance commissioner shall notify or cause to be notified in writing all agents of such insolvent insurance company that they are no longer entitled to any benefit under their contract with the insolvent company.

§33-12A-4. Notice of cancellation void in certain cases.

1 If, upon receipt by the insurance agent of the notice of proposed cancellation provided by the preceding section, the insurance agent prior to the established cancellation date as stated in the notice rectifies or eliminates the stated ground constituting "good cause" for cancellation of the contract, the notice shall be void.

§33-12A-5. Violation of provisions of this article; statute of limitations.

1 If any insurance company cancels, refuses to renew or otherwise terminates the contractual relationship with any agent in violation of the provisions of this article, the agent who has been damaged thereby has a cause of action against the insurance company for specific performance, injunctive relief or for damages sustained by the plaintiff as a result of the termination of the relationship, including ascertainable loss of goodwill as a result of the termination of the relationship: Provided, That any action brought by an insurance agent against an insurance company for wrongful termination of the contractual relationship shall be commenced within two years after such wrongful termination.
AN ACT to amend article twenty, 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 seventeen, relating to determining the insurance premium rates on residential dwellings within the state; commercial activities conducted within a dwelling.

Be it enacted by the Legislature of West Virginia:

That article twenty, 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 seventeen, to read as follows:

ARTICLE 20. RATES AND RATING ORGANIZATIONS.

§33-20-17. Determination of rates on dwellings.

1 For the purpose of determining the proper premium to be charged for coverage issued upon a dwelling situated in the state, commercial activities conducted by the insured shall not be taken into consideration by the insurer unless conducted within the dwelling.
Be it enacted by the Legislature of West Virginia:

That section one, 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 TRAINING AND CERTIFICATION.

§30-29-1. Definitions.

For purposes of this article, unless a different meaning clearly appears in the context:

"Approved law-enforcement training academy" means any training facility which is approved and authorized to conduct law-enforcement training as provided in this article;

"Chief executive" means the superintendent of the department of public safety; the chief conservation officer, department of natural resources; the sheriff of any West Virginia county; or the chief of any West Virginia municipal law-enforcement agency;

"County" means the fifty-five major political subdivisions of the state;

"Exempt rank" means any noncommissioned or commissioned rank of sergeant or above;

"Governor's committee on crime, delinquency and correction" or "governor's committee" means the governor's committee on crime, delinquency and correction established as a state planning agency pursuant to section one, article nine, chapter fifteen of this code;

"Law-enforcement officer" means any duly authorized member of a law-enforcement agency who is authorized to maintain public peace and order, prevent and detect crime, make arrests, and enforce the laws of the state or any county or municipality thereof, other than parking ordinances. As used in this article, the term "law-enforcement officer" does not apply to the chief executive of any West Virginia law-enforcement agency or any watchman, college campus security personnel or special conservation officer;
“Law-enforcement official” means the duly appointed chief administrator of a designated law-enforcement agency or a duly authorized designee;

“Municipality” means any incorporated town or city whose boundaries lie within the geographic boundaries of the state;

“Subcommittee” or “law-enforcement training subcommittee” means the subcommittee of the governor’s committee on crime, delinquency and correction created by section two of this article; and

“West Virginia law-enforcement agency” means any duly authorized state, county or municipal organization employing one or more persons whose responsibility is the enforcement of laws of the state or any county or municipality thereof.

CHAPTER 101

(H. B. 1280—By Delegate Albright)

[Passed February 24, 1984; is effective ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article twenty-nine, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to compensation for employees of a law-enforcement agency while in attendance at a law-enforcement training academy; providing that the compensation shall be at the regular rate to which the person would be entitled for a forty-hour workweek in regular employment with the agency; and allowing agreements for reimbursements by employees training but not continuing employment.

Be it enacted by the Legislature of West Virginia:

That section eight, 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 TRAINING AND CERTIFICATION.

§30-29-8. Compensation for employees attending law-enforcement training academy; limitations; agreements to reimburse employers for wages and expenses of employees trained but not continuing employment.

A West Virginia law-enforcement agency shall pay compensation to employees, including wages, salaries, benefits, tuition and expenses for the employees' attendance at a law-enforcement training academy. The compensation paid to the employees of a law-enforcement agency for attendance at a law-enforcement training academy as provided in this section shall not include overtime compensation under the provisions of section three, article five-c, chapter twenty-one of this code, and shall be at the regular rate to which the employee would be entitled for a workweek of forty hours in regular employment with the agency. In consideration for such compensation, the county commission or municipal government may require of its employees by written agreement entered into with each of them in advance of such attendance at a training academy that, if an employee should voluntarily discontinue employment any time within one year immediately following completion of the training curriculum, he or she shall be obligated to pay to such county commission or municipal government a pro rata portion of the sum of such compensation equal to that part of such year which the employee has chosen not to remain in the employ of the county commission or municipal government.

CHAPTER 102

(Com. Sub. for H. B. 1333—By Delegate Murphy and Delegate Doyle)

[Passed March 10, 1984; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and three, article three, chapter fifty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to
definitions and general provisions of newspaper legal advertising; redefining the term “qualified newspaper”; establishing rates for newspaper legal advertising; filing affidavits with the secretary of state; notifying county commissions, boards of education and municipalities.

Be it enacted by the Legislature of West Virginia:

That sections one and 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.

§59-3-1. Definitions and general provisions.
§59-3-3. Rates for legal advertisements; computation; filing affidavits with secretary of state.

§59-3-1. Definitions and general provisions.

(a) As used in this article, elsewhere in this code or in any other provision of law:

(1) “Legal advertisement” means any notice, advertisement, statement, information or other matter required by law or court to be published.

(2) “Publication area” means the area or areas for which a legal advertisement is required by law or court to be made.

(3) “Once a week for two successive weeks” means two publications of a legal advertisement in a qualified newspaper occurring within a period of fourteen consecutive days with at least an interval of six full days within such period between the date of the first publication and the date of the second publication.

(4) “Once a week for three successive weeks” means three publications of a legal advertisement in a qualified newspaper occurring within a period of twenty-one consecutive days with at least an interval of six full days within such period between the date of the first publication and the date of the second publication and with at least an interval of six full days within such period between the date of the second publication and the date of the third publication.
(5) "Publication date" means the date on which a qualified newspaper is first placed in circulation.

(6) "General circulation" means not only a newspaper meeting the other qualifications specified in subsection (b) of this section and circulated among and of interest to the general public in the area in which it circulates, but also a newspaper meeting said other qualifications, the actual circulation of which throughout the publication area is large enough to give basis for a reasonable belief that publication of a legal advertisement therein will give effective notice to the residents of the publication area.

(b) Wherever the term "qualified newspaper" or "qualified newspapers" is used in this article, or the term "newspaper" or "newspapers" is used elsewhere in this code or in any other provision of law in connection with a legal advertisement as herein defined, the terms shall be taken to mean only a newspaper or newspapers, as the case may be, published (unless otherwise expressly provided) in the state of West Virginia, and which meet the following qualifications:

(1) Any such newspaper must be of regular issue and must have a bona fide, general circulation in the publication area. A newspaper shall be deemed to be of regular issue if it is published regularly, as frequently as once a week, for at least fifty weeks during the calendar year as prescribed by its mailing permit, and (a) has been so published for at least one year immediately preceding the date on which the legal advertisement is delivered to the newspaper for publication, or (b) has suspended publication on or within one year immediately preceding the effective date of this section, and has reinstituted publication within two years of the date of suspension, and was published for at least one year immediately preceding the date of suspension. A newspaper shall be deemed to be of bona fide, general circulation in the publication area if it meets the definition of "general circulation" as defined above and is circulated to the general public at a definite price or consideration.

(2) Any such newspaper must bear a title or name, consist of not less than four pages without a cover, and be a
LEGAL ADVERTISEMENT

60 newspaper to which the general public resorts for passing
61 events of a political, religious, commercial and social nature,
62 and for current happenings, announcements, miscellaneous
63 reading matters, advertisements and other notices.
64 (c) Notwithstanding any other provision of this code or
65 law to the contrary, a qualified newspaper shall for all pur-
66 poses be considered to be published where it is first placed in
67 circulation.

§59-3-3. Rates for legal advertisements; computation; filing affi-
1 davits with secretary of state.
2 (a) The rates which a publisher or proprietor of a quali-
3 fied newspaper in West Virginia may charge and receive for
4 a single or first publication of any legal advertisement set
5 solid shall depend upon the bona fide circulation of such
6 newspaper, as follows:
7 (1) Four cents per word if the qualified newspaper has
8 reinstituted publication within the limits prescribed by
9 subdivision (1), subsection (b), section one of this article,
10 less than two years immediately preceding the date on
11 which a legal advertisement is delivered to the newspaper for
12 publication and has a bona fide circulation of less than one
13 thousand;
14 (2) Two cents per word if the qualified newspaper has
15 a bona fide circulation of one thousand or less, except as
16 provided in subdivision (1), subsection (a) of this section;
17 (3) Five cents per word if the qualified newspaper has
18 a bona fide circulation of one thousand to ten thousand;
19 (4) Six and one-fourth cents per word if the qualified
20 newspaper has a bona fide circulation of more than ten
21 thousand but less than forty thousand; or
22 (5) Seven and one-fourth cents per word if the qualified
23 newspaper has a bona fide circulation of forty thousand or
24 more.
25 (b) In computing the number of words in a legal advertise-
26 ment, not set solid, the basis shall be upon the size of type
27 in which legal advertising is set by the qualified newspaper
28 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.

(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 speci-
fied 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 com-
puted as aforesaid.

(d) The rates provided for in this section may be charged
on and after the first day of July, one thousand nine hundred
eighty-four. Between the effective date of this section and
the said first day of July, one thousand nine hundred eighty-
four, 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-three, shall control the rate
circulation classification of such qualified newspaper for the
period from the first day of July, one thousand nine hundred
eighty-four, until the first day of July, one thousand nine
hundred eighty-five. 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 calen-
dar 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-five. 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 year. 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-five, 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 secretary of state, as aforesaid, such publisher or proprietor shall notify the clerk of the county commission and the board of education of the county in which such qualified newspaper is published of the circulation classification of such qualified newspaper and of the applicable rate for publishing legal advertisements in such qualified newspaper during the ensuing fiscal year. If the qualified newspaper is published in a municipality, the publisher or proprietor shall at the same time also furnish the same notification to the clerk or recorder of such municipality.

CHAPTER 103

(H. B. 2082—By Delegate Polan and Delegate Teets)

[Passed March 9, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two through nine, inclusive, article two-a, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to implementing the recommendations of the resolution of the citizens legislative compensation commission, dated the twenty-second day of December, one thousand nine hundred eighty-two, with such commission being created by article six, section thirty-three of the constitution of West Virginia; and relating to the compensation for and expenses of members of the Legislature effective for calendar year one thousand nine hundred eighty-five, and each calendar year thereafter.

Be it enacted by the Legislature of West Virginia:
That sections two through nine, inclusive, article two-a, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2A. COMPENSATION FOR AND EXPENSES OF MEMBERS OF THE LEGISLATURE.

PART II. COMPENSATION.

§4-2A-2. Basic compensation for services; proration.

§4-2A-3. Compensation for members of the Legislature during any extension of regular session or during extraordinary session.

§4-2A-4. Additional compensation for president of Senate, speaker of House of Delegates, majority leaders and minority leaders of both houses.

§4-2A-5. Interim compensation for members of joint committee on government and finance and commission on interstate cooperation and for restructured interim meetings.

PART III. EXPENSES.

§4-2A-6. Travel expenses.

§4-2A-7. Reimbursement for expenses incurred during any session.

§4-2A-8. Interim expenses.


PART II. COMPENSATION.

§4-2A-2. Basic compensation for services; proration.

(a) Each member of the Legislature shall receive as basic compensation for his services the sum of five thousand one hundred thirty-six dollars per calendar year through calendar year one thousand eight hundred eighty-four. Each member of the Legislature shall receive as basic compensation for his services the sum of six thousand five hundred dollars per calendar year for calendar year one thousand nine hundred eighty-five and for each calendar year thereafter. In addition to such basic compensation, members shall receive the additional compensations as are expressly provided for in sections three, four and five of this article.

The increased basic compensation as set forth in this subsection and all other increased amounts or new amounts in respect to the compensation or expenses of members of the Legislature, set forth in the resolution of the citizens legislative compensation commission, dated the twenty-second
day of December, one thousand nine hundred eighty-two, and
implemented in sections two through nine of this article
providing for new amounts or amounts increased to new
amounts greater than those in force and effect on the first day
of January, one thousand nine hundred eighty-four, shall all
become effective only for calendar year one thousand nine
hundred eighty-five, and each calendar year thereafter.

(b) Beginning in the year one thousand nine hundred
eighty, and each year thereafter, such basic compensation
shall be payable twice a month during each regular session
of the Legislature, without regard to any extension of such
regular session. In the event of the death, resignation or
removal of a member of the Legislature during a regular
session of the Legislature and the appointment and qualifica-
tion of his successor during any such regular session, the basic
compensation provided for in this section shall be prorated
between the original member and his successor on the basis
of the number of days served (including Saturdays and Sun-
days) as a member of the Legislature by each during such
regular session of sixty calendar days.

(c) In the event of the death, resignation or removal of
a member of the Legislature and the appointment and
qualification of his successor subsequent to the regular session
of the Legislature held in the calendar year in which such
successor was appointed and qualified, none of the basic
compensation provided for in this section shall be paid to
such successor.

§4-2A-3. Compensation for members of the Legislature during any
extension of regular session or during extraordinary
session.

Each member of the Legislature shall receive, in addition to
the basic compensation provided for in section two of this
article, additional compensation of fifty dollars per day for
each day of attendance in person upon any business of the
Senate or House of Delegates, as the case may be, on each day
upon which the Senate or House of Delegates is actually called
to order during each extension of regular session or during
extraordinary session of the Legislature. Such additional
compensation shall be paid from time to time during any such extended session or extraordinary session, as may be prescribed by rules established by the legislative auditor.

§4-2A-4. Additional compensation for president of Senate, speaker of House of Delegates, majority leaders and minority leaders of both houses.

(a) In addition to the basic and additional compensation provided for in sections two and three of this article, the president of the Senate and the speaker of the House of Delegates shall each receive additional compensation of:

(1) Fifty dollars per day for each day actually served during any regular, extension of regular or extraordinary session as presiding officer, including Saturdays and Sundays; and

(2) One hundred dollars per day up to a maximum of eighty such days per calendar year for attending to legislative business in their offices in the Capitol building when the Legislature is not in regular, extension of regular or extraordinary session and interim committees are not meeting.

(b) In addition to the basic and additional compensation provided for in sections two and three of this article, the majority leaders and minority leaders of the Senate and of the House of Delegates shall each receive additional compensation of twenty-five dollars per day for each day actually served during any regular, extension of regular or during extraordinary session, including Saturdays and Sundays, as the selected legislative leaders of their respective political parties.

(c) Such presiding officer and majority and minority leader compensation shall be paid from time to time during any such session or interim period, as the case may be, as may be prescribed by rules established by the legislative auditor.

§4-2A-5. Interim compensation for members of joint committee on government and finance and commission on interstate cooperation and for restructured interim meetings.

(a) In addition to the basic and any additional and presiding officer and majority and minority leader compensa-
tion provided for in sections two, three and four of this article, each member of the joint committee on government and finance and the commission on interstate cooperation shall receive interim compensation of fifty dollars per day for each day actually engaged in the performance of interim duties as a member of either such committee or commission between regular sessions of the Legislature: Provided, That not more than twenty-eight members combined of both such committee and commission shall be entitled to receive the interim compensation authorized in this section, and the total additional interim compensation payable to any such member and his replacement, if any, on such committee or commission under the provisions of this section shall not exceed the sum of one thousand five hundred dollars per calendar year.

(b) If, for whatever reason, the Legislature should restructure its interim committee meetings along any lines whatsoever, the interim compensation authorized in subsection (a) of this section for members of the joint committee on government and finance and of the commission on interstate cooperation and the additional interim compensation authorized in this subsection may be authorized as interim compensation by the Legislature as it may determine, but not to exceed either fifty dollars per member of the Legislature per day for each day actually engaged in the performance of interim duties as a member of the Legislature, or a total of one thousand five hundred dollars per calendar year for any one member, or a total of sixty-five thousand dollars per calendar year for all such interim compensation for the members of both houses of the Legislature combined.

PART III. EXPENSES.

§4-2A-6. Travel expenses.

Each member of the Legislature shall be entitled to be reimbursed, upon submission of an expense voucher, for expenses incurred incident to travel in the performance of his duties as a member of the Legislature or any committee of the Legislature, whether such committee is operating under general law or resolution, including, but not limited to, attendance at party caucuses held in advance of the date of
the assembly of the Legislature in regular session in odd
numbered years for the purpose of selecting candidates for
officers of the two houses, at the rate of twenty cents per
mile for the most direct usually traveled route, if travel
is by private automobile, or for actual transportation costs
for direct route travel, if travel is by public carrier, or for
any combination of such means of transportation actually
used, plus the cost of necessary taxi or limousine service, tolls
and parking fees in connection therewith, but during any
regular, extension of regular or extraordinary session, travel
expenses shall not be paid to any member for more than one
round trip to and from the seat of government and to and
from his place of residence for each week of any such session.

In addition to the above travel expense, the president
of the Senate and the speaker of the House of Delegates
shall be entitled to be reimbursed as provided above, upon
submission of an expense voucher, for expenses incurred
incident to travel for up to a maximum of eighty days per
calendar year in connection with their visits to the capitol
building for business which is related to their duties as pre-
siding officers of the respective houses of the Legislature, but
which takes place when the Legislature is not in regular, ex-
tension of regular or extraordinary session and interim com-
mittees are not meeting.

§4-2A-7. Reimbursement for expenses incurred during any session.

In addition to reimbursement for any travel expenses, as pro-
vided for in section six of this article, each member of the Leg-
islature shall also be entitled to be reimbursed, upon submis-
sion of an expense voucher therefor, for all reasonable and
necessary expenses actually incurred in connection with any reg-
ular, extension of regular or extraordinary session of the Legis-
lature, but the total of any and all such reimbursed expenses,
exclusive of reimbursement for any such travel expenses as
aforesaid, shall not exceed housing expenses of forty dollars per
day and meal and miscellaneous expenses of thirty dollars per
day. An additional housing expense allowance of twenty-five
dollars per day shall be received by the president of the Senate
and the speaker of the House of Delegates, but only during the
regular or an extension of the regular sessions of the Legisla-
A receipt for the amount paid for housing expenses shall be submitted with the expense voucher, but a receipt shall not be required to be submitted with any such expense voucher for meal and miscellaneous expenses. The Legislature may provide for direct billing of housing expenses of legislators to be made to the Legislature from recognized hotels or motels. In lieu of reimbursement for housing expenses pursuant to the provisions of this section, any member of the Legislature shall be entitled to be reimbursed, upon submission of an expense voucher, for expenses incurred incident to daily travel to and from his place of residence and to and from the seat of government at a rate of twenty cents per mile for the most direct usually traveled route, but the total of such daily travel expenses shall not exceed forty dollars per night.

§4-2A-8. Interim expenses.

In addition to reimbursement for any travel expenses and any such reimbursements for any and all such session expenses as provided for in sections six and seven of this article, each member of the Legislature serving as a member of any committee of the Legislature established by and operating under general law and designated for the performance of interim assignments by the Legislature or otherwise duly authorized to perform interim assignments between regular sessions of the Legislature shall also be entitled to be reimbursed, upon submission of an expense voucher therefor, for all reasonable and necessary expenses actually incurred incident to the performance of duties as a member of any such committee, but the total of any and all such reimbursed interim expenses, exclusive of reimbursement for any such travel and session expenses as aforesaid, shall not under any circumstances exceed housing expenses of forty dollars per day and meal and miscellaneous expenses of thirty dollars per day for each day actually engaged in the performance of interim duties as a member of any such committee. The president of the Senate and the speaker of the House of Delegates shall be entitled to be reimbursed for housing expenses and for meal and miscellaneous expenses incurred in connection with their visits to the capitol building for business which is related to their duties as presiding
officers of the respective houses of the Legislature, but which
takes place when the Legislature is not in regular, extension
of regular or extraordinary session and interim committees are
not meeting, not to exceed housing expenses of forty dollars per
day and meal and miscellaneous expenses of thirty dollars per
day up to a maximum of eighty such days per calendar year.
A receipt for the amount paid for housing shall be submitted
with the expense voucher, but a receipt shall not be required
to be submitted with any such expense voucher for meal and
miscellaneous expenses. In lieu of reimbursement for housing
expenses pursuant to the provisions of this section, any member
of the Legislature shall be entitled to be reimbursed, upon sub-
mission of an expense voucher, for expenses incurred in-
cident to daily travel to and from his place of residence and
to and from the seat of government at a rate of twenty cents
per mile for the most direct usually traveled route, but the
total of such daily travel expenses shall not exceed forty dol-
lars per night.


In addition to reimbursement for travel expenses as autho-
rized in section six of this article, each member of the Legisla-
ture traveling from West Virginia to an out-of-state point or
points and return incident to the performance of his duties as a
member of the Legislature or any committee of the Legislature,
whether such committee is operating under general law or reso-
lution, which travel has been duly authorized, shall be entitled
to be reimbursed, upon submission of any expense voucher
therefor, for all reasonable and necessary expenses actually in-
curred incident thereto, but the total of any and all such reim-
bursed expenses, exclusive of reimbursement for such travel ex-
penses, shall not under any circumstances exceed the actual cost
of housing at the least expensive available single rate and meal
and miscellaneous expenses of thirty dollars per day. A receipt
for the amount paid for housing and for travel by any public
transportation to and from West Virginia shall be submitted
with the expense voucher, but a receipt shall not be required
to be submitted with any such expense voucher for meal and
miscellaneous expenses.
AN ACT to amend and reenact sections sixteen (one) (seven), sixteen (twenty) (five), nineteen (twenty-three) (six), twenty (five-a) (three) and twenty (five-e) (six), article two, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article two by adding thereto thirty-two new sections, designated sections five (sixteen) (eighteen), eleven (one-a) (eleven), twelve (one) (two), twelve (two) (two), twelve (six) (five), fifteen (two) (twenty-five), sixteen (two-e) (three), sixteen (twenty-nine-b) (eight), seventeen-c (five-a) (two), seventeen-c (five-a) (three), seventeen-d (two-a) (eight), nineteen (two) (five), nineteen (two-c) (five), twenty (five-e) (seven), twenty (five-f) (four), twenty (six) (two), twenty (six) (thirty-eight), twenty-one (three) (eighteen), twenty-two (four) (thirteen), twenty-three (four-c) (three), twenty-seven (nine) (one), twenty-seven (seventeen) (three), twenty-nine (three) (five), thirty (three) (seven), thirty (seven) (four), thirty (twenty-three) (five), thirty-one-a (two) (four), thirty-one-a (four) (twenty-six), thirty-two (four) (four hundred two), thirty-two (four) (four hundred twelve), thirty-three (two) (ten) and thirty-three (twenty) (fifteen), all relating generally to legislative mandate or authorization for the promulgation of certain legislative rules by various executive agencies of the state; authorizing certain of such agencies to promulgate certain legislative rules in the form that such rules were filed in the state register; authorizing certain of such agencies to promulgate legislative rules as amended by the Legislature; directing certain agencies to promulgate in accordance with rules filed in the office of the secretary of state by the clerk of the House of Delegates; authorizing the public employees insurance board to promulgate legislative rules for the purpose of regulating the public employees insurance program and defining certain
terms with respect thereto; authorizing the state tax commissioner to promulgate certain legislative rules for the purpose of appraisal of property for periodic statewide reappraisals for ad valorem property tax purposes; authorizing the state board of investments to promulgate certain legislative rules for the purpose of selection of state depositories for the disbursement of accounts through competitive bidding; authorizing the state treasurer to promulgate certain legislative rules for the purpose of the establishment of imprest funds; authorizing the state board of investments to promulgate certain legislative rules for the purpose of administration of the consolidated fund; authorizing the department of public safety to promulgate certain legislative rules for the purpose of providing general orders; authorizing the state board of health to promulgate certain legislative rules for the purposes of trauma center or facility designation, of well water regulation, of providing procedures for recovery of corneal tissue for transplant, and of birthing center licensure; authorizing the air pollution control commission to promulgate certain legislative rules for the purposes of permits for construction and modification of stationary sources of air pollution for the prevention of significant deterioration, of emission standards for hazardous air pollutants and of standards of performance for new stationary sources; authorizing the health care cost review authority to promulgate certain legislative rules for the purposes of a limitation on hospital gross patient revenue and of a freeze on hospital rates and granting temporary rate increases; authorizing the commissioner of motor vehicles to promulgate certain legislative rules with respect to driving under the influence of alcohol or drugs, drivers' license revocation and certain administrative hearings, for the purposes of the safety and treatment program and of compulsory insurance; authorizing the commissioner of agriculture to promulgate certain legislative rules for the purposes of providing a schedule of charges for inspection services for fruit, of licensing auctioneers, of regulating greyhound racing and of regulating thoroughbred horse racing; authorizing the water resources board to promulgate certain legislative rules for the purposes of special regulations, of ground water protection standards, and of providing a state national
pollutant discharge elimination system program; directing the water resources board to adopt certain rules relating to water quality standards in conformity with rules filed in the office of the secretary of state by the executive secretary of the state water resources board; authorizing the department of natural resources and the air pollution control commission to promulgate certain legislative rules for the purposes of hazardous waste management and to prevent and control air pollution from hazardous waste treatment, storage or disposal facilities, respectively; authorizing the commissioner of highways to promulgate certain legislative rules for the purpose of regulating the transportation of hazardous waste by highway transporters; authorizing the department of natural resources to promulgate certain legislative rules for the purpose of regulating surface mining; authorizing the department of mines to promulgate certain legislative rules for the purpose of governing the safety of those persons employed in and around surface mines; authorizing the department of labor to promulgate certain legislative rules for the purpose of implementing the hazardous chemical substances act; authorizing the office of oil and gas of the department of mines to promulgate certain legislative rules relating to the regulation of oil, gas and certain other wells; authorizing the workers' compensation commissioner to promulgate certain legislative rules for the purpose of the employers' excess liability fund; authorizing the state board of health to promulgate certain legislative rules for the purpose of licensure of behavioral health centers; authorizing the state fire commission to promulgate certain legislative rules for the purpose of providing a state fire code; authorizing the board of medicine to promulgate certain legislative rules relating to the practice of medicine, certain licensing disciplinary and complaint procedures, and the regulation of the practice of podiatry and of physician assistants; authorizing the board of examiners for registered professional nurses to promulgate certain legislative rules for the purpose of setting qualifications of graduates of foreign nursing schools for admission to the professional nurse licensing examination; authorizing the radiologic technology board of examiners to promulgate certain legislative rules for the purpose of regulating radiologic
technologists; authorizing the commissioner of banking to promulgate certain legislative rules for the purposes of regulating consumer credit sales and the legal lending limit; authorizing state auditor, as securities commissioner, to promulgate certain legislative rules for the purpose of regulating broker-dealers, agents and investment advisors; authorizing the insurance commissioner to promulgate certain legislative rules for the purpose of regulating excess line brokers; and authorizing the board of risk and insurance management to promulgate certain legislative rules regulating mine subsidence insurance.

Be it enacted by the Legislature of West Virginia:

That sections sixteen (one) (seven), sixteen (twenty) (five), nineteen (twenty-three) (six), twenty (five-a) (three) and twenty (five-e) (six), article two, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article two be further amended by adding thereto thirty-two new sections, designated sections five (sixteen) (eighteen), eleven (one-a) (eleven), twelve (one) (two), twelve (two) (two), twelve (six) (five), fifteen (two) (twenty-five), sixteen (two-e) (three), sixteen (twenty-nine-b) (eight), seventeen-c (five-a) (two), seventeen-c (five-a) (three), seventeen-d (two-a) (eight), nineteen (two) (five), nineteen (two-c) (five), twenty (five-e) (seven), twenty (five-f) (four), twenty (six) (two), twenty (six) (thirty-eight), twenty-one (three) (eighteen), twenty-two (four) (thirteen), twenty-three (four-c) (three), twenty-seven, (nine) (one), twenty-seven (seventeen) (three), twenty-nine (three) (five), thirty (three) (seven), thirty (seven) (four), thirty (twenty-three) (five) thirty-one-a (two) (four), thirty-one-a (four) (two), thirty-two (four) (four hundred twelve), thirty-three (two) (ten) and thirty-three (twenty) (fifteen), all to read as follows:

ARTICLE 2. EXECUTIVE AGENCY AUTHORIZATION TO PROMULGATE LEGISLATIVE RULES.

§64-2-12 (1) (2). State board of investments.
§64-2-12 (2) (2). State treasurer.
§64-2-12 (6) (5). State board of investments.
§64-2-16 (2e) (3). State board of health.
§64-2-16 (20) (5). Air pollution control commission.
§64-2-16 (29b) (8). Health care cost review authority.
§64-2-17c (5a) (2). Commissioner of motor vehicles.
§64-2-17c (5a) (3). Department of motor vehicles.
§64-2-17d (2a) (8). Commissioner of motor vehicles.
§64-2-19 (2) (5). Commissioner of agriculture.
§64-2-19 (2c) (5). Commissioner of agriculture.
§64-2-20 (5a) (3). Water resources board.
§64-2-20 (5e) (6). Department of natural resources.
§64-2-20 (5f) (4). Department of natural resources.
§64-2-20 (6) (2). Department of natural resources.
§64-2-20 (6) (38). Department of mines.
§64-2-21 (3) (18). Department of labor.
§64-2-22 (4) (13). Office of oil and gas, department of mines.
§64-2-23 (4c) (3). Workers' compensation commissioner.
§64-2-29 (3) (5). State fire commission.
§64-2-30 (3) (7). Board of medicine.
§64-2-30 (7) (4). Board of examiners for registered professional nurses.
§64-2-30 (23) (5). Radiologic technology board of examiners.
§64-2-31a (2) (4). Commissioner of banking.
§64-2-31a (4) (26). Commissioner of banking.
§64-2-33 (2) (10). Insurance commissioner.
§64-2-33 (20) (15). Board of risk and insurance management.


1 The legislative rules filed in the state register on the 2 sixteenth day of May, one thousand nine hundred eighty- 3 three, relating to the public employees insurance board 4 (public employees insurance plan) are authorized with the 5 amendments set forth below:

6 §2.01(b) shall read as follows:

7 (b) "Children" shall mean unmarried children between 8 birth and age nineteen and shall include: (1) The employee's 9 natural children, (2) legally adopted children, including 10 children living with the employee during the period of 11 probation, (3) stepchildren residing in the employee's 12 household and (4) other children fully dependent upon the
employee for support and maintenance and residing in the household of which the employee is head and actually being supported by the employee. Children may be included after the attainment of age nineteen, but not beyond the attainment of age twenty-five, if they are enrolled as full-time students, are unmarried and are fully dependent upon the employee for support. Children may also be included after the attainment of age nineteen while incapable of self-support because of a mental illness, mental retardation or a physical disability, if the child was dependent upon the employee for support and maintenance at the onset of the mental illness, mental retardation or physical disability.

§6.03.—In the second sentence delete the words “Executive Secretary” and insert the word “Board.”

On page 11, insert a new section as follows:

“§5.07.—Coverage for dependents shall terminate at the end of the month in which they no longer meet the definition of ‘dependent’ set forth in section 2.01 of these rules.”


The legislative rules filed in the state register on the fifth day of January, one thousand nine hundred eighty-four, relating to the state tax commissioner (appraisal of property for periodic statewide reappraisals for ad valorem property tax purposes), are authorized with the amendments set forth below:

Page 8, §11.04(b) (2), definition of “Active Mining Property,” at the end of the first paragraph following the “period,” by adding the following: “In the application of the herein provided valuation formula on ‘active mining property,’ the appropriate formula calculation will be based upon the actual market to which the coal from that tract and seam is currently being sold, whether it is ‘metallurgical’ or ‘steam’.”

Page 9, §11.04(b) (3), definition of “Active Reserves,” at the end of the subsection, following the “period,” by adding the following: “In the application of the herein provided valuation formula on ‘active reserves,’ the appropriate formula calculation will be based upon the actual market to
which the coal from that tract and seam is currently being
sold, whether it is 'metallurgical' or 'steam'."

Page 11, section 11.04 (b) (11), definition of "Mineable
Coal," by striking the subsection and substituting in lieu
thereof the following: "(11) Mineable Coal. Coal which can
be mined under present day mining technology and
economics."

Page 25, section 11.04 (c) (2) (C), entitled "Property Tax
Component," by striking the subsection and inserting in
lieu thereof the following: "(C) Property Tax
Component—This component will be derived by
multiplying the assessment rate by the statewide average of
tax rates on Class III property."

Page 30, §11.04(c) (4), entitled "Valuation of Mined-Out/
Unmineable/Barren Coal Properties," by striking the
numbers "$5.00" and inserting in lieu thereof the following:
"$1.00".

Page 31, section 11.04 (c) (5) (B), by striking the words and
numbers "Five Dollars ($5.00)" and inserting in lieu thereof the
following: "One Dollar ($1.00)".

Page 53, section 11.05 (h) by striking the symbol and
figures "$5.00" and inserting in lieu the following: "$1.00."

Page 73, section 11.06 (h) by striking the symbol and
figures "$5.00" and inserting in lieu the following: "$1.00."

Page 81, section 11.07 (e) (15) (B) (4) at the end of the
second sentence remove the period after the word
"property" and insert the words "unless the land is used for
some other purpose in which case it will be taxed according
to its actual use."

Page 86, section 11.07 (k) delete all of subsection (k).

Page 110, section 11.08 (c) (4) by striking the symbol and
figures "$5.00" and inserting in lieu thereof the following:
"$1.00."

Page 111, section 11.08 (c) (5) (B) by striking the symbol
and figures "$5.00" and inserting in lieu thereof the
following: "$1.00."
Page 115, §11.09 (a) (3) in the first sentence, insert after the word “land” the words, “excluding farm land.”

§64-2-12 (1) (2). State board of investments.
1 The legislative rules filed in the state register on the third day of January, one thousand nine hundred eighty-four, relating to the state board of investments (selection of state depositories for disbursement accounts through competitive bidding) are authorized.

§64-2-12 (2) (2). State treasurer.
1 The legislative rules filed in the state register on the third day of January, one thousand nine hundred eighty-four, relating to the state treasurer (establishment of imprest funds) are authorized.

§64-2-12 (6) (5). State board of investments.
1 The legislative rules filed in the state register on the third day of January, one thousand nine hundred eighty-four, relating to the state board of investments (administration of the consolidated fund) are authorized.

1 The legislative rules filed in the state register on the twenty-third day of September, one thousand nine hundred eighty-three, relating to the department of public safety (general orders) are authorized with the amendment set forth below:
2 Page 23, §9.10 remove the period at the end of the sentence and add the words “or municipalities.”

1 (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.
5 (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 modification 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.
(g) The legislative rules filed in the state register on the nineteenth day of December, one thousand nine hundred eighty-three, relating to the state board of health (trauma center or facility designation) are authorized with the modifications set forth below:

In §§3.1, 3.2, 3.4, 3.6 and 3.10 delete the words “and as may be modified by the West Virginia Categorization Committee.”

(h) The legislative rules filed in the state register on the seventh day of September, one thousand nine hundred eighty-three, relating to the state board of health (well water regulations) are authorized with the amendments set forth below:

§4.1. In the first sentence delete the word “obtaining” and insert in lieu thereof the words “applying for.” In the second sentence after “4.3” add “and 4.5.”

§4.2. At the end of the second sentence strike the period and add the words “unless emergency conditions prevail as noted under section 4.3.”

With the balance of §4.2, and create a new §4.3 with the following changes: In the first sentence delete the word “deadline” and insert in lieu thereof the word “requirements.” Add after the first sentence the sentence, “Emergency conditions and unavoidable circumstances are those conditions involving acts of God, water outages or disruption of water service, unsatisfactory water quality or quantity or public health threats.” In the third sentence delete the word “exceed” and insert in lieu thereof the words “be made in excess of.”

Renumber §4.3 as §4.4 and add the following two sentences at the end of the section: “Such standards shall constitute the minimum standards for the installation, the alteration or the deepening of water wells. Any plans approved by the director pursuant to these regulations shall be in substantial compliance with the heretofore mentioned standards.”

Renumber §4.4 as §4.5, §4.5 as §4.6, §4.6 as §4.7, §4.7 as §4.8 and §4.8 as §4.9.
§5.2. Delete the words “four (4)” and insert in lieu thereof the words “two (2)” and delete the words “active, continuous.”

(i) The legislative rules filed in the state register on the nineteenth day of December, one thousand nine hundred eighty-three, relating to the state board of health (procedures for recovery of corneal tissue for transplant) are authorized.

§64-2-16 (2e) (3). State board of health.

1 The legislative rules filed in the state register on the nineteenth day of December, one thousand nine hundred eighty-three, relating to the state board of health (birthing center licensure) are authorized.

§64-2-16 (20) (5). Air pollution control commission.

1 (a) The legislative rules filed in the state register on the thirteenth day of August, one thousand nine hundred eighty-two, relating to the air pollution control commission (series VII), are authorized.

5 (b) The legislative rules filed in the state register on the thirteenth day of August, one thousand nine hundred eighty-two, relating to air pollution control commission (series XIX), are authorized.

9 (c) The legislative rules filed in the state register on the ninth day of January, one thousand nine hundred eighty-four, relating to the air pollution control commission (permits for construction and modification of stationary sources of air pollution for the prevention of significant deterioration) (series XIV) are authorized.

15 (d) The legislative rules filed in the state register on the sixteenth day of November, one thousand nine hundred eighty-three, relating to the air pollution control commission (emission standards for hazardous air pollutants) (series XV) are authorized.

20 (e) The legislative rules filed in the state register on the sixteenth day of November, one thousand nine hundred eighty-three, relating to the air pollution control commission (standards of performance for new stationary sources) (series XVI) are authorized.
The legislative rules authorized by the Legislature in section twenty (five-e) (six) of this article (to prevent and control air pollution from hazardous waste treatment, storage or disposal facilities) (series XXV) were also proposed by the air pollution control commission pursuant to section five, article twenty, chapter sixteen of this code.

§64-2-16 (29b) (8). Health care cost review authority.

(a) The legislative rules filed in the state register on the twenty-first day of October, one thousand nine hundred eighty-three, relating to the health care cost review authority (limitation on hospital gross patient revenue) are authorized.

(b) The legislative rules filed in the state register on the nineteenth day of December, one thousand nine hundred eighty-three, relating to the health care cost review authority (freeze on hospital rates and granting temporary rate increases) are authorized.

§64-2-17c (5a) (2). Commissioner of motor vehicles.

The legislative rules filed in the state register on the ninth day of November, one thousand nine hundred eighty-three, relating to the commissioner of motor vehicles (driving under the influence, drivers' license revocation administrative hearings) are authorized.

§64-2-17c (5a) (3). Department of motor vehicles.

The legislative rules filed in the state register on the fifteenth day of December, one thousand nine hundred eighty-three, relating to the department of motor vehicles (safety and treatment program) are authorized.

§64-2-17d (2a) (8). Commissioner of motor vehicles.

The legislative rules filed in the state register on the sixteenth day of June, one thousand nine hundred eighty-three, relating to the commissioner of motor vehicles (compulsory insurance) are authorized.

§64-2-19 (2) (5). Commissioner of agriculture.

The legislative rules filed in the state register on the sixth day of April, one thousand nine hundred eighty-three,
relating to the commissioner of agriculture (schedule of
carges for inspection services: fruit) are authorized.

§64-2-19 (2c) (5). Commissioner of agriculture.

The legislative rules filed in the state register on the third
day of August, one thousand nine hundred eighty-three,
relating to the commissioner of agriculture (licensing of
auctioneers) are authorized.


(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.

(f) The legislative rules filed in the state register on the
twentieth day of September, one thousand nine hundred
eighty-three, relating to the West Virginia racing
commission (Rule 107) greyhound racing, are authorized.

(g) The legislative rules filed in the state register on the
twentieth day of September, one thousand nine hundred
eighty-three, relating to the West Virginia racing
commission (Rule 108) greyhound racing are authorized
with the amendment set forth below:
Following the word “Association” insert a period and strike the remainder of the sentence.

(h) The legislative rules filed in the state register on the twentieth day of September, one thousand nine hundred eighty-three, relating to the West Virginia racing commission (Rule 108) thoroughbred racing are authorized with the amendment set forth below:

Following the word “Association” insert a period and strike the remainder of the sentence.

(i) The legislative rules filed in the state register on the twentieth day of September, one thousand nine hundred eighty-three, relating to the West Virginia racing commission (Rule 392) greyhound racing, are authorized.

(j) The legislative rules filed in the state register on the twentieth day of September, one thousand nine hundred eighty-three, relating to the West Virginia racing commission (Rule 455) greyhound racing are authorized.

(k) The legislative rules filed in the state register on the twentieth day of September, one thousand nine hundred eighty-three, relating to the West Virginia racing commission (Rule 609A) greyhound racing are authorized.

(l) The legislative rules filed in the state register on the twentieth day of September, one thousand nine hundred eighty-three, relating to the West Virginia racing commission (Rule 627) greyhound racing are authorized.

(m) The legislative rules filed in the state register on the twentieth day of September, one thousand nine hundred eighty-three, relating to the West Virginia racing commission (Rule 845) thoroughbred racing are authorized.

§64-2-20 (5a) (3). Water resources board.

(a) 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.

(b) The legislative rules filed in the state register on the fifteenth day of November, one thousand nine hundred eighty-three, relating to the state water resources board (special regulations) are authorized.
(c) The legislative rules filed in the state register on the third day of August, one thousand nine hundred eighty-three, relating to the state water resources board (groundwater protection standards) are authorized.

(d) The legislative rules filed in the state register on the fifteenth day of November, one thousand nine hundred eighty-three, relating to the state water resources board (state national pollutant discharge elimination system (NPDES) program), are authorized.

(e) The Legislature hereby authorizes and directs the water resources board to promulgate rules relating to water quality standards in exact conformity with the rules relating to water quality standards tendered to the secretary of state on the seventh day of March, one thousand nine hundred eighty-four, by the executive secretary of the state water resources board, to be received and filed for inclusion in the state register by the secretary of state.

§64-2-20 (5e) (6). Department of natural resources.

(a) The legislative rules filed in the state register on the sixth day of January, one thousand nine hundred eighty-four, relating to the department of natural resources (hazardous waste management) are authorized.

(b) The legislative rules filed in the state register on the sixth day of January, one thousand nine hundred eighty-four, relating to the air pollution control commission (to prevent and control air pollution from hazardous waste treatment, storage or disposal facilities) (series XXV) are authorized with the amendments set forth below:

Page 3, §1.06, change the section title from "Enforcement" to "Procedure"; place an "(a)" in front of the existing paragraph and add the following:

"(b) Permit applications filed pursuant to this regulation shall be processed in accordance with the permitting procedures as set forth in Code §20-5E and this regulation. Permit procedures set forth in Code §16-20 and any other regulation of this commission are not applicable to any permit application filed pursuant to this regulation."
Page 91, §19.04, delete the second paragraph in its entirety.

Such rules shall also include a section which shall read as follows:

"The commission shall report to the legislative rule-making review committee as required by that committee, but in no event later than the first day of the regular session of the Legislature in the year one thousand nine hundred eighty-five. Such report shall include information regarding the commission's data gathering efforts, the development of compliance programs, the progress in implementation, and such other matters as the committee may require, pertaining to the regulations hereby authorized."


The legislative rules filed in the state register on the twenty-first day of October, one thousand nine hundred eighty-three, relating to the commissioner of highways (transportation of hazardous waste by highway transporters) are authorized with the amendments set forth below:

Pages 3 and 7 after "40CFR part 262" add the words "as amended through February 20, 1984,"

Page 7 after "49CFR parts 171-179" add the words "as amended through February 20, 1984,"

Page 11 after "49CFR 171.16" add the words "as amended through February 20, 1984,"

§64-2-20 (5f) (4). Department of natural resources.

The legislative rules filed in the state register on the twentieth day of January, one thousand nine hundred eighty-four, relating to the department of natural resources (solid waste management) are authorized with the amendments set forth below:

Page 9, section 4.04, line five, add the following paragraph:
"Upon request of any applicant, the division shall meet with the applicant for pre-filing review of the application. The division, with the cooperation of the solid waste authority, shall assist the applicant in preparing a complete and proper application which would not be rejected as incomplete."

On page 15, section 6.03 (c) (1) in the first full sentence, after the word "cease", strike the remainder of the sentence and insert in lieu thereof the words "within fifteen (15) days of receipt of an order of suspension" and in the second sentence strike the word "recommence" and insert the words "continue beyond fifteen (15) days"; (c) (2) in the first full sentence, after the word "cease" by striking out the remainder of the sentence and insert in lieu thereof the words "immediately upon receipt of an order of revocation".

§64-2-20 (6) (2). Department of natural resources.

The legislative rules filed in the state register on the eighth day of December, one thousand nine hundred eighty-three, relating to the department of natural resources (surface mining) are authorized with the amendments set forth below:

Page 3-4, section 3E.01 by adding after the word "engineer" the words "or licensed land surveyor".

Page 3-5, section 3E.02, subsection (a), by adding after the word "mining" the words "or civil".

Page 3-5, section 3E.02, subsection (b) by adding after the first sentence the following sentence: "Those persons who have been approved to date need not make said demonstration."

§64-2-20 (6) (38). Department of mines.

The legislative rules filed in the state register on the seventeenth day of August, one thousand nine hundred eighty-three, relating to the department of mines (governing the safety of those employed in and around surface mines), are authorized.

§64-2-21 (3) (18). Department of labor.

The legislative rules filed in the state register on the
six hundred eighty-three, relating to the department of labor
(hazardous chemical substances) are authorized.

§64-2-22 (4) (13). Office of oil and gas, department of mines.

1 The legislative rules filed in the state register on the
2 seventh day of December, one thousand nine hundred
3 eighty-three, relating to the office of oil and gas,
4 department of mines (oil and gas and other wells) are
5 authorized with the amendments set forth below:

6 Page viii, place an • in front of §32.02.
7 Page ix, after §35.04 add the following:
8 "*35.05 Extra powers of the administrator ....... 64".
9 Page 1, §1.03 in the list of additional regulations, add
10 35.05; in the list of revised regulations, add 32.02, 32.03 and
11 33.00.

12 Page 52, §32.04 and §32.05 add at the end of (ii) the words
13 "and (iii) definition of proration unit".
14 Page 53, §33 after the word "definitions" add the
15 following sentence: "The following definitions are
16 applicable to these regulations used for purposes of
17 implementing the Natural Gas Policy Act of 1978 and are
18 not intended to be used in any other context."
19 Page 55, §33.02 (b) (16) after the word "formations" in the
20 third lines of (i) and (ii), add the words "for which a well has
21 been".
22 Page 64, after §35.04 add the following section:
23 "35.05 Extra powers of the administrator.

24 The administrator may also certify or provide a waiver
25 for a well located within a proration unit as defined in 32.02
26 (b) (16) or any other well sought to be certified under these
27 regulations after notice and hearing."

§64-2-23 (4c) (3). Workers' compensation commissioner.

1 The legislative rules filed in the state register on the
2 fourteenth day of November, one thousand nine hundred
3 eighty-three, relating to the workers' compensation
commissioner (employers' excess liability fund) are authorized.


The legislative rules filed in the state register on the fourteenth day of November, one thousand nine hundred eighty-three, relating to the state board of health (licensure of behavioral health centers) are authorized with the amendments set forth below:

Page 45, §12.8.2. In the first sentence delete the words "without delay" and insert in lieu thereof the words "within twenty-four hours after receiving a report of a complaint."


The legislative rules authorized by the Legislature in section twenty-seven (nine) (one) of this article were also proposed by the state board of health pursuant to section three, article seventeen, chapter twenty-seven of this code.

§64-2-29 (3) (5). State fire commission.

The legislative rules filed in the state register on the third day of January, one thousand nine hundred eighty-four, relating to the state fire commission (state fire code) are authorized with the amendments set forth below:

Page 1, §106, line 1, after the word "to" add the words "personal care homes caring for five or less patients or"; and

Page 26, §11.06 (3) A. (3). Strike the period at the end of the sentence and add the words "except for existing sleeping rooms owned by the state and located in dormitories or state parks."

§64-2-30 (3) (7). Board of medicine.

The legislative rules filed in the state register on the twelfth day of May, one thousand nine hundred eighty-three, relating to the board of medicine (licensing, disciplinary and complaint procedures; podiatry; physician assistants) are authorized with the modifications set forth below:

§24.12.
8  (b) It shall be the responsibility of the supervising
9  physician to obtain consent in writing from the patient
10  before Type A physician assistants employed in a satellite
11  clinic may render general medical or surgical services,
12  except in emergencies.
13
14  §24.16.
15
16  (p) No physician assistant shall render nonemergency
17  outpatient medical services until the patient has been
18  informed that the individual providing care is a physician
19  assistant.

§64-2-30 (7) (4). Board of examiners for registered professional
1  nurses.
2  The legislative rules filed in the state register on the
3  thirteenth day of September, one thousand nine hundred
4  eighty-three, relating to the board of examiners for
5  registered professional nurses (qualifications of graduates
6  of foreign nursing schools for admission to the professional
7  nurse licensing examination) are authorized.

§64-2-30 (23) (5). Radiologic technology board of examiners.
1  The legislative rules filed in the state register on the
2  twenty-fourth day of January, one thousand nine hundred
3  eighty-four, relating to the radiologic technology board of
4  examiners are authorized.

§64-2-31a (2) (4). Commissioner of banking.
1  The legislative rules filed in the state register on the
2  fifteenth day of December, one thousand nine hundred
3  eighty-three, relating to the commissioner of banking
4  (consumer credit sales), are authorized.

§64-2-31a (4) (26). Commissioner of banking.
1  The legislative rules filed in the state register on the
2  nineteenth day of August, one thousand nine hundred
3  eighty-three, relating to the commissioner of banking (legal
4  lending limit) are authorized.

1  The legislative rules filed in the state register on the
twenty-first day of December, one thousand nine hundred eighty-three, relating to the state auditor, securities commissioner (broker-dealers, agents and investment advisors) are authorized with the amendments set forth below:

§14.06 Delete the words "as subsequently amended" and reinsert the words "as amended March 30, 1982".

§14.07 Place a period after "1976" and delete the words "as subsequently amended".


The legislative rules authorized by the Legislature in section thirty-two (four) (four hundred two) of this article were also proposed by the state auditor, securities commissioner pursuant to section four hundred twelve, article four, chapter thirty-two of this code.

§64-2-33 (2) (10). Insurance commissioner.

The legislative rules filed in the state register on the eighteenth day of October, one thousand nine hundred eighty-three, relating to the insurance commissioner (excess line brokers), are authorized.

§64-2-33 (20) (15). Board of risk and insurance management.

The legislative rules filed in the state register on the twenty-first day of October, one thousand nine hundred eighty-three, relating to the board of risk and insurance management (mine subsidence) are authorized.

AN ACT to amend and reenact section one, article one, chapter forty-seven-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia lending and credit rate board; authorizing the board to prescribe
semiannual, rather than quarterly, alternative maximum interest rates or finance charges on loans, credit sales, forbearances or other similar transactions; requiring semiannual reports; specifying dates for filing proposed changes with the banking commissioner; providing for public hearings; establishing effective dates for rate changes; providing for decisions as to whether a board meeting is necessary; and providing for emergency meetings.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. LENDING AND CREDIT RATE BOARD.

§47A-1-1. Legislative findings; creation, membership, powers and duties of board.

(a) The Legislature hereby finds and declares that:

(1) Changes in the permissible charges on loans, credit sales or transactions, forbearances or other similar transactions requires specialized knowledge of the needs of the citizens of West Virginia for credit for personal and commercial purposes and knowledge of the availability of such credit at reasonable rates to the citizens of this state while affording a competitive return to persons extending such credit;

(2) Maximum charges on loans, credit sales or transactions, forbearances or other similar transactions executed in this state should be prescribed from time to time to reflect changed economic conditions, current interest rates and finance charges throughout the United States and the availability of credit within the state in order to promote the making of such loans in this state; and

(3) The prescribing of such maximum interest rates and finance charges can be accomplished most effectively and flexibly by a board comprised of the heads of designated government agencies, university schools of business and administration and members of the public.
(b) In view of the foregoing findings, it is the purpose of this section to establish the West Virginia lending and credit rate board and authorize said board to prescribe semi-annually the maximum interest rates and finance charges on loans, credit sales or transactions, forbearances or similar transactions made pursuant to this section subject to the provisions, conditions and limitations hereinafter set forth and to authorize lenders, sellers and other creditors to charge up to the maximum interest rates or finance charges so fixed. The rates prescribed by the board are alternative rates and any creditor may utilize either the rate or rates set by the board or any other rate or rates which the creditor is permitted to charge under any other provision of this code.

(c) The West Virginia lending and credit rate board shall be comprised of:

(1) The director of the governor's office of economic and community development;
(2) The West Virginia state treasurer;
(3) The West Virginia banking commissioner;
(4) The deans of the schools of business and administration at Marshall University and West Virginia University;
(5) The director of the division of consumer protection of the attorney general's office;
(6) Three members of the public appointed by the governor with the advice and consent of the Senate. The members of the public shall be appointed for terms of six years each, and until their successors are appointed and qualified; except that of the members first appointed, one shall be appointed for a term of two years, one for a term of four years and one for a term of six years. A member who has served one full term of six years shall be ineligible for appointment for the next succeeding term. Vacancies shall be filled by appointment of the Governor with the advice and consent of the Senate, or if any vacancy remains unfilled for three months, by a majority vote of the board. The West Virginia banking commissioner shall serve as chairperson of the board and the rate or rates set by the board shall be determined by
a majority vote of those members of the board in attendance
at the respective board meeting.

(d) The West Virginia lending and credit rate board is hereby authorized and directed to meet after the thirty-first day of December, one thousand nine hundred eighty-three, on the first Tuesday of April and on the first Tuesday of October of each year or more or less frequently as required by the circumstances and to prescribe by order a maximum rate of interest and finance charge for the next succeeding six months, effective on the first day of June and on the first day of December, for any loans, credit sales or transactions, forbearances or similar transactions made pursuant to this section. In fixing said maximum rates of interest and finance charge, the board shall take into consideration prevailing economic conditions, including the monthly index of long-term United States government bond yields for the preceding calendar month, yields on conventional commercial short-term loans and notes throughout West Virginia and throughout the United States and on corporate interest-bearing securities of high quality, the availability of credit at reasonable rates to the citizens of this state which afford a competitive return to persons extending such credit, and such other factors as the board may determine.

(e) Any petition proposing a change in the prescribed maximum rates of interest and finance charges must be filed in the office of the banking commissioner no later than the fifteenth day of February in order to be voted on at the board meeting on the first Tuesday of April and no later than the fifteenth day of August in order to be voted on at the board meeting on the first Tuesday of October. Whenever any change in the prescribed maximum rates of interest and finance charges is proposed the board shall schedule a hearing, at least fifteen days prior to the board meeting at which the proposed rates of interest and finance charge will be voted on by the members of the board, and shall give all interested parties the opportunity to testify and to submit information at such public hearing that is relevant. Notice of the scheduled public hearing shall be issued and disseminated to the public at least twenty days prior to the scheduled date of the hearing.
(f) The board shall prescribe by order issued not later than the twentieth day of April and not later than the twentieth day of October, in accordance with the provisions of subsection (d) of this section the maximum rates of interest and finance charge for the next succeeding six months for any loan, credit sale, forbearance or similar transaction made pursuant to this section and shall cause such maximum rate of interest and finance charge to be issued and disseminated to the public, such maximum rate of interest and finance charge to be effective on the first day of June and the first day of December for the next succeeding six months.

(g) Notwithstanding the other provisions of this chapter, the West Virginia lending and credit rate board shall not be required to meet if no petition has been filed with the board requesting a hearing and interest rates and economic conditions have not changed sufficiently to indicate that any change in the existing rate order would be required, and there are not at least two board members who concur that a meeting of the board is necessary. If the board does not meet, the maximum rates of interest and finance charges prescribed by the board in the existing rate order shall remain in full force and effect until the next time the board meets and prescribes different maximum rates of interest and finance charges.

(h) If circumstances and economic conditions require, the chairperson or any three board members, at any time, may call an emergency interim meeting of the West Virginia lending and credit rate board, at which time the chairperson shall give ten days' notice of the scheduled emergency meeting to the public. All interested parties shall have the opportunity to be heard and to submit information at such emergency meeting that is relevant. Any and all emergency rate board orders shall be effective within thirty days from the date of such emergency meeting.

(i) Each member of the board, except those whose regular salary is paid by the state of West Virginia,
shall receive seventy-five dollars per diem while actually engaged in the performance of the duties of the board. Each member shall be reimbursed for all reasonable and necessary expenses actually incurred during the performance of their duties, except that in the event the expenses are paid by a third party the members shall not be reimbursed by the state. The reimbursement shall be paid out of the revolving fund established by section two of this article upon a requisition upon the state auditor, properly certified by the banking commissioner.

(j) In setting the maximum interest rates and finance charges, the board may set varying rates based on the type of credit transaction, the term of transaction, the type of debtor, the type of creditor and other factors relevant to determination of such rates. In addition, the board may set varying rates for ranges of principal balances within a single category of credit transaction.

CHAPTER 106

(Com. Sub. for S. B. 65—By Senator Tucker and Senator Tomblin)

[Passed March 8, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fourteen, relating generally to credit line deeds of trust which secure a present indebtedness and future advances; mandatory provisions of such deeds of trust; priority of such deeds of trust over all other liens created or arising after recordation of the deed of trust; certain exceptions to the priority of such deeds of trust; and the release of such deeds of trust.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. VENDOR'S AND TRUST DEED LIENS.

§38-1-14. Future advances secured by credit line deed of trust; form; priority over other liens; release.

(a) Whenever a deed of trust otherwise complying with the provisions of this article is clearly entitled at the beginning thereof either in capital letters or in language underscored, the words "A CREDIT LINE DEED OF TRUST," the deed of trust shall be, from the time it is duly recorded as required by law, security for all indebtedness secured thereby at the time of recording and for all future advances secured thereby in an aggregate principal amount outstanding at any time not to exceed the maximum amount stated in the deed of trust, without regard to whether the future advances are contracted for at the time of recordation of the deed of trust or whether the secured party under the deed of trust readvances principal sums repaid. The deed of trust shall also be security for interest on the principal sums and for taxes, insurance premiums and other obligations, including interest thereon, undertaken by the secured party in the deed of trust or in the related loan agreement, note or other evidences of indebtedness secured thereby. The interest, taxes, insurance premiums and other obligations when added to the total principal amount of the loans outstanding at any time may increase the amount secured by the deed of trust above the stated maximum amount.

(b) A credit line deed of trust, in addition to other provisions of this code, shall conform with the following:

(1) The deed of trust shall contain specific provisions permitting or requiring future advances;

(2) At no time may the unpaid principal balance of indebtedness secured by the deed of trust exceed the maximum amount stated therein, except as specifically provided for in subsection (a) of this section; and
(3) The original deed of trust must be executed and recorded after the effective date of this section.

(c) Except as otherwise provided herein, the deed of trust to the extent of the principal amount of the loan secured thereby, interest thereon, taxes, insurance premiums and other obligations, including interest thereon, secured thereby, has priority over all other deeds of trust, liens and encumbrances of every nature, however created or arising, to the same extent and for the same amount as if all the amounts were advanced immediately after the date and time the deed of trust is recorded.

(d) After the recording of the credit line deed of trust, any mechanic's lien, abstract of judgment, notice of lis pendens, deed of trust or other lien or encumbrance affecting the property encumbered by the deed of trust is duly recorded and otherwise perfected as required by law, any optional or nonobligatory advances secured by the deed of trust which are made by the secured party under the deed of trust after receipt by the secured party of written notice of the other lien at the address provided for this purpose in the deed of trust, does not have priority over the lien of the mechanic's lien, judgment lien, notice of lis pendens, deed of trust or other lien or encumbrance. However, any obligatory advances which the secured party contracted to make by written agreement entered into with the obligor whose indebtedness is secured by the deed of trust, prior to receipt of this written notice, and any taxes, insurance premiums and obligations which the secured party has agreed to pay, or which under the deed of trust or otherwise the secured party has the right to pay in connection with such deed of trust, shall continue to have the priority created under subsection (a) of this section over a mechanic's lien, judgment lien, notice of lis pendens, deed of trust or other lien or encumbrance. For the purposes of this section, an "obligatory advance" means any advance of principal which the secured party under the deed of trust is legally obligated to make in the absence of the occurrence of a specific event under the deed of trust or related loan agreement or note, by a
specified date or time or upon application therefor by
the grantor under the deed of trust or by another ob-
ligor whose indebtedness is secured by the deed of trust.

(e) Notwithstanding any other provision of this code,
the secured party under a credit line deed of trust subject
to this section shall be obligated to release the deed of
trust at such time as all indebtedness secured thereby has
been paid in full and the secured party has been duly
released from any further obligation to make future ad-
advances under any note or agreement secured by the deed
of trust. This release shall become effective upon the
recording of the release and the secured party shall be
released and discharged from any further obligation.

CHAPTER 107
(H. B. 1987—By Delegate Givens and Delegate Kelly)

[Passed March 6, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article one, chapter fifty
of the code of West Virginia, one thousand nine hundred
thirty-one, as amended, relating to the number of magistrates
to be elected in each county; two magistrates to be elected
in Brooke county.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. COURTS AND OFFICERS.

§50-1-2. Number of magistrates.

1 In each county which has less than thirty thousand in popu-
2 lation there shall be elected two magistrates; except that in
3 the county of Putnam there shall be elected three magistrates.
4 In each county which has thirty thousand or more in popu-
5 lation but less than sixty thousand in population there shall
be elected three magistrates; except that in the county of
McDowell there shall be elected four magistrates, and in the
county of Brooke there shall be elected two magistrates. In
each county which has sixty thousand or more in population
but less than one hundred five thousand in population there
shall be elected four magistrates; except that in the county
of Raleigh there shall be elected five magistrates. In each
county which has one hundred five thousand or more in
population but less than two hundred thousand in population
there shall be elected seven magistrates. In each county which
has two hundred thousand or more in population there shall
be elected ten magistrates. For the purpose of this article,
the population of each county shall be considered to be the
population as determined by the last preceding census taken
under the authority of the United States government. No
change in the number of magistrates caused by the publica-
tion of more recent such census figures shall be effective
until the next regular election for such office occurring after
the year of such publication.

CHAPTER 108
(Com. Sub. for H. B. 1465—By Delegate Chambers)

[Passed March 10, 1984; in effect July 1, 1984. Approved by the Governor.]

AN ACT to amend and reenact sections three, eight, nine and
nine-a, article one, chapter fifty of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, relating to
the judicial system and magistrate courts; providing for altering
the population criteria and break-point and reducing the
number of classes for determination of maximum allowable
salaries for magistrate court clerks and deputy clerks and mag-
istrate assistants; providing for increasing the salaries of magis-
trates and increasing the allowable maximum salaries of mag-
istrate court clerks, deputy clerks and magistrate assistants;
increasing maximum number of deputy clerks; and specifying
effective date.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. COURTS AND OFFICERS.


The salary of each magistrate shall be paid by the state. Beginning on the first day of July, one thousand nine hundred eighty-four, magistrates who serve less than ten thousand in population shall be paid annual salaries of seventeen thousand two hundred fifty dollars; magistrates who serve ten thousand or more in population but less than fifteen thousand in population shall be paid annual salaries of twenty thousand six hundred twenty-five dollars: Provided, That magistrates in the county of Putnam shall be paid annual salaries of twenty thousand six hundred twenty-five dollars. Magistrates who serve fifteen thousand or more in population shall be paid annual salaries of twenty-five thousand one hundred twenty-five dollars: Provided, however, That magistrates in the counties of Boone, Preston and Jefferson shall be paid annual salaries of twenty-five thousand one hundred twenty-five dollars. For the purpose of determining the population served by each magistrate, the number of magistrates authorized for each county shall be divided into the population of each county. Magistrates shall be paid once a month.

§50-1-8. Magistrate court clerks; salary; duties; duties of circuit clerk.

In each county having three or more magistrates the judge of the circuit court or the chief judge thereof, if there is more than one judge of the circuit court, shall appoint a magistrate court clerk. In all other counties such judge may appoint a magistrate court clerk or may by rule require the duties of the magistrate court clerk to be performed by the clerk of the circuit
court, in which event such circuit court clerk shall be entitled to
additional compensation in the amount of two thousand five
hundred dollars per year. In any county a magistrate court clerk
may be appointed prior to the first day of January, one thou-
sand nine hundred seventy-seven. The magistrate court clerk
shall serve at the will and pleasure of such circuit judge.

Magistrate court clerks shall be paid a monthly salary by
the state. Beginning on the first day of July, one thousand nine
hundred eighty-four, magistrate court clerks serving magistrates
who serve less than ten thousand in population shall be paid
up to nine hundred eighty-one dollars per month; magistrate
court clerks serving magistrates who serve ten thousand or
more in population but less than fifteen thousand in popula-
tion shall be paid up to one thousand two hundred forty-one
dollars per month: Provided, That the magistrate court clerk
in the county of Putnam shall be paid up to one thousand two
hundred forty-one dollars per month; and magistrate court
clerks serving magistrates who serve fifteen thousand or more
in population shall be paid up to one thousand five hundred
sixteen dollars per month: Provided, however, That the mag-
istrate court clerks in the counties of Boone, Preston and Jeff-
erson shall be paid up to one thousand five hundred sixteen dol-
lars per month. For the purpose of determining the population
served by each magistrate, the number of magistrates autho-
rized for each county shall be divided into the population of
each county. The salary of the magistrate court clerk shall be
established by the judge of the circuit court, or the chief
judge thereof if there is more than one judge of the circuit
court, within the limits set forth in this section.

In addition to other duties as may be imposed by the pro-
visions of this chapter or by the rules of the supreme court
of appeals or the judge of the circuit court, or the chief judge
thereof if there is more than one judge of the circuit court, it
shall be the duty of the magistrate court clerk to establish and
maintain appropriate dockets and records in a centralized sys-
tem for the magistrate court, to assist in the preparation of
such reports as may be required of the court and to carry out
on behalf of the magistrates, or chief magistrate if a chief
magistrate is appointed, the administrative duties of the court.
The magistrate court clerk or, if there is no magistrate
court clerk in the county, the clerk of the circuit court shall
have the authority to issue all manner of civil process and to
require the enforcement of subpoenas and subpoenas duces
tecum in magistrate court.


In each county there shall be one magistrate assistant for
each magistrate. Each magistrate assistant shall be appointed
by the magistrate under whose authority and supervision and
at whose will and pleasure he shall serve. Such assistant shall
not be a member of the immediate family of any magistrate
and shall not have been convicted of a felony or any misde-
meanor involving moral turpitude and shall reside in the
county where appointed. For the purpose of this section, im-
mediate family shall mean the relationships of mother, father,
sister, brother, child or spouse.

A magistrate assistant shall have such duties, clerical or
otherwise, as may be assigned by the magistrate and as may
be prescribed by the rules of the supreme court of appeals or
the judge of the circuit court, or the chief judge thereof if
there is more than one judge of the circuit court. In addition
to these duties, magistrate assistants shall perform and be
accountable to the magistrate court clerks with respect to the
following duties:

(1) The preparation of summons in civil actions;

(2) The assignment of civil actions to the various magis-
trates;

(3) The collection of all costs, fees, fines, forfeitures and
penalties which may be payable to the court;

(4) The submission of such moneys, along with an account-
ing thereof to appropriate authorities as provided by law;

(5) The daily disposition of closed files which are to be
located in the magistrate clerk’s office;

(6) All duties related to the gathering of information and
documents necessary for the preparation of administrative re-
ports and documents required by the rules of the supreme court
of appeals or the judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court;

(7) All duties relating to the notification, certification and payment of jurors serving pursuant to the terms of this chapter;

(8) All other duties or responsibilities whereby the magistrate assistant shall be accountable to the magistrate court clerk as the magistrate shall determine.

Magistrate assistants shall be paid a monthly salary by the state. Beginning on the first day of July, one thousand nine hundred eighty-four, magistrate assistants serving magistrates who serve less than ten thousand in population shall be paid up to seven hundred eighty-eight dollars per month; magistrate assistants serving magistrates who serve ten thousand or more in population but less than fifteen thousand in population shall be paid up to nine hundred seventeen dollars per month: Provided, That magistrate assistants in the county of Putnam shall be paid up to nine hundred seventeen dollars per month; and magistrate assistants serving magistrates who serve fifteen thousand or more in population shall be paid up to one thousand forty-five dollars per month: Provided, however, That magistrate assistants in the counties of Boone, Preston and Jefferson shall be paid up to one thousand forty-five dollars per month. For the purpose of determining the population served by each magistrate, the number of magistrates authorized for each county shall be divided into the population of each county. The salary of the magistrate assistant shall be established by the magistrate within the limits set forth in this section.

§50-1-9a. Magistrate court deputy clerks; salary; duties.

Whenever required by work load and upon the recommendation of the judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court, the supreme court of appeals may by rule provide for the appointment of magistrate court deputy clerks, not to exceed forty-six in number. Such magistrate court deputy clerks shall be appointed by the judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court, with such appointee to serve at his will and pleasure under the immediate
supervision of the magistrate court clerk. Such magistrate court deputy clerk shall have such duties, clerical or otherwise, as may be assigned by the magistrate court clerk and as may be prescribed by the rules of the supreme court of appeals or the judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court. Such magistrate court deputy clerks shall also have authority to exercise the power and perform the duties of the magistrate court clerk as may be delegated or assigned by such magistrate court clerk.

Such magistrate court deputy clerk shall not be a member of the immediate family of any magistrate, magistrate court clerk, magistrate assistant or circuit court judge within the same county, shall not have been convicted of a felony or any misdemeanor involving moral turpitude and shall reside in the county where appointed. For the purpose of this section, immediate family shall mean the relationships of mother, father, sister, brother, child or spouse.

Magistrate court deputy clerks shall be paid a monthly salary by the state. Such salary shall be paid on the same basis and in the same applicable amounts as for magistrate assistants in each county as provided in section nine of this article.

CHAPTER 109
(Com. Sub. for H. B. 1004—By Delegate Steptoe and Delegate Doyle)

[Passed March 8, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article five, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to magistrate courts; the trials, hearings and appeals in and from such courts; prohibiting appeals in criminal cases where a plea of guilty has been entered with representation by counsel; and exceptions.

Be it enacted by the Legislature of West Virginia:

That section thirteen, article five, 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 5. TRIALS, HEARINGS AND APPEALS.


Any person convicted of an offense in a magistrate court may appeal such conviction to circuit court by requesting such appeal within twenty days of the sentencing for such conviction. The magistrate may require the posting of bond with good security conditioned upon the appearance of the defendant as required in circuit court, but such bond may not exceed the maximum amount of any fine which could be imposed for the offense. Such bond may be upon the defendant’s own recognizance. An appeal may be granted by a judge of the circuit court of the county within ninety days from the date of sentencing. The filing or granting of an appeal shall automatically stay the sentence of the magistrate. Trial in circuit court shall be de novo. Notwithstanding any other provisions of this code to the contrary, there shall be no appeal from a plea of guilty where the defendant was represented by counsel at the time the plea was entered: Provided, That the defendant shall have an appeal from a plea of guilty where an extraordinary remedy would lie or where the magistrate court lacked jurisdiction.

CHAPTER 110

(S. B. 657—By Mr. McGraw, Mr. President, and Senator Chace)

[Passed March 8, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article one, chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to clarifying that responsibility for decisions relating to admission, discharge, and program planning in facilities for the mentally retarded lies with the superintendent or the superintendent’s designee, rather than with the clinical director or chief medical officer.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. WORDS AND PHRASES DEFINED.

§27-1-7. Superintendent and clinical director.

(a) The superintendent of a state hospital shall be the chief executive officer and shall have the authority to manage and administer the financial, business and personnel affairs of such state hospital. All other persons employed at a state hospital shall be under the jurisdiction and authority of the superintendent of such state hospital.

(b) The clinical director of a state hospital shall have the responsibility for decisions involving clinical and medical treatment of patients and shall be a physician. The clinical director of a state hospital shall be a person other than the superintendent of such state hospital.

(c) In any facility designated by the director of health as a facility for the mentally retarded in which programs and services are designed primarily to provide education, training and habilitation rather than medical or psychiatric treatment, the duties and responsibilities, other than those directly related to medical treatment services, assigned to the clinical director by this section or elsewhere in this chapter, shall be assigned to and become the responsibility of the superintendent of such facility, who need not be a physician, or of a person with expertise in the field of mental retardation, who need not be a physician, designated by the superintendent.

CHAPTER 111

(H. B. 1722—By Delegate Crookshanks)

(Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.)

AN ACT to amend article two, chapter twenty-seven 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 authorizing the department of health to lease Greenbrier school for retarded children; and certain restrictions and conditions upon such lease.

Be it enacted by the Legislature of West Virginia:

That article two, chapter twenty-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 one-a, to read as follows:

ARTICLE 2. MENTAL HEALTH FACILITIES.

§ 27-2-1a. Department of health authorized to lease Greenbrier school for retarded children.

On and after the effective date of this section the department of health is authorized to enter into a lease agreement with Carnegie Hall, Inc., a nonprofit, nonstock corporation, chartered as a corporation under the laws of this state on the first day of February, one thousand nine hundred eighty-three. Under the terms of such agreement, the department of health may lease to Carnegie Hall, Inc., all or a portion of that certain structure commonly known as Carnegie Hall on the grounds of the Greenbrier school for retarded children, located in Lewisburg. Such agreement shall require that Carnegie Hall, Inc., restore, maintain and perpetuate the use of Carnegie Hall for the use, benefit, education, entertainment and enjoyment of the citizens of the Greenbrier Valley, the residents of the Greenbrier school for retarded children and this state. The lease of the premises may be for a nominal fee and for such terms as the department deems appropriate and for so long as Carnegie Hall, Inc., uses the premises for the purposes set forth in its original charter described above, and as a nonprofit, nonstock corporation.
CHAPTER 112
(H. B. 1224—By Delegate Starcher and Delegate I. Damron)
[Passed March 10, 1984; in effect July 1, 1984. Approved by the Governor.]

AN ACT to amend and reenact section seven, article two-a, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section four, article six-a of said chapter, all relating to increasing to one hundred ten dollars from one hundred dollars the per diem for members of the board of coal mine health and safety; increasing to one hundred ten dollars from seventy-five dollars the per diem for members of the board of miner training, education and certification; and providing for expense reimbursement to members of both boards for meals, lodging and mileage at the rates established by the commissioner of the department of finance and administration for in-state travel of public employees.

Be it enacted by the Legislature of West Virginia:

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

Article
2A. Board of Coal Mine Health and Safety.
6A. Board of Miner Training, Education and Certification Credited; Membership, Method of Appointment, Terms.

ARTICLE 2A. BOARD OF COAL MINE HEALTH AND SAFETY.


1 Each member of the board not otherwise employed by the state shall receive one hundred ten dollars per diem while actually engaged in the performance of the duties of the board. Each member shall be reimbursed for all reasonable and necessary expenses actually incurred during the performance of their duties, except that in the event the expenses are paid by a third party, the members shall not be reimbursed by the state. Each member shall receive meals, lodging
and mileage expense reimbursements at the rates established by rule and regulation of the commissioner of the department of finance and administration for in-state travel of public employees. The reimbursement shall be paid out of the state treasury upon a requisition upon the state auditor, properly certified by the director of the department of mines. No employer shall prohibit a member of the board from exercising leave of absence from his place of employment in order to attend a meeting of the board or a meeting of a subcommittee of the board, or to prepare for a meeting of the board, any contract of employment to the contrary notwithstanding.

ARTICLE 6A. BOARD OF MINER TRAINING, EDUCATION AND CERTIFICATION.

§22-6A-4. Board of miner training, education and certification created; membership, method of appointment, terms.

(a) There is hereby created a board of miner training, education and certification, which shall consist of seven members, who shall be appointed in the following manner:

1. (1) One member shall be appointed to represent the viewpoint of surface mine operators in this state. When such member is to be appointed, the governor shall request from the major association representing surface coal operators in this state a list of three nominees to the board. The governor shall select from said nominees one person to serve on the board. For purposes of this subsection, the major association representing the surface coal operators in this state shall be deemed to be that association, if any, which represents surface mine operators accounting for over one half of the coal produced in surface mines in this state in the year prior to that year in which the appointment is made.

2. (2) Two members shall be appointed to represent the interests of the underground operators of this state. When said members are to be appointed, the governor shall request from the major association representing the underground coal operators in this state a list of six nominees to the board. The governor shall select from said nominees two persons to
serve on the board. For purposes of this subsection, the major association representing the underground operators in this state shall be deemed to be that association, if any, which represents underground operators accounting for over one half of the coal produced in underground mines in this state in the year prior to that year in which the appointments are made.

(3) Three members shall be appointed who can reasonably be expected to represent the interests of the working miners in this state. If the major employee organization representing coal miners in this state is divided into administrative districts, the employee organization of each district shall, upon request by the governor, submit a list of three nominees for membership on the board. If such major employee organization is not so divided into administrative districts, such employee organization shall, upon request by the governor, submit a list of twelve nominees for membership on the board. The governor shall make such appointments from the persons so nominated: Provided, That in the event nominations are made by administrative districts, not more than one member shall be appointed from the nominees of any one district unless there are less than three such districts in this state.

(4) The seventh member of the board, who shall serve as chairman, shall be a person selected and agreed upon by the six persons appointed by the governor.

(5) All appointments made by the governor under this section shall be with the advice and consent of the Senate: Provided, That persons so appointed while the Senate of this state is not in session shall be permitted to serve up to one year in an acting capacity, or until the next session of the Legislature, whichever is less.

(b) The board hereby established shall be appointed by the governor within three months of the effective date of this act. As soon as the members of the board are appointed, the director of the department of mines shall call an organizational meeting of the board. At said meeting all of the board members then appointed shall select a seventh member
of the board to serve as chairman and draw lots to determine the length of the term they and the chairman shall serve. Three members shall serve for three years; two members shall serve for two years; and two members shall serve for one year. Thereafter, members shall serve for a term of three years. As so organized, the board shall meet at the call of the chairman, at the call of the director, or upon the request of any two members of the board: Provided, That no meeting of the board for any purpose shall be conducted unless the board members are notified at least five days in advance of a proposed meeting. In cases of an emergency, members may be notified of a board meeting by the most appropriate means of communication available.

(c) Whenever a vacancy on the board occurs, appointments shall be made in the manner prescribed in this section: Provided, That in the case of an appointment to fill a vacancy nominations shall be submitted to the governor within thirty days after the vacancy occurs. The vacancy shall be filled by the governor within thirty days of his receipt of the list of nominations.

(d) Each member of the board shall receive one hundred ten 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 meals, lodging and mileage expense reimbursements at the rates established by rule and regulation of the commissioner of the department of finance and administration for in-state travel of public employees, which shall be paid out of the state treasury upon a requisition upon the state auditor, properly certified by such members of the board.

(e) A quorum of the board shall be four members. The board may act officially by a majority of those members who are present.

(f) The chairman of the board shall be a nonvoting member: Provided, That in cases of a tie, the chairman shall cast the deciding vote on the issue or issues under consideration.
(g) The director of the department of mines shall serve as the secretary to the board and shall be present or send an authorized representative to all meetings of the board.

CHAPTER 113

(Com. Sub. for S. B. 698—By Senator Tonkovich)

[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections nine and twenty, article six, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section fourteen, article five, chapter twenty-one of said code; and to further amend article five of said chapter by adding thereto a new section, designated section fourteen-a, all relating to prohibition of surface mining without a permit; permit requirements; providing that the director of the department of natural resources ascertain compliance with wage bond requirements prior to issuing any permit; public notice and hearings; requiring that the commissioner of labor, upon receipt of applicant's name and address from the director, notify the director as to applicant's compliance with wage bond requirements; wage payment and collection; requiring posting of wage bond prior to engaging in any construction work or the severance, production or transportation of minerals; insufficiency of bond; and manner of distribution.

Be it enacted by the Legislature of West Virginia:

That sections nine and twenty, article six, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section fourteen, article five, chapter twenty-one of said code be amended and reenacted; and that article five of said chapter be further amended by adding thereto a new section, designated section fourteen-a, all to read as follows:
Chapter
20. Natural resources.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 6. WEST VIRGINIA SURFACE COAL MINING AND RECLAMATION ACT.

§20-6-9. Prohibition of surface mining without a permit; permit requirements; successor in interest; duration of permits; proof of insurance; termination of permits; permit fees.

§20-6-20. Public notice; written objections; public hearings; informal conferences.

§20-6-9. Prohibition of surface mining without a permit; permit requirements; successor in interest; duration of permits; proof of insurance; termination of permits; permit fees.

1 No person may engage in surface-mining operations unless such person has first obtained a permit from the director in accordance with the following:

4 (a) Within two months after the secretary of the interior approves a permanent state program for West Virginia, all surface-mining operators shall file an application for a permit or modification of a valid existing permit or underground opening approval relating to those lands to be mined eight months after that approval.

10 (b) No later than eight months after the secretary's approval of a permanent state program for West Virginia, no person may engage in or carry out, on lands within this state, any surface-mining operations unless such person has first obtained a permit from the director: Provided, That those persons conducting such operations under a permit or underground opening approval issued in accordance with section 502(c) of Public Law 95-87, and in compliance therewith, may conduct such operations beyond such period if an application for a permit or modification of a valid existing permit or underground opening approval was filed within two months after the secretary's approval, and the administrative decision pertaining to the granting or denying of such permit has not been made by the director.
(c) All permits issued pursuant to the requirements of this article shall be issued for a term not to exceed five years: Provided, That if the applicant demonstrates that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment and the opening of the operation, and if the application is full and complete for such specified longer term, the director may extend a permit for such longer term: Provided, however, That subject to the prior approval of the director, a successor in interest to a permittee who applies for a new permit within thirty days of succeeding to such interest, and who is able to obtain the bond coverage of the original permittee, may continue surface-mining and reclamation operations according to the approved mining and reclamation plan of the original permittee until such successor's application is granted or denied.

(d) Proof of insurance shall be required on an annual basis.

(e) A permit shall terminate if the permittee has not commenced the surface-mining operations covered by such permit within three years of the date the permit was issued: Provided, That the director may grant reasonable extensions of time upon a showing that such extensions are necessary by reason of litigation precluding such commencement, or threatening, substantial economic loss to the permittee, or by reason of conditions beyond the control and without the fault or negligence of the permittee: Provided, however, That with respect to coal to be mined for use in a synthetic fuel facility or specific major electric generating facility, the permittee shall be deemed to have commenced surface-mining operations at such time as the construction of the synthetic fuel or generating facility is initiated.

(f) Each application for a new surface-mining permit filed pursuant to this article shall be accompanied by a fee of five hundred dollars. All permit fees provided for in this section or elsewhere in this article shall be collected by the director and deposited with the treasurer of the state of West Virginia to the credit of the operating permit fees fund.
and shall be used, upon requisition of the director, for the administration of this article.

(g) Prior to the issuance of any permit, the director shall ascertain from the commissioner of labor compliance with section fourteen, article five, chapter twenty-one of this code. Upon issuance of the permit, the director shall forward a copy to the commissioner of labor, who shall assure continued compliance under such permit.

§20-6-20. Public notice; written objections; public hearings; informal conferences.

At the time of submission of an application for a surface-mining permit or a significant revision of an existing permit pursuant to the provisions of this article, the applicant shall submit to the department a copy of the required advertisement. At the time of submission, the applicant shall place the advertisement in a local newspaper of general circulation in the county of the proposed surface-mining operation at least once a week for four consecutive weeks. The director shall notify various appropriate federal and state agencies as well as local governmental bodies, planning agencies and sewage and water treatment authorities or water companies in the locality in which the proposed surface-mining operation will take place, notifying them of the operator's intention to mine on a particularly described tract of land and indicating the application number and where a copy of the proposed mining and reclamation plan may be inspected. These local bodies, agencies, authorities or companies may submit written comments within a reasonable period established by the director on the mining application with respect to the effect of the proposed operation on the environment which is within their area of responsibility. Such comments shall be immediately transmitted by the director to the applicant and to the appropriate office of the department. The director shall provide the name and address of each applicant to the commissioner of labor who shall within fifteen days from receipt notify the director as to the applicant's compliance, if necessary, with section fourteen, article five, chapter twenty-one of this code.
ARTICLE 5. WAGE PAYMENT AND COLLECTION.


(a) With the exception of those who have been doing business in this state for at least five consecutive years, every person, firm or corporation engaged in or about to engage in construction work, or the severance, production or transportation (excluding railroads and water transporters) of minerals, shall, prior to engaging in any construction work, or the severance, production or transportation of minerals, furnish a bond on a form prescribed by the commissioner, payable to the state of West Virginia with the condition that the person, firm or corporation pay the wages and fringe benefits of his or its employees when due. The amount of the bond shall be equal to the total of the employer's gross payroll for four weeks at full capacity or production, plus fifteen percent of the said total of the employer's gross payroll for four weeks at full capacity or production. The amount of the bond shall increase or decrease as the employer's payroll increases or decreases: Provided, That the amount of the bond shall not be decreased, except with the commissioner's approval and determination that there are not outstanding claims against the bond.

(b) The commissioner may waive the posting of any bond required by subsection (a) of this section upon his determination that an employer is of sufficient financial responsibility to pay wages and fringe benefits. The commissioner shall promulgate rules and regulations according to the provisions of chapter twenty-nine-a of this code which prescribe standards for the granting of such waivers.

(c) The bond may include, with the approval of the commissioner, surety bonding, collateral bonding (including cash and securities), establishment of an escrow account or a combination of these methods. If collateral
bonding is used, the employer may deposit cash, or collateral securities or certificates as follows: Bonds of the United States or its possessions, or of the federal land bank, or of the homeowner's loan corporation; full faith and credit general obligation bonds of the state of West Virginia or other states, and of any county, district or municipality of the state of West Virginia or other states; or certificates of deposit in a bank in this state, which certificates shall be in favor of the state. The cash deposit or market value of such securities or certificates shall be equal to or greater than the sum of the bond. The commissioner shall, upon receipt of any such deposit of cash, securities or certificates, promptly place the same with the state treasurer whose duty it shall be to receive and hold the same in the name of the state in trust for the purpose for which such deposit is made. The employer making the deposit shall be entitled from time to time to receive from the state treasurer, upon the written approval of the commissioner, 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.

(d) Notwithstanding any other provision in this article, any employee, whose wages and fringe benefits are secured by the bond, as specified in subsection (c) of this section, has a direct cause of action against the bond for wages and fringe benefits that are due and unpaid.

(e) Any employee having wages and fringe benefits unpaid, may inform the commissioner of the claim for unpaid wages and fringe benefits and request certification thereof. If the commissioner, upon notice to the employer and investigation finds that such wages and fringe benefits or a portion thereof are unpaid, he shall make demand of such employer for the payment of such wages and fringe benefits. If payment for such wages and fringe benefits is not forthcoming within the time specified by the commissioner, not to exceed thirty days, the commissioner shall certify such claim or portion thereof, and forward the certification to the bonding company or the state treasurer, who shall provide payment to the affected employee within
fourteen days of receipt of such certification. The bonding company, or any person, firm or corporation posting a bond, thereafter shall have the right to proceed against a defaulting employer for that part of the claim of the employee paid.

(f) With the exception of those exempt under subsection (a) of this section, any employer who is engaged in construction work or the severance, production or transportation (excluding railroad and water transporters) of minerals shall post one of the following in a place accessible to his or its employees: A copy of the bond provided under subsection (a) of this section, or notification that the posting of a bond has been waived by the commissioner.

(g) The bond may be terminated, with the approval of the commissioner, after an employer submits a statement, under oath or affirmation lawfully administered, to the commissioner that the following has occurred: The employer has ceased doing business and all wages and fringe benefits have been paid, or the employer has been doing business in this state for at least five consecutive years and has paid all wages and fringe benefits. The bond may also be terminated upon a determination by the commissioner that an employer is of sufficient financial responsibility to pay wages and fringe benefits.

§21-5-14a. Insufficiency of bond; manner of distribution.

In the event that the claim of any employee or group of employees having wages and fringe benefits unpaid is in an amount in excess of the bond required in section fourteen of this article, the manner of distribution and order of priority of claims shall be as follows: Unpaid wages; unpaid fringe benefits; damages or expenses incurred or arising out of actual injury: Provided, That nothing contained in this section shall be construed so as to limit any other cause of action against any person, firm or corporation.
AN ACT to amend and reenact section forty-three, article six, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to consolidation of permitting, enforcement and rule-making authority for surface mining operations.

Be it enacted by the Legislature of West Virginia:

That section forty-three, 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.

§20-6-43. 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 regulations promulgated pursuant to subsection (b). 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. Rules and regulations adopted by the reclamation commission, pursuant to the requirements of article five-a of this chapter, shall be enforceable by the director under the provisions of sections seventeen and nineteen, article five-a of this chapter, as though the regulations were promulgated by the water resources board: Provided, That the director's authority to enforce such rules and regulations under article five-a shall not preclude the director or any person from invoking the remedies otherwise provided by article six of this chapter and shall not preclude the director from enforcing the provisions of this article.

(d) Notwithstanding any provisions of this chapter to the contrary, any permit of the director issued pursuant to subsection (a) of this section, or any order issued under
59 article five-a of this chapter, or for the purpose of
60 implementing the "National Pollutant Discharge
61 Elimination System" established under the federal Clean
62 Water Act shall be appealable only to the state water
63 resources board and such appeal shall be governed by the
64 provisions of section fifteen, article five-a of this chapter.
65
66 (e) This section shall become effective upon a
67 proclamation by the governor stating that final approval of
68 the partial transfer of the National Pollutant Discharge
69 Elimination System established under the federal Clean
70 Water Act contemplated by this section has been given by
71 the Administrator of the United States Environmental
72 Protection Agency.

CHAPTER 115
(Com. Sub. for H. B. 1791—By Delegate Burke and Delegate Yanni)

[Passed March 6, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, 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
ten-a; and to amend and reenact section one, article five of
said chapter, all relating to motor vehicles; authorizing com­
missioner to enter into reciprocal proportional registration
agreements; issuance of registration plates or markers; authoriz­
ing the promulgation of procedural rules; providing certain
exceptions to motor vehicle registration for nonresident owners;
increasing the fee for nonresident vehicle permits; requiring
motor vehicle liability insurance for nonresident commercial
vehicles operating in this state; and granting certain exceptions
for nonresident vehicles engaged in emergency restoration of
public utility services.

Be it enacted by the Legislature of West Virginia:

That article two, 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 ten-a; and that section one, article five of said chapter be amended and reenacted, all to read as follows:

Article
2. Department of Motor Vehicles.
5. Permits to Nonresident Owners.

ARTICLE 2. DEPARTMENT OF MOTOR VEHICLES:

§17A-2-10a. Same—Authorizing the entry of this state into reciprocal proportional registration agreements; issuance of registration plates or markers; promulgation of rules.

(a) The commissioner of motor vehicles is hereby authorized and empowered to enter into reciprocal agreements on behalf of this state with any jurisdiction which permits or requires the licensing of motor vehicles in interstate or combined interstate and intrastate commerce and the payment of registration, licensing or other fixed fees on an apportionment basis commensurate with and determined by the miles traveled on public roads and highways in that jurisdiction, as compared with the miles traveled on public roads and highways in other jurisdictions or on any other equitable basis of apportionment, and if that jurisdiction exempts motor vehicles registered in other jurisdictions under that apportionment basis from the requirements of full payment of its own registration, license or other fixed fees, the commissioner, by agreement may adopt the exemption as to those motor vehicles, whether owned by residents or non-residents of this state and regardless of where the vehicles are registered.

(b) The agreements under such terms, conditions or restrictions as the commissioner deems proper may provide that owners of motor vehicles operated in interstate or combined interstate and intrastate commerce in this state shall be permitted to pay registration, license or other fixed fees on an apportionment basis, commensurate with and determined by the miles traveled on public roads and highways in this state as compared with the miles traveled on public roads and highways in other jurisdictions or any
other equitable basis of apportionment. Such agreements shall not authorize or be construed as authorizing any motor vehicle so registered to be operated without complying with the provisions of chapter eleven and chapter twenty-four-a of this code.

(c) Pursuant to the provisions of this section, the commissioner is expressly authorized and empowered to enter into and become a member of the international registration plan or such other designation that may from time to time be given to such reciprocal plan.

(d) The commissioner shall prescribe the substance, form, color and context of any registration plate or marker issued under the provisions of this section, each of which shall be visually distinguishable from other registration plates or markers produced by the department of motor vehicles.

(e) The commissioner is authorized to promulgate procedural rules as may be necessary to carry out the provisions of any agreements entered into pursuant to this section.

ARTICLE 5. PERMITS TO NONRESIDENT OWNERS.

§17A-5-1. Exemptions from registration of nonresident owners; special permit and certificate in lieu of registration for nonresidents maintaining temporary and recurrent or seasonal residence in state.

(a) A nonresident owner, except as otherwise provided in this section, owning any vehicle registered in a foreign state or country of a Class A type otherwise subject to registration hereunder may operate or permit the operation of such vehicle within this state for a period of thirty days without registering such vehicle in, or paying any fees to, this state subject to the condition that such vehicle at all times when operated in this state is duly registered in and displays upon it a valid registration card and registration plate or plates issued for such vehicle in the place of residence of such owner and that such vehicle is not operated for commercial purposes.

(b) Every nonresident, including any foreign corporation,
carrying on business within this state and owning and regularly 
operating in such business any motor vehicle, trailer or 
semitrailer within this state, shall be required to register 
each such vehicle and pay the same fee therefor as is required 
with reference to like vehicles owned by residents of this 
state, except as otherwise provided by reciprocal agreements 
with other states accomplished pursuant to sections ten and 
ten-a, article two of this chapter.

(c) Any nonresident who accepts or engages in temporary 
and recurrent or seasonal employment, business, profession 
or occupation in this state and maintains temporary and 
recurrent or seasonal residence in this state in connection 
with such employment, business, profession or occupation, 
and any nonresident, including any corporation carrying on 
business of a temporary and recurrent or seasonal nature in 
this state and owning and temporarily and recurrently or 
seasonally operating in such business any motor vehicle, 
trailer or semitrailer within this state, may operate or per-
mit the operation of such vehicle within this state without 
causing said vehicle to be registered as otherwise required 
by article three of this chapter: Provided, That such non-
resident, in lieu of registration of such vehicle, shall make 
application to the department and receive a special permit 
for such vehicle which shall be evidenced by a metal identifi-
cation plate and certificate in writing, which special permit 
plate and certificate shall together identify the vehicle for 
which such special permit and plate shall issue and such 
certificate shall bear the name and address of the owner 
of such vehicle. Such special permit shall be issued with-
out previous certification of title to such vehicle as other-
wise required by article three of this chapter or the pro-
visions of subsection (b) of this section.

Every owner of a vehicle for which such special permit is de-
sired shall make a verified application to the department for 
such special permit upon the appropriate form or forms 
furnished by the department and shall bear the signature 
of the owner written with pen and ink and shall contain 
the character of information called for by section three, 
article three of this chapter, a description of the employ-
ment, residence, business and location of such business set forth in such manner as to show the temporary and recurrent or seasonal nature of such residence, employment, business, profession or occupation, and that such vehicle is duly registered in the state of residence of such owner. There shall be an application for each vehicle for which a special permit is desired.

Any special permit or plate issued by the department under this section shall be effective and valid for a period of sixty consecutive days from and including the date of issuance and, upon similar application by the owner, the commissioner may renew any such special permit for immediately ensuing similar period or periods of sixty days in any fiscal year. The department shall charge a fee of fifty dollars for each special permit issued under this section. A special permit shall be issued for one vehicle only and no combination of two or more vehicles shall be operated under fewer special permits than the number of vehicles in such combination. A special permit shall not be issued for any vehicle which is not duly registered in the state of residence of the owner thereof. The registration plate issued for such vehicle by the state of residence of the owner shall not be displayed on such vehicle while being operated over any highway during any period for which a special permit shall have been issued for such vehicle under this section, but there shall be carried in such vehicle the certificate of registration issued for such vehicle by the state of residence of such owner. Any owner of any vehicle making application to operate such vehicle upon the highways of this state pursuant to the provisions of this article shall also be required to comply with the provisions of chapter seventeen-d of this code prior to commencing such operation.

The commissioner shall prescribe the substance, form, color and context of the certificate or special permit and the special permit plate, each of which shall be visually distinguishable from the certificates of registration and registration plates issued under article three of this chapter.

It is a misdemeanor for any person to drive or move or
knowingly to permit to be moved or driven upon any highway
any vehicle for which a special permit shall have been
issued under this section unless such vehicle shall bear the
special plate called for by the certificate evidencing such
special permit.

When the employment, business, profession, occupation or
residence of the owner of a vehicle for which such special
permit shall have been issued shall cease to be temporary
and recurrent or seasonal, any special permit issued for
such vehicle pursuant to this section shall immediately ter-
minate and become void and such vehicle shall thereupon
become subject to registration under article three of this
chapter or the provisions of subsection (b) of this section.

Any special permit issued pursuant to this section shall be
valid and effective on and after the first day of a month;
that is, such special permit issued between the first and
fifteenth days of a month shall be effective during sixty
consecutive days from and including the first day of the
month in which the permit shall issue; and a special permit
issued after the fifteenth day of any month shall be effective
during sixty consecutive days commencing with and including
the first day of the month next following the month in which
such special permit shall be issued.

(d) Any other provision of this section notwithstanding,
any nonresident referred to in subsection (c) of this section
who is engaged by a public utility, as the latter is defined in
chapter twenty-four of this code, for the exclusive purpose of
restoring the service of said utility as a result of an emergency
in which such service is affected shall be permitted to operate
such motor vehicle, trailer or semitrailer within this state
without causing said motor vehicle, trailer or semitrailer to
be registered as otherwise provided by this section and article
three of this chapter for the period actually necessary for such
restoration but not to exceed a period of ten consecutive days:
Provided, That said motor vehicle, trailer or semitrailer shall
be registered in another state upon entry into this state. The
provisions of this subsection shall not affect the requirements
of reciprocal agreements with other states accomplished pur-
suant to sections ten and ten-a, article two of this chapter.
AN ACT to amend and reenact section three, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections four, five and six, article two-a, chapter seventeen-d of said code; and to amend and reenact section five, article three, chapter seventeen-d of said code, all relating to motor vehicle liability insurance or other security; making application for registration; requiring proof of insurance or security; requiring insurer to notify commissioner only if insurance is not in effect; enhancing provisions of company issued certificates of insurance; certificate of insurance must be presented at time of motor vehicle inspection; providing criminal penalties for false statements of insurance; providing procedures for suspension of motor vehicle registration; requiring department of motor vehicles to prepare annual motor vehicle insurance report to the Legislature; and directing law-enforcement officers to require proof of insurance when vehicles are involved in traffic offenses.

Be it enacted by the Legislature of West Virginia:

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

Chapter

17A. Motor Vehicle Administration, Registration, Certificate of Title, and Antitheft Provisions.

17D. Motor Vehicle Safety Responsibility Law.

CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION, REGISTRATION, CERTIFICATE OF TITLE, AND ANTITHEFT PROVISIONS.
ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

§17A-3-3. Application for registration; statement of insurance or other proof of security to accompany application; criminal penalties; fees; special revolving fund.

Every owner of a vehicle subject to registration hereunder shall make application to the department for the registration thereof upon the appropriate form or forms furnished by the department and every such application shall bear the signature of the owner or his authorized agent, written with pen and ink, and said application shall contain:

(1) The name, bona fide residence and mailing address of the owner, the county in which he resides, or business address of the owner if a firm, association or corporation.

(2) A description of the vehicle including, insofar as the hereinafter specified data may exist with respect to a given vehicle, the make, model, type of body, the manufacturer's serial or identification number or other number as determined by the commissioner.

(3) In the event a motor vehicle is designed, constructed, converted or rebuilt for the transportation of property, the application shall include a statement of its declared gross weight if such motor vehicle is to be used alone, or if such motor vehicle is to be used in combination with other vehicles, the application for registration of such motor vehicle shall include a statement of the combined declared gross weight of such motor vehicle and the vehicles to be drawn by such motor vehicle; declared gross weight being the weight declared by the owner to be the actual combined weight of the vehicle or combination of vehicles and load when carrying the maximum load which the owner intends to place thereon; and the application for registration of each such vehicle shall also include a statement of the distance between the first and last axles of that vehicle or combination of vehicles. The declared gross weight stated in the application shall not exceed the permissible gross weight for the axle spacing listed therein as determined by the table of permissible gross weights contained in chapter seventeen-c of this code; and any vehicle registered for
a declared gross weight as stated in the application shall be subject to the single-axle load limit set forth in chapter seventeen-c of this code.

(4) Each such applicant shall state whether such vehicle is or is not to be used in the public transportation of passengers or property, or both, for compensation, and if so used, or to be used, the applicants shall so certify, and shall, as a condition precedent to the registration of such vehicle, obtain a certificate of convenience, or permit from the public service commission.

(5) A statement under penalty of false swearing that liability insurance is in effect within limits which shall be no less than the requirement of section two, article four, chapter seventeen-d of this code, which statement shall contain the name of the applicant’s insurer, the name of the agent or agency which issued the policy and the effective date of the policy, and such other information as may be required by the commissioner of motor vehicles, or that the applicant has qualified as a selfinsurer meeting the requirements of section two, article six, chapter seventeen-d of the code and that as a selfinsurer he has complied with the minimum security requirements as established in section two, article four of said chapter seventeen-d, or that such applicant has submitted bond or other security approved by the commissioner of motor vehicles which shall provide the equivalent of the policy of insurance herein specified, or that the applicant has submitted the required cash or other securities with the state treasurer as set forth in the provisions of section sixteen, article four of said chapter seventeen-d of this code.

In the case of a periodic use or seasonal vehicle, as defined in section three, article two-a, chapter seventeen-d, the owner may provide, in lieu of other statements required by this section, a statement, under penalty of false swearing, that liability insurance is in effect during the portion of the year the vehicle is in actual use, within limits which shall be no less than the requirements of section two, article four, chapter seventeen-d of this code, and other information relating to the seasonal use, on a form designed and provided by the department.
The department shall periodically select for verification, on a random sample basis, not fewer than one percent of the statements of liability insurance required by this section. When a statement is selected for verification, the department shall forward the information provided on the statement to the listed insurer. The insurer shall notify the department, by such form as the commissioner may require, within thirty calendar days if the liability insurance is not in effect, as required by this section.

The department may select for verification any statement of liability insurance submitted by a person who has previously been convicted of violating the provisions of section three, article two-a, chapter seventeen-d of this code, or whose statements of liability insurance have previously been found to be incorrect. The department may also determine the correctness of information relating to proof of other security satisfying the requirements of this section.

If the department determines through the verification process that there is no liability insurance in effect, then within fifteen days of receipt of notice from the insurer, the commissioner of motor vehicles shall inform the registrant that the department of motor vehicles has received the notice from the insurer. This information shall be sent by regular mail and shall request verification of insurance or a statement from the registrant, under penalty of false swearing, that cancellation will not result in the operation of an uninsured vehicle upon the highways of this state, and this verification shall be returned to the commissioner within twenty days of the date of mailing. Following the twenty-day period, if the registrant has not responded, then the commissioner shall send a notice of pending suspension to the registrant by certified mail. The notice of pending suspension shall grant the registrant an additional twenty days from the date of the mailing to provide verification of insurance or other requested information to the commissioner. Following this twenty-day period, an order of suspension shall be directed to the superintendent by the commissioner as provided in section seven, article nine, chapter seventeen-a of this code: Provided, That whenever the commissioner determines that the vehicle was actually insured despite the receipt of a notice from the insurer, and the
registrant, under penalty of false swearing produces a statement that cancellation will not result in the operation of an uninsured vehicle upon the highways of this state, or produces verification of insurance, suspension shall be withdrawn and any fees collected by the state shall be returned. The registrant shall be given notice and afforded an opportunity for hearing and judicial review thereof in accordance with the provisions of subsection (c), section seven, article two, chapter seventeen-d of this code.

If any person making an application required under the provision of this section, therein knowingly provides false information, false proof of security or a false statement of insurance, or if any person, including an applicant's insurance agent, knowingly counsels, advises, aids or abets another in providing false information, false proof of security, or a false statement of insurance in such application, he is 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 fifteen days, or both fined and imprisoned, and in addition to such fine or imprisonment shall have his operator's or chauffeur's license and vehicle registration suspended for a period of six months.

(6) Such further information as may reasonably be required by the department to enable it to determine whether the vehicle is lawfully entitled to registration.

(7) Each such application for registration shall be accompanied by the fees hereafter provided, and an additional fee of one dollar for each motor vehicle for which the applicant seeks registration, such fee to be deposited in a special revolving fund for the operation by the department of its functions established by the provisions of article two-a, chapter seventeen-d of this code: Provided, That July one, one thousand nine hundred eighty-five, the additional fee will reduce to and remain at fifty cents.

CHAPTER 17D. MOTOR VEHICLE SAFETY RESPONSIBILITY LAW.

Article
2A. Security upon Motor Vehicles.
ARTICLE 2A. SECURITY UPON MOTOR VEHICLES.

§17D-2A-5. Cancellation of insurance policy; suspension of registration; minimum policy term.
§17D-2A-6. Investigation by duly authorized law-enforcement officer to include inquiry regarding required security; notice to department of motor vehicles.


(a) All insurance carriers transacting insurance in this state shall supply a certificate of insurance to the insured or to any person subject to the registration provisions of article three, chapter seventeen-a of this code, certifying that there is in effect a motor vehicle liability policy upon such motor vehicle in accordance with the provisions of article three, chapter seventeen-a of this code. The certificate shall give its effective date and the effective date of the policy and, unless the policy is issued to a person who is not the owner of a motor vehicle, must designate by explicit description, in such detail as the commissioner of the department of motor vehicles shall by rule require, all motor vehicles covered and all replacement vehicles of similar classification: Provided, That, on and after the first day of July, one thousand nine hundred eighty-four, insurance companies shall supply a certificate of insurance in duplicate for each policy term and for each vehicle included in a policy, except for those listed in a fleet policy. Each such certificate of insurance shall list the name of the policyholder and the name of the vehicle owner if different from the policyholder.

The certificate must specify for each vehicle listed therein, that there is a minimum liability insurance coverage not less than the requirements of section two, article four, and section five, article three, chapter seventeen-d of this code.

(b) The certificate provided pursuant to the provisions of this section or other proof of insurance shall be carried by the insured in the appropriate vehicle for use as proof of security, and must be presented at the time of vehicle inspection as required by article sixteen, chapter seventeen-c of this code: Provided, That an insured shall not be guilty of a violation of
this subsection (b) if he furnishes proof that such insurance was in effect within seven days of being cited for not carrying such certificate or other proof in such vehicle. As used in this section, proof of insurance means a certificate of insurance, an insurance policy, a mechanically reproduced copy of an insurance policy or a certificate of self-insurance.

§17D-2A-5. Cancellation of insurance policy; suspension of registration; minimum policy term.

(a) An insurance company shall provide the department of motor vehicles with a cancellation notice within ten days of the effective date of cancellation whenever the company issues or causes to be issued a cancellation under the provisions of subsections (b) through (e), section one, article six-a, chapter thirty-three of this code. The department shall then suspend the operator's or chauffeur's license of the owner of such vehicle for a period of ninety days and shall suspend the motor vehicle registration until proof of insurance is presented to the department.

(b) On or before the fifteenth day of January, one thousand nine hundred eighty-five, the commissioner of motor vehicles shall report to the Legislature upon proceedings pursuant to this section. The report shall include the total number of statements selected for verification as required by section three, article three, chapter seventeen-a, the total number of notices received from insurers, the total number of notices of pending suspensions issued, and the total number of cases in which cancellation was found to have resulted in a lapse of coverage upon a vehicle operated upon the highways of this state during the prior year.

(c) No policy of motor vehicle liability insurance issued or delivered for issuance in this state shall be contracted for a period of less than ninety days: Provided, That the insurance commissioner may establish exceptions thereto by rules and regulations to chapter twenty-nine-a.

§17D-2A-6. Investigation by duly authorized law-enforcement officer to include inquiry regarding required security; notice to department of motor vehicles.

At the time of investigation of a motor vehicle offense or
accident in this state by the department of public safety or
other law-enforcement agency or when a vehicle is stopped
by a law-enforcement officer for reasonable cause, the officer
of such agency making such investigation shall inquire of the
operators of any motor vehicle involved as to the existence
upon such vehicle or vehicles of the proof of insurance or
other security required by the provisions of this code and
upon a finding by such law-enforcement agency, officer or
agent thereof that the security required by the provisions
of this article is not in effect, as to any such vehicle, he
shall notify the department of motor vehicles of such finding
within five days if no citation requiring a court appearance
is issued: Provided, That such law-enforcement officer or
agent shall not stop vehicles solely to inquire as to the certi-
ficate of insurance. A defendant, who is charged with a traffic
offense that requires an appearance in court, shall present the
court at the time of his or her appearance or subsequent ap-
pearance with proof that the defendant had security at the time
of the traffic offenses as required by this article. If, as a result
of the defendant’s failure to show proof, the court determines
that the defendant has violated this article, it shall notify the
department of motor vehicles within five days.

ARTICLE 3. SECURITY FOLLOWING ACCIDENT.

§17D-3-5. Requirements as to policy or bond; criminal penalties.

(a) No policy or bond shall be effective under section
four of this article unless issued by an insurance company
or surety company authorized to do business in this state,
except as provided in subsection (b) of this section, nor
unless such policy or bond is subject, if the accident has
resulted in bodily injury or death, to a limit, exclusive of
interest and costs, of not less than twenty thousand dollars
because of bodily injury to or death of one person in any
one accident, and, subject to said limit for one person, to
a limit of not less than forty thousand dollars because of
bodily injury to or death of two or more persons in any one
accident, and, if the accident has resulted in injury to, or
destruction of property, to a limit of not less than ten thou-
sand dollars because of injury to or destruction of property
of others in any one accident.
(b) No policy or bond shall be effective under section four of this article with respect to any vehicle which was not registered in this state or was a vehicle which was registered elsewhere than in this state at the effective date of the policy or bond or the most recent renewal thereof, unless the insurance company or surety company issuing such policy or bond is authorized to do business in this state, or if said company is not authorized to do business in this state, unless it shall execute a power of attorney authorizing the commissioner to accept service on its behalf of notice or process in any action upon such policy or bond arising out of such accident.

(c) (1) Upon receipt of notice of such accident from the commissioner, the insurance company or surety company named in such notice or the authorized licensed agent or representative of the company shall notify the commissioner, in such manner as he may require, within thirty calendar days that the coverage was not in effect at the time of such accident.

(2) Any insurance company, surety company or the agent or representative of such company who fails to provide the notification to the commissioner if coverage was not in effect or provides false information, is 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 fifteen days, or both fined and imprisoned.

CHAPTER 117
(Com. Sub. for H. B. 1497—By Delegate Bird and Delegate Childers)

[Passed March 10, 1984; in effect ninety days from passage. 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;
authorizing special registration plates for national guard members; providing for the issuance of personalized registration plates for motorcycles; and fees.

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.

2 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.

3 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.

4 The color of the registration plates shall be blue and gold of reflectorized material.

5 The department shall not issue permit to be issued, or distribute any special numbers except as follows:

6 (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.

7 (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 he is generally known, together with a designation of the office and which plate shall supersede, during his term of office and while such motor vehicle is owned by said official or spouse, the regular numbered plate assigned to him.

(c) Upon receipt of an application on a form prescribed by the department and receipt of written evidence from the chief executive officer of the army national guard or air national guard, as appropriate, that the applicant is a member thereof, the department shall issue to any member of the national guard of this state a special registration plate designed by the commissioner for a motor vehicle owned by the member or the member's spouse, but not to exceed one plate for each such member.

(d) Upon appropriate application, any owner of a motor vehicle subject to Class A registration or the owner of a motorcycle subject to Class G registration under the provisions of this article may request that the department issue a registration plate bearing a maximum of six letters or numbers. The department shall attempt to comply with such request wherever possible and shall promulgate appropriate rules and regulations for the orderly distribution of such plates:

Provided, That for purposes of this subdivision, such regis-
Registration plates so requested and issued shall include all plates bearing the numbers two through two thousand and shall be subject to the provisions of subdivision (f) of this section.

(e) Upon appropriate application, there shall be issued to any disabled veteran, who is exempt from the payment of registration fees under the provisions of this chapter, a registration plate which bears the letters "DV" in red, and also the regular identification numerals in red.

(f) 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 provided in subdivisions (a), (b), (c) and (d): 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.

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CHAPTER 118

(Com. Sub. for S. B. 602—By Senator Tucker)

[Passed March 10, 1984: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article four, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article six of said chapter by adding thereto a new section, designated section ten-b, relating to the transfer of title to a vehicle by operation of law and stating that in the event title is vested in
a person or financial institution as the result of a lien or 
encumbrance upon the vehicle, such person or institution 
need not obtain a new registration, but may endorse the title 
to a subsequent purchaser and that such a transfer is not 
subject to the privilege tax; and relating to special license 
plates for financial institutions which repossess vehicles in 
the ordinary course of their business and which may, 
therefore, take temporary possession and have need to drive 
such repossessed vehicles.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. TRANSFERS OF TITLE OR INTERESTS.

§17A-4-5. Transfer by operation of law.

1 Whenever the title or interest of an owner in or to a 
2 registered vehicle shall pass to another otherwise than by 
3 voluntary transfer, the registration thereof shall expire and 
4 the vehicle shall not be operated upon the highways unless 
5 and until the person entitled to possession of such vehicle 
6 shall apply for and obtain the registration thereof, except 
7 that such vehicle may be operated by the person entitled to 
8 its possession or his legal representative upon the highways 
9 for a distance not exceeding seventy-five miles upon 
10 displaying upon such vehicle the registration plates issued 
11 to the former owner, or in the event title has become vested 
12 in the person holding a lien or encumbrance upon said 
13 vehicle, such person may apply to the department for and 
14 obtain special plates as may be issued under this chapter to 
15 dealers or others and may operate any said repossessed 
16 vehicle under such special plates only for purposes of 
17 transporting the same to a garage or warehouse or for 
18 purposes of demonstrating or selling the same: Provided,
That the commissioner is authorized to transfer the plates of a deceased person to his legal heir or legatee upon payment of a transfer fee of one dollar.

Upon any transfer the new owner may secure a new registration and certificate of title upon proper application and upon presentation of the last certificate of title if available, and such instruments or documents of authority or certified copies thereof as may be sufficient or required by law to evidence or effect a transfer of title or interest in or to chattels in such case. In the event title has become vested in the person or financial institution holding a lien or encumbrance upon said vehicle, such person or institution need not obtain a new registration of said vehicle or forward the certificate of title to the department in order to sell the vehicle, but the person or institution upon transfer of title or interest to another shall execute and acknowledge an assignment and warranty of title upon the certificate of title and deliver the same not later than thirty days from the date of the sale to the purchaser. The person or institution holding a lien or encumbrance upon the vehicle who acquires the vehicle as a result of the lien or encumbrance and subsequently, within sixty days, sells the vehicle in satisfaction of the debt creating the lien or encumbrance, shall not be subject to any privilege tax or personal property tax on the vehicle imposed by any other section.

ARTICLE 6. LICENSING OF DEALERS AND WRECKERS OR DISMANTLERS; SPECIAL PLATES; TEMPORARY PLATES OR MARKERS, ETC.

§17A-6-10b. Special plates for financial institutions; fee.

Notwithstanding any of the other provisions of this article, a financial institution may operate or move a vehicle upon the highways and streets of this state solely for the purposes of transporting such vehicle, in conjunction with a repossession or sale of said vehicle conducted in the ordinary course of such institution's business in financing the purchase of the vehicle or where the vehicle otherwise serves as collateral or security in a loan transaction, without first registering each such vehicle upon the condition that any such vehicle display thereon, in a manner prescribed by the commissioner, a special plate or
plates issued to such financial institution as provided in this section.

(2) Any financial institution may make application to the commissioner upon a form prescribed by him for a certificate containing a general distinguishing number and for a special plate or plates. The applicant shall submit proof of its status as a bona fide financial institution requiring such special plates as required by the commissioner. The commissioner shall determine that the applicant is a bona fide financial institution eligible to receive a special plate or plates under the provisions of this section and that said institution does, as a regular incident to its business, repossess and sell vehicles and have need to transport said vehicles in conjunction with the repossession or sale.

(3) The commissioner, upon approving any such application, shall issue to the applicant a certificate containing the applicant's name and address and the general distinguishing number assigned to the applicant. The commissioner shall also issue a special plate, or special plates, as applied for, which shall have displayed thereon the general distinguishing number assigned to the applicant. Each plate shall also contain a number or symbol identifying the same from every other plate or plates bearing the same general distinguishing number.

(4) The annual fee for a license certificate for a financial institution and one special plate shall be one hundred dollars. Additional special plates, not to exceed four, shall be available upon appropriate application to the commissioner at a fee of twenty-five dollars each.

(5) Every financial institution shall keep a written record of the vehicle upon which such special plates are used, the time during which each is used upon a particular vehicle, and the location of the place of repossession, storage and subsequent delivery, if any, of each vehicle, which record shall be open to inspection by any police officer or employee of the department.

(6) The provisions of this section shall not apply to any
50 work, company or service vehicles of the financial in-
51 stitution.

52 (7) The financial institution shall be required to furnish
53 a certificate of insurance in the amount of twenty thousand
54 dollars because of bodily injury to or death of any one
55 person in any one accident, forty thousand dollars because
56 of bodily injury or death to two or more persons in any one
57 accident, and ten thousand dollars because of injury to or
58 destruction of property of others in any one accident.

59 (8) For purposes of this section, “financial institution”
60 shall mean any state bank, state savings and loan
61 association, state building and loan association, national
62 bank, federally chartered savings and loan, savings bank,
63 industrial bank, industrial loan company or similar
64 institution.

CHAPTER 119

[H. B. 1965—By Delegate Davis and Delegate Chambers]

[Passed March 6, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article four-a, 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
sixteen, relating to motor vehicles; providing priority security
interest for a security agreement on a new motor vehicle.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4A. LIENS AND ENCUMBRANCES ON VEHICLES TO BE
SHOWN ON CERTIFICATE OF TITLE; NOTICE TO
CREDITORS AND PURCHASERS.


1 Any security agreement covering a security interest in a
motor vehicle, if such instrument is accompanied by delivery  
of a manufacturer's or importer's certificate of origin, and  
followed by actual and continued possession of such cer- 
tificate by the holder of said instrument, shall be valid as  
against the creditors of the debtor, whether armed with  
process or not, and against secured parties, and other lien- 
holders or claimants. The interest of the holder of said  
instrument shall be valid against subsequent purchasers only  
if there is no consent by the holder of said instrument to  
expose the covered motor vehicle for sale: Provided, That  
such protected interest shall be void as to any bona fide  
purchaser for value without notice.

Nothing herein shall be deemed to affect the provisions of  
section one of this article.

CHAPTER 120
(H. B. 1273—By Delegate Faircloth and Delegate Wiedebusch)

[Passed February 21, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven-a, article two, chapter seventeen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing and reestablishing the driver's licensing advisory board.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-7a. Driver's licensing advisory board.

There is hereby created a driver's licensing advisory board,  
which shall consist of five members to be appointed by  
the governor, by and with the advice and consent of the  
Senate, for terms of three years, except that as to the
members first appointed, two shall be appointed for a term of three years, two shall be appointed for a term of two years, and one shall be appointed for a term of one year, all from the first day of July, one thousand nine hundred seventy-four. All vacancies occurring on the board shall be filled by the governor, by and with the advice and consent of the Senate. One member of the board shall be an optometrist duly registered to practice optometry in this state and the other four members of the board shall be physicians or surgeons duly licensed to practice medicine or surgery in this state. The governor shall appoint persons qualified to serve on the board who, in his opinion, will best serve the work and function of the board.

The board shall advise the commissioner of motor vehicles as to vision standards and all other medical criteria of whatever kind or nature relevant to the licensing of persons to operate motor vehicles under the provisions of this chapter. The board shall, upon request, advise the commissioner of motor vehicles as to the mental or physical fitness of an applicant for, or the holder of, a license to operate a motor vehicle. The board shall furnish the commissioner with all such medical standards, statistics, data, professional information and advice as he may reasonably request.

The members of the board shall receive an honorarium of thirty-five dollars for each day actually devoted to the business of the board, and shall be reimbursed for all reasonable and necessary expenses actually incurred by them in the discharge of their official duties.

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 drivers' licensing advisory board should be continued and reestablished. Accordingly, notwithstanding the provisions of section four, article ten, chapter four of this code, the drivers' licensing advisory board shall continue to exist until the first day of July, one thousand nine hundred ninety.
AN ACT to amend and reenact section six, article thirteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to stopping, standing or parking privileges for disabled; qualification; application; violations; making it a misdemeanor offense to park a vehicle without special license plate or decal in reserved areas for disabled except for limited purposes of loading or unloading a handicapped or physically disabled passenger; penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13. STOPPING, STANDING AND PARKING.

§17C-13-6. Stopping, standing or parking privileges for disabled; qualification; application; violation.

(a) Any owner of a class A motor vehicle subject to registration under the provisions of article three, chapter seventeen-a of this code, who is a physically handicapped person with limited mobility, or whose spouse or other immediate family member is a physically handicapped person with limited mobility and resides with him, may apply for a special registration plate by submitting to the commissioner:

1. An application therefor on a form prescribed and furnished by the commissioner;

2. A certificate issued by a person licensed to practice medicine in this state stating that the applicant or the applicant's spouse or a member of the applicant's immediate family residing with him is a physically handicapped person with limited mobility as defined in this section.

Upon receipt of the application, the physician's certificate
and the registration fee, if he finds that the applicant qualifies for the special registration plate provided for in this sub-
section, the commissioner shall issue to such applicant an appropriately designed and appropriately designated special registration plate. The special plate shall be used in place of a regular license plate.

As used in this section, a physically handicapped person with limited mobility is any person who suffers from a permanent physical condition making it unduly difficult and burdensome for such person to walk.

Any person who falsely or fraudulently obtains or seeks to obtain the special plate provided for in this subsection (a), and any person who falsely certifies that a person is physically handicapped with limited mobility in order that an applicant may be issued the special plate, is guilty of a misdemeanor, and, upon conviction thereof, in addition to any other penalty he may otherwise incur, shall be fined not less than one hundred dollars nor more than one thousand dollars, or imprisoned in the county jail not more than one year, or both fined and imprisoned.

(b) Any physically disabled person, and any person whose spouse or other immediate family member is a physically disabled person and resides with him, may apply for a vehicle decal for a class A vehicle by submitting to the commissioner:

(1) An application therefor on a form prescribed and furnished by the commissioner;

(2) A certificate issued by a person licensed to practice medicine in this state stating that the applicant or the applicant’s spouse or a member of the applicant’s immediate family residing with him is a physically disabled person, as defined in this section, and stating the expected duration of the disability; and

(3) A fee of one dollar.

Upon receipt of the application, the physician’s certificate and the registration fee, if he finds that the applicant quali-
fies for the vehicle decal provided for in this subsection, the
commissioner shall issue to such applicant an appropriately
designed decal. The decal shall be displayed on the motor
vehicle in the manner prescribed by the commissioner and
shall be valid for such period of time as the certifying phy-
sician has determined that the disability will continue, which
period of time, reflecting the date of expiration, shall be con-
spicuously shown on the face of the decal.

As used in this section "physically disabled person" means
any person who has sustained a temporary disability rendering
it unduly difficult and burdensome for him to walk.

Any person who falsely or fraudulently obtains or seeks
to obtain the vehicle decal provided for in this subsection,
and any person who falsely certifies that a person is physically
disabled in order that an applicant may be issued the vehicle
decal, is guilty of a misdemeanor, and, upon conviction there-
of, in addition to any other penalty he may otherwise incur,
shall be fined not less than fifty nor more than one hundred
dollars, or imprisoned in the county jail not more than thirty
days, or both fined and imprisoned.

(c) Free stopping, standing or parking places marked "re-
served for disabled persons" or "handicapped parking" shall be
designated in close proximity to all state, county and municipal
buildings and other public facilities. Such places shall be re-
served solely for physically disabled and handicapped persons
during the hours that such buildings are open for business.

Any person whose vehicle properly displays a valid spe-
cial registration plate or decal may park the vehicle for
unlimited periods of time in parking zones unrestricted as
to length of parking time permitted: Provided, That this
privilege does not mean that the vehicle may park in any
zone where stopping, standing or parking is prohibited or
which creates parking zones for special types of vehicles or
which prohibits parking during heavy traffic periods during
specified rush hours or where parking would clearly present
a traffic hazard. To the extent any provision of any ordinance
of any political subdivision of this state is contrary to the
provisions of this section, the provisions of this section
shall take precedence and shall apply.

The privileges provided for in this section shall apply only
during those times when the vehicle is being used for the
transportation of a physically handicapped or disabled per-
son. Any person who knowingly exercises, or attempts to exer-
cise, such privileges at a time when the vehicle is not being used
for the transportation of a physically handicapped or disabled
person is guilty of a misdemeanor, and, upon conviction there-
of, in addition to any other penalty he may otherwise incur,
shall be fined not less than ten nor more than fifty dollars, or
imprisoned in the county jail for not more than thirty days,
or both fined and imprisoned.

(d) No person may stop, stand or park a motor vehicle
in an area designated, zoned or marked for the handicapped
or physically disabled, when such person is not physically
disabled or handicapped and does not have displayed upon his
vehicle a distinguishing insignia for the handicapped issued
by the commissioner: Provided, That any person in the act
of transporting a handicapped or physically disabled person,
as defined by this article, may stop, stand or park a motor
vehicle not displaying a distinguishing insignia for the handi-
capped in an area designated, zoned or marked for the handi-
capped or physically disabled for the limited purposes of
loading or unloading his handicapped or physically disabled
passenger: Provided, however, That such vehicle shall be
promptly moved after the completion of such limited purposes.

Any person who violates the provisions of this subsection
is guilty of a misdemeanor, and, upon conviction thereof,
shall be fined not more than twenty-five dollars.

(e) The commissioner shall adopt and promulgate rules
and regulations in accordance with the provisions of chapter
twenty-nine-a of this code to effectuate the provisions of
this section.
CHAPTER 122

(Com. Sub. for H. B. 1029—By Delegate Wooton and Delegate Roop)

[Passed March 9, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article thirteen, 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 eight, relating to disabled persons parking places on certain private facilities; signs designating places to be provided.

Be it enacted by the Legislature of West Virginia:

That article thirteen, 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 eight, to read as follows:

ARTICLE 13. STOPPING, STANDING AND PARKING.

§17C-13-8. Disabled parking places on private facilities; signs designating places.

Upon request of operators of privately-owned facilities serving the general public, the director of the division of vocational rehabilitation may provide signs to designate disabled persons parking places.

CHAPTER 123

(Com. Sub. for H. B. 1101—By Delegate Gilliam)

[Passed March 9, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article nineteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the circumstances under which a nonresident motorist arrested for traffic violations shall be immediately taken before a magistrate or court; and relating to the circumstances under which such nonresident
motorist shall be issued a written notice to appear in court and not be taken immediately before a magistrate or court.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 19. PARTIES, PROCEDURE UPON ARREST, AND REPORTS IN CRIMINAL CASES.

§17C-19-3. When person arrested must be taken immediately before a magistrate or court.

1 (a) Whenever any person is arrested for any violation of this chapter punishable as a misdemeanor, the arrested person shall be immediately taken before a magistrate or court within the county in which the offense charged is alleged to have been committed and who has jurisdiction of the offense and is nearest or most accessible with reference to the place where the arrest is made, in any of the following cases:

2 (1) When a person arrested demands an immediate appearance before a magistrate or court;

3 (2) When the person is arrested upon a charge of negligent homicide;

4 (3) When the person is arrested upon a charge of driving while under the influence of alcohol, or under the influence of any controlled substance, or under the influence of any other drug, or under the combined influence of alcohol and any controlled substance or any other drug;

5 (4) When the person is arrested upon a charge of failure to stop in the event of an accident causing death, personal injury or damage to property;

6 (5) When the person is arrested upon a charge of violating section fourteen, article seventeen of this chapter relating to weight violations, except as otherwise provided in that section;

7 (6) When the person arrested is a resident of a state that has not entered into a nonresident violator compact with this state;
(7) In any other event when the person arrested refuses to give his written promise to appear in court as provided in section four of this article.

(b) When the person arrested is a resident of a state that has entered into a nonresident violator compact with this state, the arresting officer shall issue the person a written notice as provided for in section four of this article and may not take the person immediately before a magistrate or court, except under the terms of the compact or under the circumstances set forth in subsection (a) of this section.

CHAPTER 124
(Com. Sub. for H. 8. 1605—By Delegate Love)

[Passed March 10, 1984; in effect July 1, 1984. Approved by the Governor.] AN ACT to amend article ten, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four, relating to the power of municipalities to authorize the recorder, assistant recorder, municipal clerk or deputy municipal clerk to issue warrants, administer oaths, and to accept and approve sureties and bonds; providing for the appointment of such official and for the removal of such authority; and setting forth limitations on the authority of such official.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. POWERS AND DUTIES OF CERTAIN OFFICERS.

§8-10-4. Powers and duties of recorder or clerk relating to warrants, oaths, sureties and bonds.

1 Any municipality may provide by charter provision and 2 ordinance, or notwithstanding a charter provision to the
3 contrary, a municipality may provide by ordinance, that the
governing body may vest in the recorder, assistant recorder,
municipal clerk or deputy municipal clerk, the authority to
issue warrants for arrest, to administer oaths, and to ac-
cept and approve sureties and bonds, and any such ordinance
shall provide for the appointment of such person by con-
firmation of the governing body and for the removal of such
authority by action of the governing body: Provided, That
such person may only issue warrants, administer oaths, or
accept and approve sureties and bonds, in the absence of
the mayor, or if there be a police court or municipal judge,
in the absence of such police court or municipal judge.

CHAPTER 125
(S. B. 534—By Mr. McGraw, Mr. President)

[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article fourteen, chapter eight of the code
of West Virginia, one thousand nine hundred thirty-one, as
amended, by adding thereto a new section, designated
section thirteen-a; and to amend article fifteen of said
chapter by adding thereto a new section, designated sec­
tion eighteen-a, all relating to review by members of police
and fire departments of their individual promotional ex­
amination questions, answers and scores; public hearing
and review of any individual’s examination by the police­
men’s or firemen’s civil service commission upon request
of the individual; certification of eligibility lists after ex­
haustration of commission review; judicial review of com­
mission decisions.

Be it enacted by the Legislature of West Virginia:

That article fourteen, chapter eight of the code of West
Virginia, one thousand nine hundred thirty-one, as amended,
be amended by adding thereto a new section, designated
section thirteen-a; and that article fifteen of said chapter be
amended by adding thereto a new section, designated section eighteen-a, all to read as follows:

Article
14. Law and Order; Police Force or Departments; Powers; Authority and Duties of Law-enforcement Officials and Policemen; Police Matrons; Special School Zone and Parking Lot or Parking Building Police Officers; Civil Service for Certain Police Departments.
15. Fire Fighting; Fire Companies and Departments; Civil Service for Paid Fire Departments.

ARTICLE 14. LAW AND ORDER; POLICE FORCE OR DEPARTMENTS; POWERS, AUTHORITY AND DUTIES OF LAW-ENFORCEMENT OFFICIALS AND POLICEMEN; POLICE MATRONS; SPECIAL SCHOOL ZONE AND PARKING LOT OR PARKING BUILDING POLICE OFFICERS; CIVIL SERVICE FOR CERTAIN POLICE DEPARTMENTS.

PART V. CIVIL SERVICE FOR CERTAIN POLICE DEPARTMENTS.

§8-14-13a. Individual review of test and answers from promotional examination.

(a) Any applicant for promotion to any position in a paid police department may personally review such applicant's examination questions, answers and scores to all parts of any competitive examination within five days after the posting of results of the competitive examination. Such five days shall not include the day the examination results are posted, nor any day that the office of the recorder of the city is not open for business to the public. The commission shall not certify the list of eligibles until all procedures before the commission under this section have been exhausted. The commission shall provide any applicant requesting review of such applicant's examination questions, answers and scores with a location to review such materials.

(b) If any applicant feels aggrieved by the answers and/or scores received on a promotional competitive examination, the commission shall, at the request of such applicant made within five days as calculated above, appoint a date, time and place for a public hearing, at which time such applicant may appear, with or without counsel. The commission shall review all parts of the
competitive examination questions, answers and scores of the aggrieved applicant, and testimony shall be taken. The commission shall subpoena, at the expense of the applicant, any competent witnesses requested by such applicant.

(c) After such review, the commission shall render a decision either in favor of the applicant, and therefore adjust the certified eligibility list to provide for such applicant's adjusted score, or the commission shall rule that the applicant's prior score should remain unchanged. Any decision rendered by the commission under this section shall be in writing and shall set forth findings of fact and conclusions of law relied upon to reach such decision.

(d) The commission shall not certify a list of eligibles after the completion of a competitive promotional examination until all applicants for such position have exhausted the procedures before the commission set forth in this section.

(e) If any applicant is aggrieved by a decision rendered by the commission under this section, such applicant may, within twenty days of the date of the commission's decision, seek judicial review thereof in the circuit court of the county wherein such municipality is located. Nothing in this section shall be construed as depriving such applicant of the right to seek a writ of mandamus to the appropriate court within the time specified in this subsection.

ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.

PART IV. CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.

§8-15-18a. Individual review of test and answers from promotional examination.

(a) Any applicant for promotion to any position in a paid fire department may personally review such applicant's examination questions, answers and scores to all parts of any competitive examination within five days
after the posting of results of the competitive examination. Such five days shall not include the days the examination results are posted, nor any day that the office of the recorder of the city is not open for business to the public. The commission shall not certify the list of eligibles until all procedures before the commission under this section have been exhausted. The commission shall provide any applicant requesting review of such applicant's examination questions, answers and scores with a location to review such materials.

(b) If any applicant feels aggrieved by the answers and/or scores received on a promotional competitive examination, the commission shall, at the request of such applicant made within five days as calculated above, appoint a date, time and place for a public hearing, at which time such applicant may appear, with or without council. The commission shall review all parts of the competitive examination questions, answers and scores of the aggrieved applicant, and testimony shall be taken. The commission shall subpoena, at the expense of the applicant, any competent witnesses requested by such applicant.

(c) After such review, the commission shall render a decision either in favor of the applicant, and therefore adjust the eligibility list to provide for such applicant's adjusted score, or the commission shall rule that the applicant's prior score should remain unchanged. Any decision rendered by the commission under this section shall be in writing and shall set forth findings of fact and conclusions of law relied upon to reach such decision.

(d) The commission shall not certify a list of eligibles after the completion of a competitive promotional examination until all applicants for such position have exhausted the procedures before the commission set forth in this section.

(e) If any applicant is aggrieved by a decision rendered by the commission under this section, such applicant may, within twenty days of the date of the commission's decision, seek judicial review thereof in the circuit
chapter

chapter

CHAPTER 126

(H. B. 1031—By Delegate Love)

[Passed February 22, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article fifteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the power and authority to form volunteer fire companies; number of persons who may serve; recordation of statement; organization.

Be it enacted by the Legislature of West Virginia:

That section four, article fifteen, 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 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.

PART II. VOLUNTEER FIRE COMPANIES

§8-15-4. Power and authority to form fire companies; recordation of statement; organization.

Any number of persons, not less than twenty, residing within the corporate limits of a municipality without a paid fire department may form themselves into a company for extinguishing fires therein. A writing stating the formation of such company, with the names of the members thereof subscribed thereto, shall be recorded in the office of the clerk of the county commission of the county wherein such municipality or the major portion of the territory thereof is located, after which the members of the company shall elect its
officers, including a commander, and make rules and regulations for effecting its object consistent with the laws of the state and the ordinances of such municipality. A volunteer fire company shall be subject to the authority of the governing body.

CHAPTER 127

(Com. Sub. for H. B. 1069—By Delegate Love)

[Passed March 7, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight-b, article fifteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to fire companies and departments; and providing that revenues allocated to volunteer and part volunteer fire companies from the municipal pensions and protection fund may be expended for capital improvements, retirement of debts and payment of utility bills.

Be it enacted by the Legislature of West Virginia:

That section eight-b, article fifteen, 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 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.

§8-15-8b. Authorized expenditures of revenues from the municipal pensions and protection fund.

1 Revenues allocated to volunteer and part volunteer fire companies and departments may be expended only for the items listed in subsections (a) through (g) of this section.

4 Such expenditures may be made for the following:

5 (a) Personal protective equipment, including protective headgear, bunker coats, pants, boots, combination of bunker pants and boots, coats and gloves;
(b) Equipment for compliance with the national fire protection standard or automotive fire apparatus, NFPA-1901;

(c) Compliance with insurance service office recommendations relating to fire departments;

(d) Rescue equipment, communications equipment and ambulance equipment: Provided, That no moneys received from the municipal pensions and protection fund may be used for equipment for personal vehicles owned or operated by volunteer fire company or department members;

(e) Capital improvement;

(f) Retirement of debts; and

(g) Payment of utility bills.

CHAPTER 128
(H. B. 1623—By Delegate Wiedebusch and Delegate Bollouz)

[Passed March 7, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four and six, article nineteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to municipal revenue bond financing; estimates of costs; amount, negotiability and execution of bonds; ordinance for issuance of bonds; rates for services; removal of limited rates of interest; and return on bonds for waterworks or electric power systems.

Be it enacted by the Legislature of West Virginia:

That sections four and six, 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 IV. REVENUE BOND FINANCING.

§8-19-4. Estimate of cost; ordinance for issuance of revenue bonds; interest on bonds; rates for services.

§8-19-6. Amount, negotiability and execution of bonds.
§8-19-4. Estimate of cost; ordinance for issuance of revenue bonds; interest on bonds; rates for services.

Whenever a municipality shall, under the provisions of this article, determine to acquire, by purchase or otherwise, construct, establish, extend or equip a waterworks system, or to construct any additions, betterments or improvements to any waterworks or electric power system, it shall cause an estimate to be made of the cost thereof, and shall, by ordinance, provide for the issuance of revenue bonds under the provisions of this article, which ordinance shall set forth a brief description of the contemplated undertaking, the estimated cost thereof, the amount, rate or rates of interest, the time and place of payment, and other details in connection with the issuance of the bonds. Such bonds shall be in such form and shall be negotiated and sold in such manner and upon such terms as the governing body of such municipality may by ordinance specify. All such bonds and the interest thereon, and all properties and revenues and income derived from such waterworks or electric power system, shall be exempt from all taxation by this state, or any county, municipality, political subdivision or agency thereof. Such bonds shall bear interest at a rate per annum set by the municipality, payable at such times, and shall be payable as to principal at such times, not exceeding forty years from their date, and at such place or places, within or without the state, as shall be prescribed in the ordinance providing for their issuance. Such ordinance shall also declare that a statutory mortgage lien shall exist upon the property so to be acquired, constructed, established, extended or equipped, fix minimum rates or charges for water to be collected prior to the payment of all of said bonds and shall pledge the revenues derived from the waterworks or electric power system for the purpose of paying such bonds and interest thereon, which pledge shall definitely fix and determine the amount of revenues which shall be necessary to be set apart and applied to the payment of the principal of and interest upon the bonds and the proportion of the balance of such revenues, which are to be set aside as a proper and adequate depreciation account, and the remainder shall be set aside for the reasonable and proper maintenance and operation thereof. The rates or charges to be charged for the services from such waterworks
or electric power system shall be sufficient at all times to
provide for the payment of interest upon all bonds and to
create a sinking fund to pay the principal thereof as and
when the same become due, and reasonable reserves therefor,
and to provide for the repair, maintenance and operation of
the waterworks or electric power system, and to provide an
adequate depreciation fund, and to make any other payments
which shall be required or provided for in the ordinance
authorizing the issuance of said bonds.

§8-19-6. Amount, negotiability and execution of bonds.

Bonds herein provided for shall be issued in such amounts
as may be necessary to provide sufficient funds to pay all
costs of acquisition, construction, establishment, extension or
equipment, including engineering, legal and other expenses,
together with interest to a date six months subsequent to the
estimated date of completion. Bonds issued under the provi-
sions of this article are hereby declared to be negotiable in-
struments, and the same shall be executed by the proper legally
constituted authorities of the municipality, and be sealed with
the corporate seal of the municipality, and in case any of the
officers whose signatures appear on the bonds or coupons
shall cease to be such officers before delivery of such bonds,
such signatures shall nevertheless be valid and sufficient for
all purposes the same as if they had remained in office until
such delivery. All signatures on the bonds or coupons and the
 corporate seal may be mechanically reproduced if authorized
in the ordinance authorizing the issuance of the bonds.

CHAPTER 129

(S. B. 285—By Senator Boettner)

[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]
firemen's pension and relief funds generally; providing for additional benefit credit for members who have served in the armed forces; increasing the minimum amount of benefits payable to retirees; and increasing the minimum amount of death benefits payable to dependent spouses.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 22. RETIREMENT BENEFITS GENERALLY; POLICEMEN'S PENSION AND RELIEF FUND; FIREMEN'S PENSION AND RELIEF FUND; PENSION PLANS FOR EMPLOYEES OF WATERWORKS SYSTEM, SEWERAGE SYSTEM OR COMBINED WATERWORKS AND SEWERAGE SYSTEM.


(a) Any member of a paid police or fire department who is entitled to a retirement pension hereunder, and who has been in the honorable service of such department for twenty years, may, upon written application to the board of trustees, be retired from all service in such department without medical examination or disability; and on such retirement the board of trustees shall authorize the payment of annual retirement pension benefits commencing upon his retirement or upon his attaining the age of fifty years, whichever is later, payable in twelve monthly installments for each year of the remainder of his life, in an amount equal to sixty percent of such member's average annual salary or compensation received during the three twelve-consecutive-month periods, not necessarily consecutive, each of such three periods beginning with the same calendar month of different years and all such three periods falling within the member's final five years of employment with such department, in which such member received his highest salary or compensation while a member
of the department, or an amount of two hundred dollars per
month, whichever shall be greater.

(b) Any member of any such department who is entitled
to a retirement pension under the provisions of subsection
(a) of this section and who has been in the honorable service
of such department for more than twenty years at the time
of his retirement, as herein provided, shall, in addition to
the sixty percent authorized in said subsection (a), receive
one additional percent, to be added to the sixty percent, per
each year served in excess of twenty years up to a maximum
of ten additional percent.

(c) Any member of any such department whose service
has been interrupted by duty with the armed forces of the
United States as provided in section twenty-seven of this
article prior to the first day of July, one thousand nine
hundred eighty-one, shall be eligible for retirement pension
benefits immediately upon retirement, regardless of his age,
if he shall otherwise be eligible for such retirement pension
benefits.

Any member of any such department who has served in
active duty with the armed forces of the United States as
described in section twenty-seven of this article, whether
prior to or subsequent to becoming a member of a paid
police or fire department covered by the provisions of this
article, shall receive, in addition to the sixty percent
authorized in subsection (a) of this section and the
additional percent credit authorized in subsection (b) of
this section, one additional percent per each year so served
in active military duty, up to a maximum of four additional
percent. In no event, however, may the total benefit granted
to any member exceed seventy-five percent of the member's
annual average salary calculated in accordance with
subsection (a) of this section.

(d) Any member of a paid police or fire department shall
be retired at the age of sixty-five years in the manner
provided in this subsection. When a member of the paid
police or fire department shall have reached the age of
sixty-five years, the said board of trustees shall notify the
mayor of this fact, within thirty days of such member's
sixty-fifth birthday; and the mayor shall cause such sixty-five-year-old member of the paid police or fire department to be retired within a period of not more than thirty additional days. Upon retirement under the provisions of this subsection, such member shall receive retirement pension benefits payable in twelve monthly installments for each year of the remainder of his life, in an amount equal to sixty percent of such member's average annual salary or compensation received during the three twelve-consecutive-month periods, not necessarily consecutive, each of such three periods beginning with the same calendar month of different years and all such three periods falling within the member's final five years of employment with such department, in which such member received his highest salary or compensation while a member of the department, or an amount of three hundred dollars per month, whichever is greater. If such member has been employed in said department for more than twenty years, the provisions of subsection (b) of this section shall apply.

(e) It shall be the duty of each member of a paid police or fire department at the time a fund is hereafter established to furnish the necessary proof of his date of birth to the said board of trustees, as specified in section twenty-three of this article, within a reasonable length of time, said length of time to be determined by the said board of trustees; and then the board of trustees and the mayor shall proceed to act in the manner provided in subsection (d) of this section and shall cause all members of the paid police or fire department who are over the age of sixty-five years to be retired in not less than sixty days from the date the fund is established. Upon retirement under the provisions of this subsection, such member, whether he has been employed in said department for twenty years or not, shall receive retirement pension benefits payable in twelve monthly installments for each year of the remainder of his life, in an amount equal to sixty percent of such member's average annual salary or compensation received during the three twelve-consecutive-month periods, not necessarily consecutive, each of such three periods beginning with the same calendar month of different years and all such three periods falling within the member's final five years of
employment with such department, in which such member
received his highest salary or compensation while a member
of the department, or an amount of two hundred dollars per
month, whichever shall be greater. If such member has been
employed in said department for more than twenty years,
the provisions of subsection (b) of this section shall apply.


(a) In case:

(1) Any member of a paid police or fire department who
has been in continuous service for more than five years dies
from any cause other than as specified in subsection (b) of
this section before retirement on a disability pension under
the provisions of, prior to the first day of July, one thousand
nine hundred eighty-one, section twenty-four of this article
or, after the thirtieth day of June, one thousand nine
hundred eighty-one, sections twenty-three-a and twenty-
four of this article or a retirement pension under the
provisions of subsecton (a) or both subsections (a) and (b),
section twenty-five of this article, leaving in either case
surviving a dependent spouse, or any dependent child or
children under the age of eighteen years, or dependent
father or mother or both, or any dependent brothers or
sisters or both under the age of eighteen years; or

(2) Any former member of any such department who is
on a disability pension prior to the first day of July, one
thousand nine hundred eighty-one, under section twenty-
four of this article, or after the thirtieth day of June, one
thousand nine hundred eighty-one, under sections twenty-
three-a and twenty-four of this article, or is receiving or is
entitled to receive retirement pension benefits under the
provisions of subsection (a) or both subsections (a) and (b),
section twenty-five of this article, shall die from any cause
other than as specified in subsection (b) of this section
leaving in either case surviving a dependent spouse to
whom the marriage took place prior to the date of such
member's retirement on a disability pension or a retirement
pension, or any dependent child or children under the age of
eighteen years who were born prior to or within ten months
after the date of such member's retirement on a disability
pension or a retirement pension, or dependent father or
mother or both, or any dependent brothers or sisters or both
under the age of eighteen years; then in any of the cases set
forth above in (1) and (2) the board of trustees of such
pension and relief fund shall, immediately following the
death of such member, pay to or for each of such entitled
surviving dependents the following pension benefits viz.:
To such dependent spouse, until death or remarriage, a sum
per month equal to thirty percent of such member's average
monthly salary or compensation received during the three
twelve-consecutive-month periods, not necessarily
consecutive, each of such three periods beginning with the
same calendar month of different years and all such three
periods falling within the member's final five years of
employment with such department, in which such member
received his highest salary or compensation while a member
of the department, hereinafter referred to in this section as
“monthly average,” or an amount of two hundred dollars
per month, whichever is greater. To each such dependent
child a sum per month equal to ten percent of such monthly
average, or the sum of thirty dollars per month for each such
child, whichever shall be greater, until such child shall
attain the age of eighteen years or marry, whichever first
occurs; to each such dependent orphaned child a sum per
month equal to fifteen percent of such monthly average, or
the sum of forty-five dollars per month for each such child,
whichever shall be greater, until such child shall attain the
age of eighteen years or marry, whichever first occurs; to
each such dependent father or mother a sum per month for
each equal to ten percent of such monthly average, or the
sum of thirty dollars per month for each such father and
mother, whichever shall be greater; to each such dependent
brother or sister the sum of five dollars per month until such
individual shall attain the age of eighteen years or marry,
whichever first occurs, but in no event shall the aggregate
amount paid to such brothers and sisters exceed thirty
dollars per month; but if at any time, because of the number
of dependents, all such dependents cannot be paid in full as
herein provided, then each dependent shall receive his pro
rata share of such payments: Provided, That in no case shall
the payments to the surviving spouse and children be cut
below sixty-five percent of the total amount to be paid to all 
dependents.

(b) The dependent spouse, child or children, or 
dependent father or mother, or dependent brothers or 
sisters, of any such member who shall die by reason of 
service rendered in the performance of such member's 
duties shall, regardless of the length of such member's 
service and irrespective of whether such member was or 
was not entitled to receive or was or was not receiving 
disability pension or temporary disability payments at the 
time of his death, receive the death benefits provided for in 
subsection (a) of this section, and if such member had less 
than three years' service at the time of his death, the 
monthly average shall be computed on the basis of the 
actual number of years of service.

(c) If a member dies without leaving a dependent 
spouse, child or children, or dependent father or mother, or 
dependent brothers or sisters, his contributions to the fund 
plus six percent interest shall be refunded to his named 
beneficiary or, if no beneficiary has been named, to his 
estate to the extent that such contributions plus interest 
exceed any disability or retirement benefits that he may 
have received before his death.

(d) The provisions of this section shall not be construed 
as creating or establishing any contractual or vested rights 
in favor of any individual who may be or become qualified 
as a beneficiary of the death benefits herein authorized to 
be made, all the provisions hereof and benefits provided for 
hereunder being expressly subject to such subsequent 
legislative enactments as may provide for any change, 
modification or elimination of the beneficiaries or benefits 
specified herein.

§8-22-27. General provisions concerning disability pensions, 
retirement pensions and death benefits.

(a) In determining the years of service of a member in a 
paid police or fire department for the purpose of 
ascertaining certain disability pension benefits, all 
retirement pension benefits and certain death benefits, the 
following provisions shall be applicable:
(1) Absence from the service because of sickness or injury for a period of two years or less shall not be construed as time out of service; and

(2) Any member of any paid police or fire department covered by the provisions of sections sixteen through twenty-eight of this article who has been required to or shall at any future time be required to enter the armed forces of the United States by conscription, by reason of being a member of some reserve unit of the armed forces or a member of the West Virginia national guard or air national guard, whose reserve unit or guard unit is called into active duty for one year or more, or who enlists in one of the armed forces of the United States during hostilities, and who upon receipt of an honorable discharge from such armed forces presents himself for resumption of duty to his appointing municipal official within six months from his date of discharge, and is accepted by the pension board's board of medical examiners as being mentally and physically capable of performing his required duties as a member of such paid police or fire department, shall be given credit for continuous service in said paid police or fire department, and his rights shall be governed as herein provided. No member of a paid police or fire department shall be required to pay the monthly assessment as now required by law, during his period of service in the armed forces of the United States.

(b) As to any former member of a paid police or fire department receiving disability pension benefits or retirement pension benefits from a policemen's or firemen's pension and relief fund, on the effective date of this article, the following provisions shall govern and control the amount of such pension benefits:

(1) A former member who on June thirtieth, one thousand nine hundred sixty-two, was receiving disability pension benefits or retirement pension benefits from a policemen's or firemen's pension and relief fund, shall continue to receive pension benefits, but on and after July one, one thousand nine hundred seventy-one, such pension benefits shall be in the amount of two hundred dollars per month; and
(2) A former member who became entitled to disability pension benefits or retirement pension benefits on or after July one, one thousand nine hundred sixty-two, shall continue to receive pension benefits, but on and after July one, one thousand nine hundred seventy-one, shall receive the disability pension benefits or retirement pension benefits provided for in section twenty-four or section twenty-five of this article, as the case may be.

(c) As to any dependent spouse, child or children, or dependent father or mother, or dependent brothers or sisters, of any former member of a paid police or fire department, receiving any death benefits from a policemen’s pension and relief fund or firemen’s pension and relief fund, on the effective date of this article, the following provisions shall govern and control the amount of such death benefits:

(1) A dependent spouse, child or children, or dependent father or mother, or dependent brothers or sisters, of any former member, who on June thirty, one thousand nine hundred sixty-two, was receiving any death benefits from a policemen’s pension and relief fund or firemen’s pension and relief fund, shall continue to receive death benefits, but on and after July one, one thousand nine hundred seventy-one, such death benefits shall be in the following amounts:

To a dependent spouse, until death or remarriage, the sum of two hundred dollars per month, to each dependent child the sum of thirty dollars per month, until such child shall attain the age of eighteen years or marry, whichever first occurs; to each dependent orphaned child the sum of forty-five dollars per month, until such child shall attain the age of eighteen years or marry, whichever first occurs; to each dependent father and mother the sum of thirty dollars per month for each; to each dependent brother or sister the sum of five dollars per month, until such individual shall attain the age of eighteen years or marry, whichever first occurs, but in no event shall the aggregate amount paid to such brothers and sisters exceed thirty dollars per month; but if at any time, because of the number of dependents, all such dependents cannot be paid in full as herein provided, then each dependent shall receive his pro rata share of such payments: Provided, That in no case shall the payments to
the surviving spouse and children be cut below sixty-five percent of the total amount to be paid to all dependents;

(2) A dependent spouse, child or children, or dependent father or mother, or dependent brothers or sisters, of any former member, who became eligible for death benefits on or after July one, one thousand nine hundred sixty-two, shall continue to receive death benefits, but on and after July one, one thousand nine hundred seventy-one, shall receive the death benefits provided for in section twenty-six of this article.

(d) A former member who is receiving disability pension benefits on the thirtieth day of June, one thousand nine hundred eighty-one, shall continue to receive disability pension benefits provided for in section twenty-four of this article.

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CHAPTER 130

(H. B. 1721—By Delegate Albright and Delegate Feinberg)

[Passed March 9, 1984; 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 thousand nine hundred thirty-one, as amended, relating to continuing the preexisting use of land for certain purposes when prohibited under zoning rules and regulations; removing the distinction between farm, industrial or manufacturing land inside or outside urban areas with regard to making improvements to the land for continuance of a preexisting use and with regard to when abandonment of a preexisting use occurs.

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:
§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 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, 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 131
(S. B. 727—By Senator Loehr)

[Passed March 8, 1984; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article thirty-three, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the powers of building commissions.

Be it enacted by the Legislature of West Virginia:

That section four, article thirty-three, 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 33. INTERGOVERNMENTAL RELATIONS—BUILDING COMMISSIONS.

PART II. POWERS OF COMMISSIONS.

§8-33-4. Powers.

1 Each commission shall have plenary power and authority to:

2 (a) Sue and be sued;

3 (b) Contract and be contracted with;

4 (c) Adopt, use and alter a common seal;

5 (d) Make and adopt all necessary, appropriate and lawful bylaws and rules and regulations pertaining to its affairs;

6 (e) Elect such officers, appoint such committees and agents and employ and fix the compensation of such employees and contractors as may be necessary for the conduct of the affairs and operations of the commission;

7 (f) (1) Acquire, purchase, own and hold any property, real or personal, and (2) acquire, construct, equip, maintain and operate public buildings, structures, projects and appurtenant facilities, of any type or types for which the governmental body or bodies creating such commis-
18 tion are permitted by law to expend public funds (all
19 hereinafter in this article referred to as facilities);
20 (g) Apply for, receive and use grants-in-aid, donations
21 and contributions from any source or sources, including,
22 but not limited to, the United States of America, or any
23 department or agency thereof, and accept and use be-
24 quests, devises, gifts and donations from any source
25 whatsoever;
26 (h) Sell, encumber or dispose of any property, real or
27 personal;
28 (i) Issue negotiable bonds, notes, debentures or other
29 evidences of indebtedness and provide for the rights of
30 the holders thereof, incur any proper indebtedness and
31 issue any obligations and give any security therefor
32 which it may deem necessary or advisable in connection
33 with exercising powers as provided herein;
34 (j) Raise funds by the issuance and sale of revenue
35 bonds in the manner provided by the applicable provi-
36 sions of sections seven, ten, twelve and sixteen, article
37 sixteen of this chapter, without regard to the extent
38 provided in section five of this article, to the limitations
39 specified in said section twelve, article sixteen, it being
40 hereby expressly provided that for the purpose of the
41 issuance and sale of revenue bonds, each commission is
42 a "governing body" as that term is used in said article
43 sixteen only;
44 (k) Subject to such reasonable limitations and condi-
45 tions as the governmental body or all of the governmen-
46 tal bodies creating and establishing such building com-
47 mission may prescribe by ordinance or by order, exercise
48 the power of eminent domain in the manner provided in
49 chapter fifty-four of this code for business corporations,
50 for the purposes set forth in subdivision (f) of this sec-
51 tion, which purposes are hereby declared public purposes
52 for which private property may be taken or damaged;
53 (l) Lease its property or any part thereof, for public
54 purposes, to such persons and upon such terms as the
55 commission deems proper, but when any municipality or
county commission is a lessee under any such lease, such lease must contain a provision granting to such municipality or county commission the option to terminate such lease during any fiscal year covered thereby; and

(m) Do all things reasonable and necessary to carry out the foregoing powers.

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CHAPTER 132
(H. B. 1063—By Delegate Wooton)

[Passed March 8, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article one-b, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to oaths of allegiance for enlistment in the national guard; and allowing such oaths to be taken before any commissioned armed forces officer.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1B. NATIONAL GUARD.


1 (a) The qualification for enlistment and re-enlistment, the period of enlistment, re-enlistment and voluntary extension of enlistment, the period of service and the manner and form of transfer and discharge of enlisted personnel of the national guard shall be as prescribed by applicable federal law and regulations: Provided, That the governor may extend the period of any enlistment, re-enlistment, voluntary extension of enlistment and the period of service of enlisted personnel of the national guard for a period not exceeding the duration of an emergency declared by him pursuant to article one-c of this chapter.
12 (b) Any person who has been discharged under other than
13 honorable conditions from the national guard of this or any
14 other state or from any component of the armed forces of the
15 United States and has not been restored to duty shall not be
16 eligible for enlistment in the national guard.

17 (c) Every person enlisted for the national guard shall take
18 an oath of allegiance to the state and the United States and
19 shall sign an enlistment paper, which shall be forwarded to the
20 adjutant general on such form as may be prescribed.

21 (d) The oath of allegiance referred to in subsection (c) of
22 this section may be taken and signed before any commissioned
23 officer of the armed forces of the United States.

CHAPTER 133
H. B. 1966—By Delegate Wooton and Delegate I. Damron)
[Passed March 8, 1984; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-one, article one-b, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the powers of the adjutant general of the state generally and with respect to members of the national guard in attendance at institutions of higher education.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1B. NATIONAL GUARD.
§15-1B-21. Tuition and fees for guard members at institutions of higher education.

1 Any member of the national guard who is enrolled in a
2 course of undergraduate study at and is attending any
3 accredited college, university, business or trade school located
in West Virginia, may be entitled to payment of tuitions and
fees at such college, university, business or trade school during
the period of his service in the national guard: Provided,
That the adjutant general may prescribe criteria of eligibility for
payment of tuition and fees at such college, university, business
or trade school: Provided, however, That such payment shall
be contingent upon appropriations being made by the Legisla-
ture for this express purpose.

The amount of such payment for members attending a
state-supported school shall be determined by the adjutant
general, and shall not exceed the actual amount of tuition
and fees at such school. The amount of such payment for
members attending a private school shall be determined by
the adjutant general, but in no event shall exceed the highest
amounts payable at any state-supported school.

The adjutant general is charged with the administration of
tuition and fee payments under this section and shall pro-
mulgate rules and regulations for the same.

CHAPTER 134

(Com. Sub. for S. B. 62—By Senator Cook, Senator Heck, Senator Chace
and Senator Davis)

[Passed March 6, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter sixteen of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, by
adding thereto a new article, designated article thirty,
relating to the West Virginia natural death act; defining
terms; providing for execution of a declaration; providing
for revocation of the declaration; requiring physicians to
confirm terminal condition; providing for chart
identification; providing for determination of competency
of and intent of declarant; granting immunity to physicians,
licensed health care facilities and professional or
employees for acts done in good faith in reliance upon the
declaration; providing for transfer of the declarant;
providing criminal penalties for violations; determining
effect on insurance policies; and preserving existing rights.
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 thirty, to read as follows:

ARTICLE 30. WEST VIRGINIA NATURAL DEATH ACT.

§16-30-1. Short title.
§16-30-2. Definitions.
§16-30-3. Executing a declaration.
§16-30-4. Revocation.
§16-30-5. Physician's duty to confirm terminal condition; chart identification.
§16-30-6. Competency and intent of declarant.
§16-30-7. Liability and protection of declaration; penalties.
§16-30-8. Insurance.
§16-30-10. Prohibition.

§16-30-1. Short title.
1 This article shall be known as and may be cited as the
2 "West Virginia Natural Death Act."

§16-30-2. Definitions.
1 For the purposes of this article, the terms:
2 (1) "Attending physician" means the physician selected
3 by, or assigned to, the patient who has primary
4 responsibility for the treatment and care of the patient;
5 (2) "Declaration" means a witnessed document in
6 writing, voluntarily executed by the declarant in
7 accordance with the requirements of section three of this
8 article;
9 (3) "Life-sustaining procedure" means any medical
10 procedure or intervention which, when applied to a
11 qualified patient, would serve only to artificially prolong
12 the dying process and where, in the judgment of the
13 attending physician and a second physician, death will
14 occur whether or not such procedure or intervention is
15 utilized. The term "life-sustaining procedure" does not
16 include the administration of medication or the
17 performance of any medical procedure deemed necessary to
18 provide comfort, care or to alleviate pain;
(4) "Physician" means a person authorized to practice medicine in the state of West Virginia;

(5) "Qualified patient" means a patient who has executed a declaration in accordance with this article and who has been diagnosed and certified in writing to be afflicted with a terminal condition by two physicians who have personally examined the patient, one of whom is the attending physician: Provided, That if there be more than one attending physician, all such attending physicians must certify in writing that the patient is afflicted with a terminal condition; and

(6) "Terminal condition" means an incurable condition caused by injury, disease or illness, which, regardless of the application of life-sustaining procedures, would, within reasonable medical judgment, cause natural death and where the application of life-sustaining procedures serves only to postpone the moment of death.

§16-30-3. Executing a declaration.

(a) Any person eighteen years of age or older may execute a declaration directing the withholding or withdrawal of life-sustaining procedures from themselves should they be in a terminal condition. The declaration made pursuant to this article shall be: (1) In writing; (2) signed by the person making the declaration or by another person in the declarant's presence at the declarant's express direction; (3) dated; (4) signed in the presence of two or more witnesses at least eighteen years of age; and (5) signed and attested by such witnesses whose signatures and attestations shall be notarized.

(b) In addition, a witness may not be:

(1) The person who signed the declaration on behalf of and at the direction of the declarant;

(2) Related to the declarant by blood or marriage;

(3) Entitled to any portion of the estate of the declarant according to the laws of intestate succession of the state of West Virginia or under any will of the declarant or codicil thereto: Provided, That the validity of the declaration shall
not be affected when a witness at the time of witnessing such declaration was unaware that he was a named beneficiary of the declarant's will;

(4) Directly financially responsible for declarant's medical care; or

(5) The attending physician, an employee of the attending physician or an employee of the health facility in which the declarant is a patient.

(c) It shall be the responsibility of the declarant to provide for notification to his or her attending physician of the existence of the declaration. An attending physician, when presented with the declaration, shall make the declaration or a copy of the declaration a part of the declarant's medical records.

(d) The declaration shall be substantially in the following form, but in addition may include other specific directions not inconsistent with other provisions of this article. Should any of the other specific directions be held to be invalid, such invalidity shall not affect other directions of the declaration which can be given effect without the invalid direction and to this end the directions in the declaration are severable.

"DECLARATION"

"Declaration made this ............. day of ...........
(month, year). I, ..................................., being of sound mind, willfully and voluntarily make known my desires that my dying shall not be artificially prolonged under the circumstances set forth below, do declare:

"If at any time I should have an incurable injury, disease or illness certified to be a terminal condition by two physicians who have personally examined me, one of whom is my attending physician, and the physicians have determined that my death will occur whether or not life-sustaining procedures are utilized and where the application of life-sustaining procedures would serve only to artificially prolong the dying process, I direct that such procedures be withheld or withdrawn, and that I be permitted to die naturally with only the administration of..."
nutrition, medication or the performance of any medical procedure deemed necessary to provide me with comfort, care or to alleviate pain.

"In the absence of my ability to give directions regarding the use of such life-sustaining procedures, it is my intention that this declaration be honored by my family and physician(s) as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences resulting from such refusal.

"I understand the full import of this declaration and I am emotionally and mentally competent to make this declaration.

"Signed ........................................
"Address ..................................................

"I did not sign the declarant's signature above for or at the direction of the declarant. I am at least eighteen years of age and am not related to the declarant by blood or marriage, entitled to any portion of the estate of the declarant according to the laws of intestate succession of the state of West Virginia or to the best of my knowledge under any will of declarant or codicil thereto, or directly financially responsible for declarant's medical care. I am not the declarant's attending physician, an employee of the attending physician, nor an employee of the health facility in which the declarant is a patient.

"Witness ........................................
"Witness ........................................
"STATE OF ........................................
"COUNTY OF ................................., to wit:

"This day personally appeared before me, the undersigned authority, a Notary Public in and for ....... County, .............. (State), .............. (witness) and .............. (witness) who, being first duly sworn, say that they are the subscribing witnesses to the declaration of ....... (declarant), which declaration is dated the ....... day of ................................., 19........; and that on the said date the said ....... (declarant), the declarant, signed, sealed, published and declared the
same as and for his declaration, in the presence of both these
affiants; and that these affiants, at the request of said declarant, in the presence of each other, and in the presence of said declarant, all present at the same time, signed their names as attesting witnesses to said declaration.

"Affiants further say that this affidavit is made at the request of .......... (declarant), declarant, and in his presence, and that .......... (declarant), at the time the declaration was executed, was in the opinion of affiants, of sound mind and memory, and over the age of eighteen years.

"Taken, subscribed and sworn to before me by .......... (witness) and .......... (witness) this .......... day of .........., 19........

"My commission expires:

Notary Public."

§16-30-4. Revocation.

(a) A declaration may be revoked at any time only by the declarant or at the express direction of the declarant, without regard to the declarant's mental state by any of the following methods:

(1) By being destroyed by the declarant or by some person in the declarant's presence and at his direction;

(2) By a written revocation of the declaration signed and dated by the declarant or person acting at the direction of the declarant. Such revocation shall become effective only upon communication of the revocation to the attending physician by the declarant or by a person acting on behalf of the declarant. The attending physician shall record in the patient's medical record the time and date when he or she receives notification of the written revocation; or

(3) By a verbal expression of the intent to revoke the declaration in the presence of a witness eighteen years of age or older who signs and dates a writing confirming that
such expression of intent was made. Any verbal revocation shall become effective only upon communication of the revocation to the attending physician by the declarant or by a person acting on behalf of the declarant. The attending physician shall record, in the patient’s medical record, the time, date and place of when he or she receives notification of the revocation.

(b) There is no criminal or civil liability on the part of any person for failure to act upon a revocation made pursuant to this section unless that person has actual knowledge of the revocation.

§16-30-5. Physician’s duty to confirm terminal condition; chart identification.

(a) An attending physician who has been notified of the existence of a declaration executed under this article, without delay after the diagnosis of a terminal condition of the declarant, shall take the necessary steps to provide for written certification and confirmation of the declarant’s terminal condition so that the declarant may be deemed to be a qualified patient under this article.

(b) Once written certification and confirmation of the declarant’s terminal condition is made, a person becomes a qualified patient under this article only if the attending physician verbally or in writing informs the patient of his or her terminal condition and documents such communication in the patient’s medical record. If the patient is diagnosed as unable to comprehend verbal or written communications, such patient becomes a qualified patient as defined in section two of this article, immediately upon written certification and confirmation of his terminal condition by the attending physician.

(c) All inpatient health care facilities shall develop a system to visibly identify a qualified patient’s chart which contains a declaration as set forth in this article.

§16-30-6. Competency and intent of declarant.

(a) The desires of a qualified patient at all times supersede the effect of the declaration.
(b) If the qualified patient is incompetent at the time of the decision to withhold or withdraw life-sustaining procedures, a declaration executed in accordance with section three of this article is presumed to be valid. For the purposes of this article, a physician or health facility may presume in the absence of actual notice to the contrary that an individual who executed a declaration was of sound mind when it was executed. The fact that an individual executed a declaration is not an indication of a declarant’s mental incompetency.

§16-30-7. Liability and protection of declaration; penalties.

(a) No physician, licensed health care professional, health facility or employee thereof who in good faith and pursuant to reasonable medical standards causes or participates in the withholding or withdrawing of life-sustaining procedures from a qualified patient pursuant to a declaration made in accordance with this article may, as a result thereof, be subject to criminal or civil liability.

(b) An attending physician who cannot comply with the declaration of a qualified patient pursuant to this article shall, in conjunction with the next of kin of the patient or other responsible individual, effect the transfer of the qualified patient to another physician who will honor the declaration of the qualified patient. Transfer under these circumstances does not constitute abandonment.

(c) Any person who willfully conceals, cancels, defaces, obliterates or damages the declaration of another without the declarant’s consent or who falsifies or forges a revocation of the declaration of another is guilty of a felony, and, upon conviction thereof, shall be fined an amount not to exceed five thousand dollars or be imprisoned in the penitentiary for a period not to exceed three years, or both fined and imprisoned.

(d) Any person who falsifies or forges the declaration of another or willfully conceals or withholds personal knowledge of the revocation of a declaration with the intent to cause a withholding or withdrawal of life-sustaining procedures, contrary to the wishes of the declarant and, thereby, because of such act, directly causes life-sustaining
procedures to be withheld or withdrawn and death to be hastened is guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than one nor more than five years.

§16-30-8. Insurance.

(a) The withholding or withdrawal of life-sustaining procedures from a qualified patient in accordance with the provisions of this article does not, for any purpose, constitute a suicide and does not constitute the crime of assisting suicide.

(b) The making of a declaration pursuant to section three of this article does not affect in any manner the sale, procurement or issuance of any policy of life insurance, nor does it modify the terms of an existing policy of life insurance. No policy of life insurance may be legally impaired or invalidated in any manner by the withholding or withdrawal of life-sustaining procedures from an insured qualified patient, notwithstanding any term of the policy to the contrary.

(c) No physician, health facility or other health care provider and no health care service plan, health maintenance organization, insurer issuing disability insurance, self-insured employee welfare benefit plan, nonprofit medical service corporation or mutual nonprofit hospital service corporation may require any person to execute a declaration as a condition for being insured for or receiving health care services.


(a) Nothing in this article impairs or supersedes any legal right or legal responsibility which any person may have to effect the withholding or withdrawal of life-sustaining procedures in any lawful manner. In such respect the provisions of this article are cumulative.

(b) This article creates no presumption concerning the intention of an individual who has not executed a declaration to consent to the use of withholding of life-sustaining procedures in the event of a terminal condition.
§16-30-10. Prohibition.

1 Nothing in this article may be construed to condone, authorize or approve mercy killing or to permit any affirmative or deliberate act or omission to end a human life other than to permit the natural process of dying as provided in this article.

CHAPTER 135

(Com. Sub. for H. B. 1212—By Delegate Murphy)

[Passed March 10, 1984; 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 ten-a, relating to the authority of the director of the department of natural resources to lease land to county boards of education for outdoor education programs with the approval of the governor; multi-county agreements to establish joint programs; reversion upon determination of the director that the land has ceased to be used for outdoor education purposes; judicial review of such determinations by the director.

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 ten-a, to read as follows:

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-10a. Authority to convey land to county board of education for educational purposes.

1 To further an appreciation and understanding of the outdoors by the youth of this state, the director is hereby authorized to enter into long-term agreements, with the written
approval of the governor, leasing unto the county board of
education of any county wherein are situate lands belonging to
the department of natural resources, for nominal consideration,
one parcel of rural land not exceeding in size one acre for each
five hundred students registered in the public schools of the
county at the time of the lease. Such land shall be used by the
county board of education exclusively to establish and main-
tain an outdoor education program and for no other purpose.

By a multi-county agreement, the county boards of education
of any county or counties in which no land belonging to the
department of natural resources is located may join with any
other county or counties in which such land is located to
establish and maintain a joint outdoor education program and
the combined student enrollment of the counties joining into
such an agreement shall determine the maximum acreage that
may be leased by the department of natural resources for such
purposes.

If the department of natural resources makes a finding
that land leased pursuant to this section has ceased to be used
for the purposes set forth herein for a period of three consecu-
tive years, the director shall notify the affected county board
or boards of education of such a finding in writing. Upon the
expiration of sixty days from receipt of said notice, such
lease shall become null and void and control of such leased
land shall revert to the department of natural resources unless
the affected board or boards of education have petitioned
the circuit court of the county wherein the land or the greater
portion thereof lies for review of the said finding.

Upon petition and hearing, the said circuit court shall
determine whether the land has ceased to be used for the
purposes set forth in this section. Periodic or incidental use
of the land for less than six months of each calendar year
shall not be sufficient to support a finding that the land has
ceased to be used for the purposes set forth herein. If the said
circuit court determines that the land has ceased to be used
for the purposes set forth herein, the court shall, by written
order, declare the lease null and void and reinstate control of
the leased land in the department of natural resources.
AN ACT to repeal sections two, two-a, two-b, nine, ten and eleven, article four, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend said code by adding thereto a new chapter, designated chapter twenty-nine-c, relating to the uniform notaries act; general provisions; short title; purposes and rules of construction; prospective effect of act; construction against implicit repeal; notary public notarization defined; severability; repeal; time of taking effect; appointment provisions; appointment; jurisdiction and term; local or district offices; powers; limitations on powers; exception for attorneys and their employees; duties; forms and procedures; acknowledgment forms; affirmation; procedure; form; executing witness form; certified facsimiles of documents; procedure; form; liability; fines and imprisonment; liability of notary and sureties; liability of employer of notary; proximate cause; revocation of commission; action for injunction; certificate of authority.

Be it enacted by the Legislature of West Virginia:

That sections two, two-a, two-b, nine, ten and eleven, article four, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that said code be amended by adding thereto a new chapter, designated chapter twenty-nine-c, to read as follows:

CHAPTER 29C. UNIFORM NOTARY ACT.

Article
4. Duties.
5. Forms and Procedures.
7. Revocation of Commission; Action for Injunction; Unauthorized Practice of Law.
ARTICLE 1. GENERAL PROVISIONS.


This article shall be known and may be cited as the “uniform notary act.”

§29C-1-102. Purposes and rules of construction.

(a) This article shall be construed and applied to promote its underlying purposes and policies.

(b) The underlying purposes and policies of this article are:

(1) To simplify, clarify and modernize the law governing notaries public;

(2) To make uniform notary laws among the states enacting it; and

(3) To promote, serve and protect the public interest.

(c) In this article, unless the context otherwise requires:

(1) Words in the singular number include the plural, and words in the plural number include the singular;

(2) Words of the masculine gender include the feminine and the neuter; and

(3) Words of the neuter gender may refer to any gender when the sense so indicates.

§29C-1-103. Prospective effect of chapter.

This article applies prospectively. Nothing in this article shall be construed to revoke any notary public commission existing on the effective date of this article. All renewals of notarial commissions shall be obtained in accordance with this article.
§29C-1-104. Construction against implicit repeal.
1 This article is intended to provide comprehensive and
2 unified coverage of the subject matter. Therefore, no part of
3 it shall be construed to be impliedly repealed or amended by
4 subsequent legislation if that construction can be avoided.

§29C-1-105. Notary public and notarization defined.
1 (a) The terms "notary public" or "notary" are used
2 interchangeably to mean any individual appointed and
3 commissioned to perform notarial acts.
4 (b) "Notarization" means the performance of a notarial
5 act.

§29C-1-106. Effective date.
1 This article shall take effect the first day of July, one
2 thousand nine hundred eighty-four.

ARTICLE 2. APPOINTMENT PROVISIONS.

PART I. OFFICE PROVISIONS.


§29C-2-102. Jurisdiction and term.

PART II. QUALIFYING.

§29C-2-201. Application.

§29C-2-202. Qualifying fee.

§29C-2-203. Applicant's endorsers.

§29C-2-204. Applicant's oath.

§29C-2-205. Bond.

§29C-2-206. Confidential application.

§29C-2-207. Specimen official signature.

§29C-2-208. Application by persons holding existing commissions.

PART III. GOVERNMENT NOTARIES.

§29C-2-301. State and local government employees.

PART I. OFFICE PROVISIONS.


1 (a) Upon application under this article, the governor
2 may appoint and commission persons as a notary public in
3 this state.

4 (b) The governor may not appoint and commission as a
notary public any person who submits an application containing substantial and material misstatement or omission of fact.

(c) The secretary of state shall administer the article and may issue rules and regulations, in accordance with the provisions of chapter twenty-nine-a, to make the article effective.

§29C-2-102. Jurisdiction and term.

Notaries may perform notarial acts in any part of this state for a term of ten years, unless sooner removed.

PART II. QUALIFYING.

§29C-2-201. Application.

Every applicant for appointment and commission as a notary public shall complete an application to be filed with the secretary of state stating:

(a) That he is a citizen of the United States, or if he is not a citizen of the United States, that he is a citizen or national of a country that permits American citizens to become notaries public therein;

(b) If he is a citizen of the United States, that he is a qualified elector of a state at the time of his application;

(c) That he is able to read and write English;

(d) The address of his business or residence in this state;

(e) His social security number, if he has one; and

(f) That during the past ten years his commission as a notary public has not been revoked.

§29C-2-202. Qualifying fee.

Every applicant for appointment and commission as a notary public shall pay to the secretary of state a fee of fifty dollars.

§29C-2-203. Applicant's endorsers.

Every applicant for appointment and commission as a notary public shall submit to the secretary of state
endorsements from three qualified electors of this state, in the following form:

I, ........................................ (name of endorser), a qualified elector of this state, believe to the best of my knowledge, the applicant is a person of good moral character and integrity and capable of performing notarial acts.

(Endorser's signature and address)

§29C-2-204. Applicant's oath.

Every applicant for appointment and commission as a notary public shall take the following oath in the presence of a person qualified to administer an oath in this state:

I, ........................................ (name of applicant), solemnly swear or affirm, under the penalty of perjury, that the answers to all questions in this application are true, complete and correct; that I have carefully read the notaries public law of this State; and, if appointed and commissioned as a notary public, I will perform faithfully, to the best of my ability, all notarial acts in accordance with the law.

(Signature of applicant)

Subscribed and sworn or affirmed before me this .... day of ....... , 19 .... The undersigned notary public further certifies that ........................................ (name of applicant), is known to me to be the applicant and elector who executed the within application for appointment and commission as a notary public and acknowledged to me that he or she executed the same for the purposes therein stated.

(Official signature and official seal of notary)

§29C-2-205. Bond.

Every applicant for appointment and commission as a notary public shall submit to the secretary of state an executed bond commencing at least thirty days after the date the applicant mails his application to the secretary of state with a term of ten years, in the sum of five hundred
6 dollars, with, as surety thereon, a company qualified to
7 write surety bonds in this state, or upon a personal surety,
8 such surety bond shall be signed in the office of the county
9 clerk of the county in which the notary or his surety resides:
10 Provided, That the county clerk shall certify that the surety
11 owns real property in that county of an assessed value of
12 more than double the amount of the bond: Provided,
13 however, That where the surety is not assessed with
14 sufficient property in the county in which bond is being
15 executed, justification of surety shall be required by the
16 clerk. The bond shall be conditioned upon the faithful
17 performance of all notarial acts in accordance with this
18 article.

§29C-2-206. Confidential application.

1 Information in the application for appointment, except
2 for the applicant's name and address, is confidential and
3 may not be disclosed by an official or employee having
4 access to it to any person other than the applicant, his
5 authorized representative, or an employee or officer of the
6 federal government, the state government or a local agency,
7 acting in his official capacity. Such information shall be
8 used by the governor and secretary of state for the sole
9 purpose of performing his duties under this article.

§29C-2-207. Specimen official signature.

1 Every applicant for appointment and commission as a
2 notary public shall mail or deliver to the secretary of state a
3 handwritten specimen of his official signature which
4 contains his surname and at least the initial of his first
5 name. The fee payable to the secretary of state for recording
6 a specimen of the official signature is two dollars.

§29C-2-208. Application by persons holding existing
commissions.

1 Persons holding notary commissions on the effective date
2 of this article and having been appointed pursuant to
3 former section two, article four, chapter twenty-nine of this
4 code, shall continue upon their bonds as previously posted
5 until the expiration of their respective notarial
6 commissions.
PART III. GOVERNMENT NOTARIES.

§29C-2-301. State and local government employees.

(a) The governor may appoint and commission such number of state and local government employees as notaries public, to act for and in behalf of their respective state and local government offices, as he deems proper. An appointee commissioned as a notary public under this section may act only for and in behalf of the government office or offices in which he is employed.

(b) An appointee under this section shall meet the requirements for qualification and appointment prescribed in article two of this article except that the head of the state or local government office where the applicant is employed may execute a certificate that the application is made for the purposes of the office and in the public interest and submit it to the governor together with the application for appointment as a notary public, in which case the fee for appointment specified in article two, section two hundred two, is waived.

(c) Premium on the bond and costs of all other notary supplies for a commissioned state or local government employee shall be paid for from funds available to the office in which he is employed.

(d) All fees received for notarial services by a notary public appointed for and in behalf of a state or local government office shall be remitted by him to the state or local government office in which he is employed.

(e) A notary public who is an employee of a state or local government office in this state must comply with all provisions of this article.

ARTICLE 3. POWERS.


§29C-3-102. Limitations on powers.


Every notary public is empowered to:

(1) Take acknowledgments;
§29C-3-102. Limitations on powers.

(a) A notary public who has a disqualifying interest, as hereinafter defined, in a transaction may not legally perform any notarial act in connection with the transaction.

(b) For the purposes of this article, a notary public has a disqualifying interest in a transaction in connection with which notarial services are requested if he:

(1) May receive directly, and as a proximate result of the notarization, any advantage, right, title, interest, cash or property, exceeding in value the sum of any fee properly received in accordance with section three hundred one article four of this chapter; or

(2) Is named, individually, as a party to the transaction.

ARTICLE 4. DUTIES.

PART I. SEAL AND SIGNATURE.

§29C-4-101. Official signature.
§29C-4-102. Rubber stamp seal.
§29C-4-103. Seal embosser.
§29C-4-104. Illegibility.

PART II. RECORD CHANGES.

§29C-4-201. Change of address.
§29C-4-202. Change of notary’s name.
§29C-4-203. Lost official seal.

PART III. FEES.

§29C-4-301. Maximum fees.

PART IV. TERMINATION OF COMMISSION.

§29C-4-401. Death.
§29C-4-402. Resignation or removal.
§29C-4-403. Revocation of commission.
§29C-4-404. Failure to be reappointed.
§29C-4-405. Reappointment.
PART I. SEAL AND SIGNATURE.

§29C-4-101. Official signature.

1 At the time of notarization a notary public shall sign his official signature on every notarial certificate.

§29C-4-102. Rubber stamp seal.

1 Under or near his official signature on every notarial certificate, a notary public shall rubber stamp clearly and legibly, so that it is capable of photographic reproduction:
   4 (a) The words “Official Seal”;
   5 (b) His name exactly as he writes his official signature;
   6 (c) The words “Notary Public,” “State of West Virginia” and “My Commission expires (commission expiration date)”;
   9 (d) The address of his business or residence in this state; and
   11 (e) A serrated or milled edge border in a rectangular form not more than one inch in width by two and one-half inches in length surrounding the information.

§29C-4-103. Seal embosser.

1 (a) Every notary public may provide, keep and use a seal embosser engraved to show the words “Notary Seal,” his name, “Notary Public,” and “State of West Virginia.”
   4 (b) The indentations made by the seal embosser shall not be applied on the notarial certificate or document to be notarized in a manner that will render illegible or incapable of photographic reproduction any of the printed marks or writing.

§29C-4-104. Illegibility.

1 The illegibility of any of the information required by sections one hundred one through one hundred three, article four, does not affect the validity of a transaction.

PART II. RECORD CHANGES.

§29C-4-201. Change of address.

1 Every notary public shall mail or deliver notice to the
2 secretary of state within thirty days after he changes the
3 address of his business or residence in this state. The fee
4 payable to the secretary of state for recording notice of
5 change of address is two dollars.

§29C-4-202. Change of notary's name.
1 Every notary public shall mail or deliver notice to the
2 secretary of state within thirty days after he changes his
3 name, including with the notification a specimen of his
4 handwritten official signature which contains his surname
5 and at least the initial of his first name. The fee payable to
6 the secretary of state for recording notice of change of
7 notary's name is two dollars.

§29C-4-203. Lost official seal.
1 Every notary public shall mail or deliver notice to the
2 secretary of state within thirty days after he loses or
3 misplaces his official seal. The fee payable to the secretary
4 of state for recording notice of a lost seal is two dollars.

PART III. FEES.

§29C-4-301. Maximum fees.
1 The maximum fee in this state for notarization of each
2 signature and the proper recordation thereof in the journal
3 of notarial acts is two dollars for each signature notarized.
4 (a) The maximum fee in this state for certification of a
5 facsimile of a document, retaining a facsimile in the
6 notary's file, and the proper recordation thereof in the
7 journal of notarial acts is two dollars for each eight and
8 one-half by eleven inch page retained in the notary's file.
9 (b) The maximum fee in this state is two dollars for any
10 other notarial act performed.
11 (c) A notary public who charges more than the
12 maximum fees specified is guilty of official misconduct.

PART IV. TERMINATION OF COMMISSION.

§29C-4-401. Death.
1 If a notary public dies during the term of his appointment,
2 his heirs or personal representative, as soon as reasonably
3 possible after the notary's death, shall send by certified
d4 mail or deliver to the secretary of state the deceased
5 notary's papers and copies relating to his notarial acts. His
6 heirs or personal representative shall destroy forthwith his
7 official seal.

§29C-4-402. Resignation or removal.
1 If a notary public no longer desires to be a notary public
2 or has ceased to have a business or residence address in this
3 state, he shall send forthwith by certified mail or deliver to
4 the secretary of state a letter of resignation and all papers
5 and copies relating to his notarial acts. He shall destroy
6 forthwith his official seal. His commission shall thereupon
7 cease to be in effect.

§29C-4-403. Revocation of commission.
1 Immediately after receiving notice from the secretary of
2 state that his commission has been revoked, the person
3 whose commission is revoked shall forthwith send by
4 certified mail or deliver to the secretary of state all papers
5 and copies relating to his notarial acts. He shall destroy
6 forthwith his official seal.

§29C-4-404. Failure to be reappointed.
1 A notary public who is not reappointed to act as a notary
2 public within thirty days after the expiration of his
3 commission shall send forthwith by certified mail or deliver
4 to the secretary of state all papers and copies relating to his
5 notarial acts. He shall destroy forthwith his official seal.

§29C-4-405. Reappointment.
1 (a) No person may be automatically reappointed as a
2 notary public.
3 (b) Every notary public who is an applicant for
4 reappointment as a notary public shall recomply with the
5 provisions of article two of this chapter.

ARTICLE 5. FORMS AND PROCEDURES.
§29C-5-101. Acknowledgment forms.
§29C-5-102. Oath; procedure; form.
§29C-5-103. Executing witness form.
§29C-5-104. Certified facsimiles of documents; procedure; form.
§29C-5-101. Acknowledgment forms.

1 (a) The forms of acknowledgment set forth in section six, article one-a, chapter thirty-nine of this code, and known as “statutory short forms of acknowledgment” may be used and are sufficient for their respective purposes under any law of this state, whether the acknowledgment was taken within or without this state.

7 (b) Certificates of acknowledgment for the following purposes may be substantially in the following respective form:

10 (1) By a United States citizen who is outside of the United States ................. (description or location of place where acknowledgment is taken).

13 On this ...... day of .............., in the year ......, before me ................. (name and title of person acting as a notary and refer to law or authority granting power to act as a notary), personally appear .............. .............. (name of citizen) known to me to be the person who executed the within .............. .............. (type of document) and acknowledged to me that ...... (he) executed the same for the purposes therein stated.

21 (Official signature and official seal of person acting as a notary and refer to law or authority granting power to act as a notary)

25 (2) By an individual who cannot write his name,

26 State of .............., County of .............., .........

27 On this ...... day of .............., in the year ......, before me ................. (name of notary), a notary public in and for said state, personally appeared .............. .............. (name of individual), known to me to be the person who, being unable to write his name, made his mark in my presence. I signed his name at his request and in his presence on the within .............. (type of document) and he acknowledged to me and the two witnesses who have signed and printed their names and
36 addresses hereto, that he made his mark on the same for the
37 purposes therein stated.
38 .................................................................
39 (Official signature and official seal of notary)
40 .................................................................
41 (Signatures of two witnesses and their addresses)

§29C-5-102. Oath; procedure; form.
1 (a) If the oath to be administered by the notary public is
2 in writing and the person who took the oath has signed his
3 name thereto, the notary public shall write or print under
4 the text of the oath the following:
5 “Subscribed and sworn before me this ........ day of
6 ........................................, 19........”
7 .................................................................
8 (Official signature and official seal of notary)

9 (b) If the oath to be administered by the notary public is
10 not in writing, the notary public shall address the affirmant
11 substantially as follows:
12 You do solemnly swear, under the penalty of perjury, that
13 the testimony you shall give in the matter in issue, pending
14 between ........................................ and ....................,
15 shall be the truth, the whole truth, and nothing but the
16 truth, so help you God?”

§29C-5-103. Executing witness form.
1 (a) “Executing witness” as used in this section means an
2 individual who acts in the place of a notary.
3 (b) An executing witness may not be related by blood or
4 marriage or have a disqualifying interest as defined in
5 subsection (b), section one hundred two, article three of this
6 chapter.
7 (c) The affidavit of executing witness for
8 acknowledgment by an individual who does not appear
9 before a notary shall be substantially in the following form:
I, ....................... (name of executing witness),
do solemnly swear under the penalty of perjury, that
.......... (name of person who does not appear
before a notary), personally known to me, has executed the
within ............. (type of document) in my presence,
and has acknowledged to me that ........ (he) executed the
same for the purposes therein stated and requested that I
sign my name on the within document as an executing
witness.

.......................................................... 
(Signature of executing witness)

Subscribed and sworn before me this ........ day of
................................., 19........

(Official signature and official seal of notary)

§29C-5-104. Certified facsimiles of documents; procedure;
form.

(a) A notary public may certify a facsimile of a
document if he receives a signed written request stating
that:

(1) A certified copy or facsimile of the document cannot
be obtained from the office of any recorder of public
documents or custodian of documents in this state; and

(2) The production of a facsimile, preparation of a copy
or certification of a copy of the document does not violate
any state or federal law.

(b) Every notary public shall retain a facsimile of each
document he has certified as a facsimile of another
document, together with other papers or copies relating to
his notarial acts.

(c) The certification of a facsimile shall be substantially
in the following form:

State of ..................., County of ..................

I, ....................... (name of notary), a notary public
in and for said state, do certify that on ........... (date) I
carefully compared the attached facsimile of ...........
(type of document) and the facsimile I now hold in my
ARTICLE 6. LIABILITY, FINES AND IMPRISONMENT.

PART I. LIABILITY.

§29C-6-101. Liability of notary and sureties.

A notary public and the surety or sureties on his bond are liable to the persons involved for all damages proximately caused by the notary's official misconduct.

§29C-6-102. Liability of employer of notary.

The employer of a notary public is also liable to the persons involved for all damages proximately caused by the notary's official misconduct, if:

(a) The notary public was acting within the scope of his employment at the time he engaged in the official misconduct; and

(b) The employer consented to the notary public's official misconduct.

§29C-6-103. Proximate cause.

It is not essential to a recovery of damages that a notary's official misconduct be the only proximate cause of the damages.

PART II. MISCONDUCT.

§29C-6-201. Official misconduct defined.

The term "official misconduct" means the wrongful
exercise of a power or the wrongful performance of a duty. The term “wrongful” as used in the definition of official misconduct means unauthorized, unlawful, abusive, negligent, reckless or injurious.

1 (a) A notary public who knowingly and willfully commits any official misconduct is guilty of a misdemeanor, and, upon conviction, shall be fined not more than five thousand dollars or imprisoned in the county jail not more than one year or both fined and imprisoned.
2 (b) A notary public who recklessly or negligently commits any official misconduct is guilty of a misdemeanor, and, upon conviction, shall be fined not more than one thousand dollars.

§29C-6-203. Willful impersonation.
1 Any person who acts as, or otherwise willfully impersonates, a notary public while not lawfully appointed and commissioned to perform notarial acts is guilty of a misdemeanor, and, upon conviction, shall be fined not more than five thousand dollars or imprisoned in the county jail not more than one year, or both fined and imprisoned.

§29C-6-204. Wrongful possession.
1 Any person who unlawfully possesses a notary’s official seal or any papers or copies relating to notarial acts, is guilty of a misdemeanor, and, upon conviction, shall be fined not more than one thousand dollars.

ARTICLE 7. REVOCATION OF COMMISSION; ACTION FOR INJUNCTION; UNAUTHORIZED PRACTICE OF LAW.

PART I. Revocation.
§29C-7-101. Revocation of commission.

PART II. INJUNCTIONS.
§29C-7-201. Action for injunction; unauthorized practice of law.
§29C-7-202. Remedies additional to those now existing.

PART I. Revocation.
§29C-7-101. Revocation of commission.
1 The governor or secretary of state may revoke the
commission of any notary public who during the current
term of appointment:

(a) Submits an application for commission and
appointment as a notary public which contains substantial
and material misstatement or omission of fact;

(b) Is convicted of any felony or official misconduct
under this article;

(c) Fails to exercise the powers or perform the duties of a
notary public in accordance with this article;

(d) Is adjudged liable in any suit grounded in fraud,
representation, impersonation or violation of the state
regulatory laws of this state, if his liability is not solely by
virtue of his agency or employment relationship with
another who engaged in the act for which the suit was
brought;

(e) Represents or implies from unauthorized use of his
title of notary public that he has qualifications, powers,
duties, rights or privileges that by law he does not possess;

(f) Allows or permits his name or his title of notary
public to be used deceptively, fraudulently or in false or
misleading advertising;

(g) Engages in the unauthorized practice of law;

(h) Ceases to be a citizen of the United States or a
national of a country which permits American citizens to
become notaries public therein;

(i) Ceases to be a qualified elector of a state;

(j) Ceases to have a business or residence address in this
state; or

(k) Becomes incapable of reading and writing the
English language.

A notary's commission may be revoked under the
provisions of this article only if action is taken subject to the
rights of the notary public to notice, hearing, adjudication
and appeal.
PART II. INJUNCTIONS.

§29C-7-201. Action for injunction; unauthorized practice of law.
1 Upon his own information or upon complaint of any person, the attorney general, or his designee, may maintain an action for injunctive relief in circuit court against any notary public who renders, offers to render or holds himself out as rendering any service constituting the unauthorized practice of the law. Any organized bar association in this state may intervene in the action, at any stage of the proceeding, for good cause shown. The action may also be maintained by an organized bar association in this state or by the secretary of state.

§29C-7-202. Remedies additional to those now existing.
1 The remedies provided in article seven are in addition to, and not in substitution for, other available remedies.

ARTICLE 8. CERTIFICATE OF AUTHORITY.

1 Upon the receipt of a written request, the notarized document and a fee of two dollars payable to the secretary of state, the office of the secretary of state shall provide a certificate of authority in substantially the following form:

I, ........................................ ..... (secretary of state of the State of West Virginia, which office is an office of record having a seal) certify that ......................... (notary's name), by whom the foregoing or annexed document was notarized, was, at the time of the notarization of the same, a notary public authorized by the laws of this state to act in this state and to notarize the within ....................... (type of document), and I further certify that the notary's signature on the document is genuine to the best of my knowledge, information and belief and that such notarization was executed in accordance with the laws of this state.

In testimony whereof, I have affixed my signature and the seal of the State of West Virginia, this ............... day of ................................., 19 ....

........................................................
(Certifying officer's signature, title, jurisdiction, address and the seal affixed near the signature)
AN ACT to amend and reenact sections one-d and one-e, article four, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to and increasing the limit on salaries for the supervising inspector and inspectors in the office of oil and gas and continuing and reestablishing the oil and gas inspectors' examining board within the department of mines.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. OIL AND GAS WELLS.

§ 22-4-1d. Oil and gas inspectors; eligibility for appointment; qualifications; salary; expenses; removal.

§ 22-4-1e. Oil and gas inspectors' examining board created; composition; appointment, term and compensation of members; meetings; powers and duties generally; continuing and reestablishing the oil and gas inspectors' examining board.

§ 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.

(b) 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.

(c) The salary of the supervising inspector shall be not less than twenty-seven thousand five hundred dollars per annum. Salaries of inspectors shall be not less than twenty-two 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.

(d) An inspector or the supervising inspector, after having received a permanent appointment, shall be removed from office only for physical or mental
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-le. Oil and gas inspectors' examining board created; composition; appointment, term and compensation of members; meetings; powers and duties generally; continuing and reestablishing the oil and gas inspectors' examining board.

(a) There is hereby created an oil and gas inspectors' examining board consisting of five members who, except for the public representative on such board, shall be appointed by the governor, by and with the advice and consent of the Senate. Members may be removed only for the same causes and like manner as elective state officers. One member of the board who shall be the representative of the public, shall be a professor in the petroleum engineering department of the school of mines at West Virginia University appointed by the dean of said school; two members shall be persons who by reason of previous training and experience may reasonably be said to represent the viewpoint of independent oil and gas
operators; and two members shall be persons who by reason of previous training and experience may reasonably be said to represent the viewpoint of major oil and gas producers.

The administrator for oil and gas shall be an ex officio member of the board and shall serve as secretary of the board without additional compensation, but he shall have no right to vote with respect to any matter before the board.

The members of the board, except the public representative, shall be appointed for overlapping terms of eight years, except that the original appointments shall be for terms of two, four, six and eight years, respectively. Any member whose term expires may be reappointed by the governor.

Each member of the board shall receive seventy-five dollars per diem while actually engaged in the performance of the work of the board, and shall receive mileage at the rate of not more than fifteen cents for each mile actually traveled going from the home of the member to the place of the meeting of the board and returning therefrom, which shall be paid out of the state treasury upon a requisition upon the state auditor, properly certified by such members of the board.

The public member shall serve as chairman of the board.

Members of the board, before performing any duty, shall take and subscribe to the oath required by section five, article four of the constitution of West Virginia.

The board shall meet at such times and places as shall be designated by the chairman. It shall be the duty of the chairman to call a meeting of the board on the written request of two members, or on the written request of the administrator for oil and gas or the director of the department of mines. Notice of each meeting shall be given in writing to each member by the secretary at least five days in advance of the meeting. Three voting members shall constitute a quorum for the transaction of business.

(b) In addition to other powers and duties expressly set forth elsewhere in this article, the board shall:

(1) Establish, and from time to time revise, forms of
application for employment as an oil and gas inspector and
supervising inspector and forms for written examinations
to test the qualifications of candidates, with such
distinctions, if any, in the forms for oil and gas inspector
and supervising inspector as the board may from time to
time deem necessary or advisable;

(2) Adopt and promulgate reasonable rules and
regulations relating to the examination, qualification and
certification of candidates for appointment, and relating to
hearings for removal of inspectors or the supervising
inspector, required to be held by this article. All of such
rules and regulations shall be printed and a copy thereof
furnished by the secretary of the board to any person upon
request;

(3) Conduct, after public notice of the time and place
thereof, examinations of candidates for appointment. By
unanimous agreement of all members of the board, one or
more members of the board or an employee of the
department of mines may be designated to give to a
candidate the written portion of the examination;

(4) Prepare and certify to the administrator for oil and
gas and the director of the department of mines a register of
qualified eligible candidates for appointment as oil and gas
inspectors or as supervising inspectors, with such
differentiation, if any, between the certification of
candidates for oil and gas inspectors and for supervising
inspectors as the board may from time to time deem
necessary or advisable. The register shall list all qualified
eligible candidates in the order of their grades, the
candidate with the highest grade appearing at the top of the
list. After each meeting of the board held to examine such
candidates and at least annually, the board shall prepare
and submit to the administrator for oil and gas and the
director of the department of mines a revised and corrected
register of qualified eligible candidates for appointment,
deleting from such revised register all persons (a) who are
no longer residents of West Virginia, (b) who have allowed a
calendar year to expire without, in writing, indicating their
continued availability for such appointment, (c) who have
been passed over for appointment for three years, (d) who
92 have become ineligible for appointment since the board
93 originally certified that such persons were qualified and
94 eligible for appointment, or (e) who, in the judgment of at
95 least three members of the board, should be removed from
96 the register for good cause;

97 (5) Cause the secretary of the board to keep and preserve
98 the written examination papers, manuscripts, grading
99 sheets and other papers of all applicants for appointment
100 for such period of time as may be established by the board.
101 Specimens of the examinations given, together with the
102 correct solution of each question, shall be preserved
103 permanently by the secretary of the board;

104 (6) Issue a letter or written notice of qualification to
105 each successful eligible candidate;

106 (7) Hear and determine proceedings for the removal of
107 inspectors or the supervising inspector in accordance with
108 the provisions of this article;

109 (8) Hear and determine appeals of inspectors or the
110 supervising inspector from suspension orders made by the
111 administrator for oil and gas pursuant to the provisions of
112 section one-a of this article: Provided, That in order to
113 appeal from any order of suspension, an aggrieved
114 inspector or supervising inspector shall file such appeal in
115 writing with the oil and gas inspectors' examining board
116 not later than ten days after receipt of the notice of
117 suspension. On such appeal the board shall affirm the
118 action of the administrator for oil and gas unless it be
119 satisfied from a clear preponderance of the evidence that
120 the administrator for oil and gas has acted arbitrarily;

121 (9) Make an annual report to the governor concerning
122 the administration of oil and gas inspection personnel in the
123 state service; making such recommendations as the board
124 considers to be in the public interest; and

125 (10) Render such advice and assistance to the
126 administrator for oil and gas as he shall from time to time
127 determine necessary or desirable in the performance of his
128 duties.
(c) 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 oil and gas inspectors' examining board within the department of mines should be continued and reestablished. Accordingly, notwithstanding the provisions of section four, article ten, chapter four of this code, the oil and gas inspectors' examining board within the department of mines shall continue to exist until the first day of July, one thousand nine hundred eighty-seven.

CHAPTER 138
(S. B. 87—By Senator Tucker)

|Passed February 29, 1984: in effect ninety days from passage. Approved by the Governor.|

AN ACT to amend article four, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four-b, relating to free use of picnic shelters in state parks and recreation areas by individuals donating materials and labor and constructing such shelters with the consent of the director of the department of natural resources.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. PARKS AND RECREATION.

§20-4-4b. Free use of picnic shelters in state parks and recreation areas.

1 The director, or any other officer, employee or agent of the department of natural resources, may not charge a private individual or group of individuals constructing a
picnic shelter in a state park or recreation area any fee for
the use of that picnic shelter for one reserved date during
the calendar year for recreational purposes, so long as the
private individual or group of individuals donated the
materials and labor for the shelter and was authorized by
the director to construct the same.

CHAPTER 139
(Com. Sub. for S. B. 482—By Senator Lucht)

[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to licenses to practice medicine, surgery and podiatry; educational training permits; temporary licenses and permits; extension of time in which temporary permittees must become licensed.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-10. Licenses to practice medicine and surgery or podiatry; educational training permits; temporary licenses and permits.

(a) The board shall issue a license to practice medicine
and surgery or to practice podiatry to any individual who
is qualified to do so in accordance with the provisions of
this article.

(b) For an individual to be licensed to practice medi-
cine and surgery in this state, he must meet the follow-
ing requirements:

(1) He shall submit an application to the board on a
form provided by the board and remit to the board an
examination fee not to exceed two hundred fifty dollars, 
the amount of such fee to be set by the board. The ap-
lication must, as a minimum, require a sworn and notar-
ized statement that the applicant is of good moral 
character and that he is physically and mentally capable 
of engaging in the practice of medicine and surgery;

(2) He must provide evidence of graduation and receipt 
of the degree of doctor of medicine or its equivalent from 
a school of medicine which is approved by the liaison 
committee on medical education or by the board;

(3) He must submit evidence to the board of having 
completed a minimum of one year of graduate clinical 
training in a program approved by the board; and

(4) He must pass an examination approved by the 
board, which examination can be related to a national 
standard. The examination shall be in the English 
language and be designed to ascertain an applicant's fit-
ness to practice medicine and surgery. The board shall 
before the date of examination determine what will 
constitute a passing score: Provided, That the said board, 
or a majority of them, may accept in lieu of an examina-
tion of applicants, the certificate of the national board 
of medical examiners issued within the previous eight 
years, or diplomate certificate from an American special-
ty board: Provided, however, That any certificate or 
license to practice which is granted by the board by vir-
tue of such diplomate certificate shall only be valid so 
long as the holder thereof maintains such diplomate 
certificate in good standing with the applicable Ameri-
can specialty board and no longer and such certification 
shall be limited to that specific specialty in the practice 
of medicine and surgery in this state. If an applicant 
fails to pass the examination on two occasions, he shall 
successfully complete a course of study or training, as 
approved by the board, designed to improve his ability 
to engage in the practice of medicine and surgery, before 
being eligible for reexamination: Provided further, That 
said board is required to establish a program that will 
assist all temporary license holders in preparing for and
passing the medical examination prescribed by it: And provided further, That said board shall maintain the program until the first day of July, one thousand nine hundred eighty-four, and shall make an annual report of its activities to the Legislature for each year the program is maintained.

(c) In addition to the requirements of subsection (b) hereof, any individual who has received the degree of doctor of medicine or its equivalent from a school of medicine located outside of the United States, the Commonwealth of Puerto Rico and Canada, to be licensed to practice medicine in this state, must also meet the following additional requirements and limitations:

(1) He must be able to demonstrate to the satisfaction of the board his ability to communicate in the English language; and

(2) He must have fulfilled the requirements of the educational council for foreign medical graduates for certification before taking a licensure examination, including the receipt of a passing score on the educational council for foreign medical graduates examination; and

(3) An individual subject to the provisions of this subsection shall not be awarded a temporary permit unless such individual was a bona fide resident of this state for the six-month period preceding the filing of his application for such temporary permit: Provided, That an individual subject to the provisions of this subsection who did not hold a temporary permit before June eight, one thousand nine hundred seventy-nine, shall be ineligible for a temporary permit if he has failed to pass the medical examination prescribed by the board on two or more occasions.

(d) For an individual to be licensed to practice podiatry in this state, he must meet the following requirements:

(1) He shall submit an application to the board on a form provided by the board and remit to the board an examination fee not to exceed two hundred fifty dollars, the amount of such fee to be set by the board. The ap-
Application must, as a minimum, require a sworn and notarized statement that the applicant is of good moral character and that he is physically and mentally capable of engaging in the practice of podiatric medicine;

(2) He must provide evidence of graduation and receipt of the degree of doctor of podiatric medicine or its equivalent from a school of podiatric medicine which is approved by the council of podiatry education or by the board;

(3) He must pass an examination approved by the board, which examination can be related to a national standard. The examination shall be in the English language and be designed to ascertain an applicant's fitness to practice podiatric medicine. The board shall before the date of examination determine what will constitute a passing score. If an applicant fails to pass the examination on two occasions, he shall successfully complete a course of study or training, as approved by the board, designed to improve his ability to engage in the practice of podiatric medicine, before being eligible for reexamination.

(e) An individual meeting the requirements set forth in subdivisions (1) and (2), subsection (b) and subdivisions (1) and (2), subsection (c), if applicable, of this section, may be granted an educational training permit to practice medicine and surgery. Such permits shall authorize the permit holder to practice medicine and surgery only under the supervision of a licensed physician in a training program approved by the liaison committee on graduate medical education or the board. The board may fix and collect a fee not to exceed fifty dollars for this class of permit.

(f) If the board determines that the public health in a specified geographical area of the state requires such action, the board may grant a temporary permit to an individual who meets the requirements set forth in subdivisions (1) and (2), subsection (b) and subdivisions (1) and (2), subsection (c), if applicable, of this section. Such license shall be limited to the specified geographical
area and shall be valid for a period of not more than one year. The board may fix and collect a fee not to exceed fifty dollars for this class of temporary permit.

(g) All licenses or temporary permits granted prior to the effective date of this article and valid on the effective date of this article shall continue in full effect for such term and under such conditions as provided by law at the time of the granting of the license or temporary permit: Provided, That any physician who has been certified by the educational council for foreign medical graduates or who, as of the effective date of this section, holds a temporary permit to practice in a prescribed area, shall not when under the supervision of a licensed physician be ineligible for a temporary license permit to practice in any mental health or state-owned facility and in any hospital, clinic, physician's office and any other approved health care facility until the first day of July, one thousand nine hundred eighty-five, by virtue of his failure to pass the medical examination prescribed by the board, so long as such physician shall take said examination at least once each year: Provided, however, That, such physician shall be enrolled in an educational program approved by the board that will assist him in preparing for the examination and that the program sponsored by the University of Charleston shall be deemed to be so approved: Provided further, That any such physician granted a temporary permit who fails to pass the medical examination prescribed by the board before the first day of July, one thousand nine hundred eighty-five, shall be thereafter disqualified from obtaining any further temporary permits in this state; And provided further, That notwithstanding any provision of law to the contrary, the name, address, and type of license or permit held by any physician shall be public information: And provided further, That the provisions of subsection (d) of this section shall not apply to any person legally entitled to practice chiropody or podiatry in this state prior to June eleventh, one thousand nine hundred sixty-five: And provided further, That all persons licensed to practice chiropody prior to June eleventh, one thousand nine
hundred sixty-five, shall be permitted to use the term “chiropody-podiatry” and shall have the rights, privileges and responsibilities of a podiatrist set out in this article.

CHAPTER 140
(5. B. 100—By Senator Kaufman)

[Passed March 8, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the unauthorized practice of medicine and surgery or podiatry; penalties; setting forth exceptions; providing that the fitting or sale of prosthetic or orthotic devices, in accord with a prescription as required by this section, by duly certified practitioners and registered technicians in prosthetics and orthotics is exempted from medical licensure requirements; providing that any partnership, proprietorship or corporation employing such practitioners or technicians is exempted from medical licensure requirements; permitting such practitioners or technicians to make recommendations to certain specified persons; and excluding the services of a physician’s assistant from the effect of this section.

Be it enacted by the Legislature of West Virginia:

That section thirteen, 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.

§30-3-13. Unauthorized practice of medicine and surgery or podiatry; criminal penalties; limitations.

(a) A person shall not engage in the practice of medicine and surgery or podiatry, hold himself out as qualified
to practice medicine and surgery or podiatry or use any
title, word or abbreviation to indicate to or induce
others to believe that he is licensed to practice medicine
and surgery or podiatry in this state unless he is actually
licensed under the provisions of this article. Any person
who violates the provisions of this subsection is guilty of
a misdemeanor, and, upon conviction thereof, shall be
fined not more than ten thousand dollars, or imprisoned
in the county jail not more than twelve months, or both
fined and imprisoned.

(b) The provisions of this section do not apply to:

(1) Persons who are duly licensed health care providers
under other pertinent provisions of this code and are
acting within the scope of their license;

(2) Physicians or podiatrists licensed in other states or
foreign countries who are acting in a consulting capac-
ity with physicians or podiatrists duly licensed in this
state, for a period of not more than three months;

(3) Persons holding licenses granted by another state
or foreign country who are commissioned medical of-
ficers of, a member of or employed by the armed forces
of the United States, the United States public health ser-
vice, the veterans' administration of the United States,
any federal institution or any other federal agency while
engaged in the performance of their official duties;

(4) Any person providing first-aid care in emergency
situations;

(5) The practice of the religious tenets of any recog-
nized church in the administration of assistance to the
sick or suffering by mental or spiritual means;

(6) Visiting medical faculty engaged in teaching or
research duties at a medical school or institution recog-
nized by the board and who are in this state for periods
of not more than six months: Provided, That such indi-
viduals do not otherwise engage in the practice of medi-
(7) Persons enrolled in a school of medicine approved by the liaison committee on medical education or by the board, or persons enrolled in a school of podiatric medicine approved by the council of podiatry education or by the board, or engaged in graduate medical training in a program approved by the liaison committee on graduate medical education or the board who are performing functions in the course of training;

(8) The fitting, recommending or sale of corrective shoes, arch supports or similar mechanical appliances in commercial establishments; and

(9) The fitting or sale of a prosthetic or orthotic device not involving any surgical procedure, in accord with a prescription of a physician, osteopathic physician, or where chiropractors or podiatrists are authorized by law to prescribe such a prosthetic or orthotic device, in accord with a prescription of a chiropractor or podiatrist, by a practitioner or registered technician certified by the American Board for Certification of Orthotics and Prosthetics in either prosthetics or orthotics: Provided, That the sale of any such prosthetic or orthotic device by a partnership, proprietorship or corporation which employs such a practitioner or registered technician who fitted such prosthetic or orthotic device shall not constitute the unauthorized practice of medicine: Provided, however, That such practitioner or registered technician may, without a prescription, make recommendation solely to a physician or osteopathic physician or to a chiropractor or podiatrist otherwise authorized by law to prescribe a particular prosthetic or orthotic device, regarding any prosthetic or orthotic device to be used for a patient upon a request for such recommendation.

(c) This section shall not be construed as being in any way a limitation upon the services of a physician's assistant performed in accordance with the provisions of this article.
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; and to amend and reenact sections one and twelve-b, article five of said chapter, all relating to permitting certain authorized Type A physician assistants to prescribe drugs at the direction of a supervising physician under specific circumstances; directing the establishment of regulations by the board of medicine limiting the drugs which may be so prescribed; definitions enabling pharmacists to dispense drugs approved by the board of medicine when ordered by an authorized Type A physician assistant at the direction of his or her supervising physician.

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; and that sections one and twelve-b, article five of said chapter be amended and reenacted, all to read as follows:


§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.

(a) As used in this section:
(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;

(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 postgraduate training in a recognized nonprimary care clinical specialty or has received additional training from a physician adequate to qualify him or her 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 or her 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 or she is trained and that he or she 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 or her 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 and in the case of certain authorized Type A physician assistants to prescribe at the direction of his or her supervising physician in accordance with subsection (1) of this section those categories of drugs submitted to it in the job description required by subsection (i) 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 or she has met the following standards:

(1) He or she is a graduate of an approved program of instruction in primary health care;

(2) He or she 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 or she 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 or she has met the following standards:

(1) He or she is of good moral character;

(2) He or she 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 postgraduate training in a recognized nonprimary care clinical specialty or has received additional training from a physician
adequate to qualify him or her to perform patient services in that specialty as defined by the supervising physician; or

(3) He or she 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 has not been certified as such by the National Board of Medical Examiners on behalf of the National Commission on Certification of Physician Assistants will be restricted to work under the direct supervision of the supervising physician.

(f) When any person who meets the qualifications for a Type B physician assistant as defined in this section and who submits an application accompanied by a job description for a Type B physician assistant certificate, the board may certify such applicant as a Type B physician assistant for a period of four months. Upon expiration of the four-month temporary certification, the board may certify the applicant as a Type B physician assistant. The Type B physician assistant will be restricted to work under the direct supervision of the supervising physician until he or she has passed either the examination for surgical assistants or the examination for primary care physician assistants administered by the National Board of Medical Examiners on behalf of the National Commission on Certification of Physician Assistants.

(g) Certification of a Type B physician assistant is subject
to review and recertification after every three-year period following the first certification. Recertification requires a report from the supervising physician of a Type B physician assistant which must include a performance evaluation, a summary of experience or continuing medical education and any proposed change in job description.

(h) The board may certify as a physician assistant in this state without examination any person who has been certified or licensed by examination in another state of the United States which has requirements substantially equivalent to the requirements of this section.

(i) Any physician applying to the board to supervise either a Type A or Type B physician assistant shall provide a job description that sets forth the range of medical services to be provided by such assistant. Before a physician assistant can be employed or otherwise use his or her skills, the supervising physician must obtain approval of the job description from the board. The board may revoke or 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 or her supervision. He or she shall notify the board in writing of any termination of his or her 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 or her 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 or her and specifies his or her type of classification and the name of his or her 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.

(1) A Type A physician assistant providing primary care outpatient services in a medically underserved area or other area of need, both as defined by the board, may write or sign prescriptions or transmit prescriptions by word of mouth, telephone or other means of communication at the direction of his or her supervising physician. The board shall promulgate rules and regulations governing the eligibility and extent to which such a Type A physician assistant may prescribe at the direction of the supervising physician. The regulations shall provide for a state formulary classifying pharmacologic categories of drugs which may be prescribed by such a Type A physician assistant. In classifying such pharmacologic categories, those categories of drugs which shall be excluded shall include, but not limited to, Schedules I and II of the Uniformed Controlled Substances Act, anticoagulants, antineoplastics, antipsychotics, radiopharmaceuticals, general anesthetics and radiographic contrast materials. Drugs listed under schedule III shall be limited to a forty-eight hour supply without refill. The regulations shall provide that all pharmacological categories of drugs to be prescribed by a Type A physician assistant shall be listed in each job description submitted to the board as required in subsection (i) of this section. The regulations shall provide the maximum dosage a Type A physician assistant may prescribe. The regulation shall also provide that to be eligible for such prescription privileges, a Type A physician assistant shall have performed patient care services for a minimum of two years immediately preceding the submission to the board of the job description containing prescription privileges and shall have successfully completed an accredited course of instruction in clinical pharmacology approved by the board. The regulations shall also provide that to maintain prescription privileges, a physician assistant shall continue to maintain national certification as a physician assistant, and in meeting such national certification requirements shall complete a minimum of ten hours of continuing education in rational drug therapy in each
certification period. Nothing in this subsection shall be construed to permit a Type A physician assistant to independently prescribe or dispense drugs.

(m) A supervising physician shall not supervise at any one time more than two physician assistants.

A physician assistant shall not sign any prescription, except in the case of an authorized Type A physician assistant at the direction of his or her supervising physician in accordance with the provisions of subsection (l) of this section. A physician assistant shall not perform any service that his or her supervising physician is not qualified to perform. A physician assistant 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.

(n) 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.

(o) 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 or she 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.

(p) It is unlawful for any physician assistant to represent to any person that he or she 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.
ARTICLE 5. PHARMACISTS, ASSISTANT PHARMACISTS AND DRUGSTORES.

§30-5-1. Definitions.
§30-5-12b. Definitions; selection of generic drug products.

§30-5-1. Definitions.

1 The following words and phrases as used in this article, shall have the following meanings, unless the context otherwise requires:

(1) The term "drug" means (a) articles in the official United States Pharmacopoeia, or official National Formulary, or any other supplement to either of them, which are intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals, and (b) all other articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals, and (c) articles, other than food, intended to affect the structure or any function of the body of man or other animals and (d) articles intended for use as a component of any articles specified in clause (a), (b) or (c).

(2) The term "poisonous drug" means any drug likely to be destructive to adult human life in quantities of five grains or less.

(3) The term "deleterious drug" means any drug likely to be destructive to adult human life in quantities of sixty grains or less.

(4) The term "habit-forming drug" means any drug which has been or may be designated as habit forming under the regulations promulgated in accordance with section 502 (d) of the Federal Food, Drug and Cosmetic Act of June twenty-fifth, one thousand nine hundred thirty-eight.

(5) The term "pharmacy" or "drugstore" or "apothecary" shall be held to mean and include every store or shop or other place (a) where drugs are dispensed or sold at retail or displayed for sale at retail; or (b) where physicians' prescriptions are compounded; or (c) which has upon it or displayed within it, or affixed to or used in connection
with it, a sign bearing the word or words "pharmacy," "pharmacists," "apothecary," "drugstore," "drugs," "druggists," "medicine," "medicine store," "drug sundries," "remedies" or any word or words of similar or like import; or (d) any store or shop or other place, with respect to which any of the above words are used in any advertisement.

(6) The term "prescription" shall be held to mean an order for drugs or medicines or combinations or mixtures thereof, written or signed by a duly licensed physician, an authorized Type A physician assistant at the direction of his or her supervising physician in accordance with the provisions of section sixteen, article three of this chapter, dentist, optometrist, as authorized by section two, article eight of this chapter, veterinarian or other medical practitioner licensed to write prescriptions intended for the treatment or prevention of disease of man or animals. Any prescription written or signed by an authorized Type A physician assistant shall be imprinted with the name of his or her supervising physician, the name of the physician assistant, and a list of drugs approved under the Type A physician assistant's job description, in accordance with the provisions of section sixteen, article three of this chapter.

The term "prescription" shall also include orders for drugs or medicines or combinations or mixtures thereof transmitted to the pharmacist by word of mouth, telephone or other means of communication by a duly licensed physician, an authorized Type A physician assistant, dentist, optometrist, veterinarian or other medical practitioner licensed to write prescriptions intended for treatment or prevention of disease of man or animals, and such prescriptions received by word of mouth, telephone or other means of communication shall be recorded in writing by the pharmacist and the record so made by the pharmacist shall constitute the original prescription to be filed by the pharmacist. A pharmacist receiving a prescription by word of mouth, telephone or other means of communication from an authorized Type A physician assistant shall require a copy of the list of drugs approved under the job description of such Type A physician assistant prior to accepting such orders. All such descriptions shall be
preserved on file for a period of five years, subject to in-
spection by the proper officer of the law. The above shall
apply except for narcotic prescriptions, when all narcotic
laws and regulations must be compiled with.

(7) The term "cosmetic," which shall be held to include
"dentifrice" and "toilet article," means (a) articles intended
to be rubbed, poured, sprinkled or sprayed on, introduced
into, or otherwise applied to the human body, or any part
thereof for cleansing, beautifying, promoting attractiveness
or altering the appearance, and (b) articles intended for use
as a component of any such articles, except that such term shall
not include soap.

§30-5-12b. Definitions; selection of generic drug products.

(a) As used in this section:

(1) "Brand name" means the proprietary or trade name
selected by the manufacturer and placed upon a drug or drug
product, its container, label or wrapping at the time of pack-
aging.

(2) "Generic name" means the official title of a drug or
drug combination for which a new drug application, or an
abbreviated new drug application, has been approved by the
United States food and drug administration and is in effect.

(3) "Substitute" means to dispense without the prescriber's
express authorization a therapeutically equivalent generic drug
product in the place of the drug ordered or prescribed.

(4) "Equivalent" means drugs or drug products which are
the same amounts of identical active ingredients and same
dosage form, and which will provide essentially the same
therapeutic efficacy and toxicity when administered to an
individual.

(5) "Practitioner" means a physician, an authorized Type
A physician assistant at the direction of his or her super-
vising physician in accordance with the provisions of section
sixteen, article three of this chapter, osteopath, dentist, veter-
inarian, podiatrist, optometrist or any other person duly licens-
ed to practice and to prescribe drugs under the laws of this state.

(b) A pharmacist who receives a prescription for a brand name drug or drug product shall substitute a less expensive equivalent generic name drug or drug product unless in the exercise of his or her professional judgment the pharmacist believes that the less expensive drug is not suitable for the particular patient: Provided, That no substitution may be made by the pharmacist where the prescribing practitioner indicates that, in his or her professional judgment, a specific brand name drug is medically necessary for a particular patient. Every drug prescription order shall contain an instruction on whether or not an equivalent generic name drug or drug product may be substituted.

If a written prescription is involved, the prescription or chart order form shall have two signature lines at opposite ends on the bottom of the form. Under the signature line at the left side shall be clearly printed or written the words "Brand Necessary" or words of similar purport which clearly indicate the practitioners' intent to prohibit substitution. Under the signature line at the right side shall be clearly printed the words "Generic Equivalent Permitted." A written prescription order not in the form hereinabove prescribed shall be construed as permitting the pharmacist to substitute an equivalent generic name drug or drug product except where the prescribing practitioner has indicated in writing his or her intent that the pharmacist not substitute an equivalent generic name drug or drug product.

If an oral prescription order is involved, the prescribing practitioner or his or her agent shall indicate to the pharmacist whether or not an equivalent generic name drug or drug product may be substituted. The pharmacist shall note the instructions on the file copy of the prescription or chart order form.

(c) No person may by trade rule, work rule, contract, or in any other way prohibit, restrict, limit or attempt to prohibit, restrict or limit the making of a generic name substitution under subsection (b) of this section. No employer or his or
her agent may use coercion or other means to interfere with
the professional judgment of the pharmacist in deciding which
generic name drugs or drug products shall be stocked or sub-
stituted: Provided, That this section shall not be construed to
permit the pharmacist to generally refuse to substitute less ex-
pensive therapeutically equivalent generic drugs for brand
name drugs, and that any pharmacist so refusing shall be
subject to the penalties prescribed in section twenty-two,
article five, chapter thirty of this code.

(d) A pharmacist may substitute a drug under subsection
(b) of this section only where there will be a savings to the
buyer. Where substitution is proper under subsection (b), or
where the practitioner prescribes the drug by generic name, the
pharmacist shall, consistent with his or her professional judg-
ment, dispense the lowest retail cost, effective brand which is
in stock.

(e) All savings in the retail price of the prescription shall
be passed on to the purchaser; these savings shall be equal to
the difference between the retail price of the brand name
product and the customary and usual price of the generic
product substituted therefor: Provided, That in no event shall
such savings be less than the difference in acquisition cost of
the brand name product prescribed and the acquisition cost
of the substituted product.

(f) Each pharmacy shall maintain a record of any substitu-
tion of an equivalent generic name drug product for a pre-
scribed brand name drug product on the file copy of a written
or oral prescription or chart order. Such record shall include
the manufacturer and generic name of the drug product
selected.

All drugs shall be labeled in accordance with the instruc-
tions of the practitioner.

Unless the practitioner directs otherwise, the prescription
label on all drugs dispensed by the pharmacist shall indicate
the generic name using abbreviations if necessary and the
name of the manufacturer. The same notation will be made on
the original prescription retained by the pharmacist.
(g) A pharmacist may not dispense a product under the provisions of this section unless the manufacturer has shown that the drug has been manufactured with the following minimum good manufacturing standards and practices by:

1. Labeling products with the name of the original manufacturer and control number;
2. Maintaining quality control standards equal to or greater than those of the United States food and drug administration;
3. Marking products with identification code or monogram; and
4. Labeling products with an expiration date.

(h) The West Virginia board of pharmacy shall establish by rule a formulary of generic type and brand name drug products which are determined by the board to demonstrate significant biological or therapeutic inequivalence and which, if substituted, would pose a threat to the health and safety of patients receiving prescription medication. The formulary shall be promulgated by the board within ninety days of the date of passage of this section, and may be amended in accordance with the provisions of chapter twenty-nine-a of this code.

(i) No pharmacist shall substitute a generic named therapeutically equivalent drug product for a prescribed brand name drug product if the brand name drug product or the generic drug type is listed on the formulary established by the West Virginia board of pharmacy pursuant to this article, or is found to be in violation of the requirements of the United States food and drug administration.

(j) Any pharmacist who substitutes any drug shall, either personally or through his or her agent, assistant or employee, notify the person presenting the prescription of such substitution. The person presenting the prescription shall have the right to refuse the substitution. Upon request the pharmacist shall relate the retail price difference between the brand name and the drug substituted for it.
(k) Every pharmacy shall post in a prominent place that is in clear and unobstructed public view, at or near the place where prescriptions are dispensed, a sign which shall read: "West Virginia law requires pharmacists to substitute a less expensive generic named therapeutically equivalent drug for a brand name drug, if available, unless you or your physician direct otherwise." The sign shall be printed with lettering of at least one and one-half inches in height with appropriate margins and spacing as prescribed by the West Virginia board of pharmacy.

(l) The West Virginia board of pharmacy shall promulgate rules and regulations setting standards for substituted drug products, obtaining compliance with the provisions of this section and enforcing the provisions of this section. Any person shall have the right to file a complaint with the West Virginia board of pharmacy regarding any violation of the provisions of this article. Such complaints shall be investigated by the board of pharmacy.

Fifteen days after the board has notified, by registered mail, a person, firm, corporation or copartnership that such person, firm, corporation or copartnership is suspected of being in violation of a provision of this section, the board shall hold a hearing on the matter. If, as a result of the hearing, the board determines that a person, firm, corporation or copartnership is violating any of the provisions of this section, it may, in addition to any penalties prescribed by section twenty-two of this article, suspend or revoke the permit of any person, firm, corporation or copartnership to operate a pharmacy or drugstore.

(m) No pharmacist complying with the provisions of this section shall be liable in any way for the dispensing of a generic named therapeutically equivalent drug, substituted under the provisions of this section, unless the generic named therapeutically equivalent drug was incorrectly substituted.

In no event where the pharmacist substitutes a drug under the provisions of this section shall the prescribing physician be liable in any action for loss, damage, injury or death of any
person occasioned by or arising from the use of the substitute
drug unless the original drug was incorrectly prescribed.

Failure of a practitioner to specify that a specific brand
name is necessary for a particular patient shall not constitute
evidence of negligence unless the practitioner had reasonable
cause to believe that the health of the patient required the use
of a certain product and no other.

(n) This section shall take effect on the first day of July,
one thousand nine hundred seventy-eight.

CHAPTER 142
H. B. 1939—By Delegate Bird and Delegate Artrip)

[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article four, chapter thirty of the code of West
Virginia, one thousand nine hundred thirty-one, as amended,
by adding thereto a new section, designated section two-b,
relating to requiring patient and dentist identification on den-
tures; and providing penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. DENTISTS, DENTAL HYGIENISTS AND DENTAL COR-
PORATIONS.

§30-4-2b. Denture identification; penalty.

1 Every dental laboratory as defined in section two-a of this
2 article and every licensed dentist as defined by this article
3 who engages in dental technological work and who manu-
4 factures any full upper or lower set of prosthetic dentures
5 to be used as a substitute for the upper or lower set of human
6 teeth shall place or cause to be placed upon the dentures,
the name of the patient for whom the dentures are manufactured, and the initials of the dentist's state of practice and license identification number. This information shall be affixed to these dentures in a nonremovable manner.

Any dental laboratory or dentist who fails to comply with the provisions of this section is guilty of a misdemeanor, and, upon conviction thereof, shall be subject to the penalties set forth in section eighteen of this article for practicing dentistry or dental hygiene without complying with the provisions of this article.

CHAPTER 143

[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections six and thirteen, article six, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the examination, registration and renewal fees for funeral directors and embalmers; disposition of fees; report to governor; license to operate a funeral establishment; application and qualification for license; renewal; fees.

Be it enacted by the Legislature of West Virginia:

That sections six and thirteen, article six, 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 6. EMBALMERS AND FUNERAL DIRECTORS.

§30-6-6. Examination, registration and renewal fees; disposition of fees; report to governor.

§30-6-13. License required to operate funeral establishment; application and qualifications for license; renewal; fee; manager.

§30-6-6. Examination, registration and renewal fees; disposition of fees; report to governor.

The examination fee for a funeral director's license shall
be one hundred dollars and shall be remitted at the time the
application for a funeral director's license is submitted to the
board.

The examination fee for an embalmer's license shall be one
hundred dollars and shall be remitted at the time the appli-
cation for an embalmer's license is submitted to the board.

All the licenses and certificates of registration shall expire
on the thirtieth day of June of each calendar year and the
renewal date for all licenses and certificates shall be the first
day of July of each calendar year.

The annual renewal fee for embalmer's license, funeral di-
rector's license, assistant funeral director's license or appren-
tice registration shall be fifteen dollars and shall be paid on or
before the first day of July of each calendar year.

Any person who has been duly licensed as a funeral director
or as an embalmer under the laws of this state, but who fails
to renew his license within ninety days after the expiration
date for renewals, may file an application for a renewal of
his license, without examination, upon payment of a penalty
of ten dollars and the required renewal fee.

Any person who has been duly licensed as a funeral director
or as an embalmer under the laws of this state, but who fails
to renew his license within one year after the expiration date
for renewals, may file an application for a renewal of his
license, without examination, upon payment of a penalty of
twenty-five dollars and the required renewal fee.

A funeral director or an embalmer whose license has lapsed
one year or more shall make application to the board for a
new license in compliance with the provisions of this article
relating to unlicensed persons.

Any person who has been duly licensed as an assistant
funeral director and fails to renew his license within ninety days
after the expiration date for renewal may file an application
for renewal of his license upon payment of a penalty of ten
dollars and the required renewal fee. Otherwise, after the said
period of ninety days, his license will automatically be can-
celed.
Any person who has been duly registered as an apprentice embalmer or apprentice funeral director and fails to renew his registration within ninety days after the expiration date for renewals may file an application for such renewal upon payment of a penalty of two dollars and the required renewal fee. Otherwise, after the said period of ninety days, his registration will automatically be canceled.

All fees and other moneys received by the board pursuant to the provisions of this article shall be kept in a separate fund and expended solely for the purposes of this article. After expenditures for the fiscal year, of the remaining moneys, all sums in excess of ten thousand dollars in the separate fund shall revert to the general fund of the state. The compensation provided by this article and all expenses incurred the payment of which is authorized under this article shall be paid from this separate fund. No compensation or expense incurred under this article shall be a charge against the general funds of the state.

§30-6-13. License required to operate funeral establishment; application and qualifications for license; renewal; fee; manager.

On or before July one, one thousand nine hundred sixty-nine, every funeral establishment operating in West Virginia shall obtain a license for the succeeding fiscal year beginning July one, one thousand nine hundred sixty-nine, as provided for in this section.

An application for a license to operate a funeral establishment shall be in writing and verified on a form provided by the board and shall be accompanied by a fee as herein provided, and upon receipt of the same, the board shall forthwith issue or renew a license to operate a funeral establishment. Such application to operate a funeral establishment shall be made by any person, partnership, association, corporation, organization or fiduciary having controlling interest in such funeral establishment.

Such application shall be signed by the applicant and by the individual who is duly licensed as a funeral director, and who shall be in charge and responsible for all transactions
conducted and services performed therein. If such funeral es-
ablishment is owned by a person who is not licensed as a
funeral director or by a partnership, association, corporation
or other organization, then such owner shall have in his or
its employ and place in charge of such establishment a per-
son who is duly licensed as a funeral director, who shall
manage, conduct and have supervision of the work or business
of such establishment and be responsible therefor.

A license to operate a funeral establishment shall expire on
the thirtieth day of June of each calendar year and the re-
newal date for any such license shall be the first day of July
of each calendar year.

Each funeral establishment license shall be valid only for one
funeral establishment to be located at a specific street address
or location; the fee to operate the principal establishment shall
be seventy-five dollars per year and the fee to operate each
additional funeral establishment by the same applicant shall
be fifty dollars per year. Each separate funeral establishment
shall have its own license, which license shall be prominently
displayed within the funeral establishment. No additional li-
cense fee shall be charged if during any given year it shall be
necessary to reapply for a license to operate a funeral estab-
ishment at the same or different location.

The holder of any funeral establishment license who ceases
to operate the funeral establishment at the location specified
in the application shall, within twenty days thereafter, sur-
render the funeral establishment license to the board and such
license shall be canceled by the board, except that in the
event of the death of an individual who was the holder of a
funeral establishment license, it shall be the duty of such
holder's personal representative to surrender such funeral
establishment license within thirty days of qualifying as such
personal representative. It shall be the duty of any holder of
a funeral establishment license, pursuant to this section, to
notify the board within thirty days if for any reason the
licensed funeral director whose name is signed to the appli-
cation for the issuance thereof, ceases to be employed by such
funeral establishment. Within thirty days after such notifi-
cation, such holder of a funeral establishment license may
execute a new application for a funeral establishment license
signed by the applicant and by the licensed funeral director
who shall be in charge of and responsible for all transactions
conducted and services performed within the funeral establish-
ment. Failure to comply with any of these provisions shall be
grounds for revocation of a funeral establishment license.

A licensee whose embalmer's license, funeral director's
license or license to operate a funeral establishment has been
revoked under this article shall not operate, either directly or
indirectly, or hold any interest in any funeral establishment.
Nothing herein contained shall prohibit a licensee whose license
has been revoked from leasing any property owned by him or
them for use as a funeral establishment so long as he or they
do not participate in the control or profit of such funeral es-
tablishment otherwise than as a lesser of the premises for a
fixed rental not dependent upon earnings.

CHAPTER 144
(H. B. 1808—By Delegate Dalton)

[Passed March 7, 1984; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article twelve, chapter
thirty of the code of West Virginia, one thousand nine hundred
thirty-one, as amended, relating to fees chargeable by the
state board of architects; and providing for fee levels which
will enable the state board of architects to pay for actual costs
incurred and necessary in carrying out its regulatory examina-
tion and registration activities.

Be it enacted by the Legislature of West Virginia:

That section eight, article twelve, 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 12. ARCHITECTS.
§30-12-8. Fees.

1 (a) The fee to be paid to the board by an applicant for
an examination to determine his fitness to receive a certificate
of registration as a registered architect shall be three hundred
fifty dollars. Any applicant failing to pass an original exami-
nation shall pay a fee of two hundred dollars for any re-
quested reexamination, notwithstanding the provisions of sec-
tion six, article one of this chapter.

(b) The fee to be paid to the board by an applicant for
a hand seal and certificate of registration as a registered
architect shall be forty dollars.

(c) The fee to be paid to the board for the restoration of
an expired certificate of registration shall be fifty dollars.

(d) The fee to be paid to the board upon renewal of a
certificate of registration shall be twenty-five dollars.

(e) The fee to be paid to the board by an applicant for a
certificate of registration, who is an architect registered or
licensed under the laws of another state or territory of the
United States, or of a foreign country or province, under
subdivision (b), section four of this article, shall be one
hundred fifty dollars.

CHAPTER 145
(H. B. 1319—By Delegate Ashcraft)

[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.

AN ACT to amend sections eight and nine, article twenty, chapter
thirty of the code of West Virginia, one thousand nine hundred
thirty-one, as amended, relating to physical therapists; issuance
of licenses; renewal of licenses; renewal fee; display of license
and temporary permits.

Be it enacted by the Legislature of West Virginia:

That sections eight and nine, 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.

§30-20-8. Issuance of license; renewal of license; renewal fee; display of license.


§30-20-8. Issuance of license; renewal of license; renewal fee; display of license.

(a) Whenever the board finds that an applicant meets all of the requirements of this article for a license to engage in the practice of physical therapy or to act as a physical therapy assistant, as the case may be, it shall forthwith issue to him such license; and otherwise the board shall deny the same.

(b) Every licensee shall renew his license on or before January one of each year by payment of a fee of thirty-five dollars in the case of a license to engage in the practice of physical therapy and twenty dollars in the case of a license to act as a physical therapy assistant. Any license which is not so renewed shall automatically lapse. A license which has lapsed may be renewed within five years of its expiration date by payment to the board of the appropriate renewal fee for each year or part thereof during which the license was not renewed. After the expiration of such five-year period, a license may be renewed only by complying with the provisions herein relating to the issuance of an original license.

(c) A licensee desiring to cease engaging in the practice of physical therapy temporarily or to cease acting temporarily as a physical therapy assistant shall send a written notice to the board. Upon receipt of such notice, the board shall place the name of such person upon the inactive list. While his name remains on this list, such person shall not be subject to the payment of any fee and shall not engage in the practice of physical therapy or act as a physical therapy assistant, as the case may be, in this state. When such person again desires to engage in the practice of physical therapy or to act as a physical therapy assistant, application for renewal of the license and the payment of a renewal fee for the then current year shall be made to the board.
(d) The board may deny any application for renewal of a license for any reason which would justify the denial of an original application for a license.

(e) The board shall prescribe the form of licenses and each license shall be conspicuously displayed by the licensee at his principal place of practice, or, in the case of a license to act as a physical therapy assistant, at his place of employment.

(f) Any license issued under the former provisions of this article, which license remains unsuspended and unrevoked, shall be valid and considered for all purposes as having been issued under the provisions of this article and may be renewed, suspended or revoked as licenses issued under the provisions of this article, and any license issued under the former provisions of this article which has lapsed or shall hereafter lapse shall be subject to the provisions of subsection (b) of this section pertaining to the lapse of a license issued under the provisions of this article and the renewal thereof.


(a) Upon proper application and the payment of a non-refundable fee of thirty-five dollars the board may issue, without examination, a temporary permit to engage in the practice of physical therapy in this state:

(1) Pending examination, to any applicant who meets the requirements of subdivisions (1) through (5), subsection (a), section six of this article, which temporary permit shall expire thirty days after the board gives written notice of the results of the examination held next following the issuance of such temporary permit, but upon such expiration, one additional temporary permit may be obtained by such applicant, upon proper application therefor and the payment of a non-refundable fee of thirty-five dollars; and

(2) To an applicant who is not a resident of this state and who meets the requirements of subdivisions (1) through (5), subsection (a), section six of this article, which temporary permit shall be valid only for a period of ninety days
in the calendar year in which issued and such permit may not be renewed nor another thereof issued to the same person in the same calendar year.

(b) Upon proper application and the payment of a non-refundable fee of twenty dollars, the board may issue, without examination, a temporary permit to act as a physical therapy assistant in this state:

(1) Pending examination, to an applicant who meets the requirements of subdivisions (1) and (2), subsection (b), section six of this article, which temporary permit shall expire thirty days after the board gives written notice of the results of the examination held next following the issuance of such temporary permit, but upon such expiration, one additional temporary permit may be obtained by such applicant, upon proper application therefor and the payment of a non-refundable fee of ten dollars; and

(2) To an applicant who is not a resident of this state and who meets the requirements of subdivisions (1) and (2), subsection (b), section six of this article, which temporary permit shall be valid only for a period of ninety days in the calendar year in which issued and such permit may not be renewed nor another thereof issued to the same person in the same calendar year.

CHAPTER 146

(Com. Sub. for S. B. 310—By Senator Spears and Senator Williams)

[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article twenty-six, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to delivery of receipt by hearing-aid dealer to person supplied with a hearing aid; information contained on receipt; creating a right of person to whom hearing aid is supplied to return the hearing aid and rescind the purchase agreement within a
certain time; extension of time for certain reasons; reasonable fees for examination and fitting not precluded by exercise of right to return and rescind; and maximum fees for examination and fitting to be set by board.

Be it enacted by the Legislature of West Virginia:

That section fifteen, article twenty-six, 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 26. HEARING-AID DEALERS AND FITTERS.

§30-26-15. Receipt required to be furnished to a person supplied with hearing aid; information required; right to rescind purchase agreement.

(a) Any person who practices the fitting and sale of hearing aids shall deliver to each person supplied with a hearing aid a receipt which shall contain his signature, his business address and the number of his license; the specifications as to the make and model of the hearing aid furnished; the full terms of the sale, including the date upon which the hearing aid was supplied to the person; the address of the West Virginia board of hearing-aid dealers; and the following statement: "Any person supplied with a hearing aid by a hearing-aid dealer licensed in this state has the right to return the hearing aid to the dealer within thirty days after receipt and rescind the purchase agreement except for reasonable fitting and examination charges if the hearing aid does not function properly, the hearing aid cannot be adjusted to satisfactorily correct the deficiency in the person's hearing or the person is otherwise dissatisfied with the hearing aid." If a hearing aid which has been previously sold at retail is sold, the receipt shall be clearly marked as "used" or "reconditioned," whichever is applicable, with terms of guarantee, if any.

Such receipt shall be in the manner and form as prescribed by the board in its rules and regulations. Such rules and regulations shall prescribe the type and size of print to be used in such receipt and the receipt shall set forth such additional information as the board may prescribe. A copy of such receipt shall be retained in the records of the
licensee for a period of seven years following the issuance of such receipt.

(b) Each person supplied with a hearing aid by a hearing-aid dealer licensed pursuant to the provisions of this article shall have the right to return the hearing aid to the dealer within thirty calendar days of receipt and rescind the purchase agreement if the hearing aid does not function properly, cannot be adjusted to satisfactorily correct the deficiency in the person's hearing or the person is otherwise dissatisfied with the hearing aid. If a hearing-aid dealer, pursuant to being notified by a person to whom he has supplied a hearing aid that the hearing aid does not function properly, does not satisfactorily correct the deficiency in the person's hearing or that the person is otherwise dissatisfied with the hearing aid, makes an adjustment to the hearing aid or advises the person to continue use of the hearing aid for the purpose of becoming more accustomed thereto or any other reason, the right of the person to whom the hearing aid was supplied shall be extended for thirty calendar days following the date upon which such adjustment was made or advisement was given.

(c) An exercise of the right to rescind the purchase agreement by a person to whom a hearing aid has been supplied may not preclude the dealer from charging reasonable fees for examination and fitting. The maximum fees which may be charged by a hearing-aid dealer for examination and fitting shall be fixed by the West Virginia board of hearing-aid dealers by rule and regulation lawfully promulgated in accordance with the provisions of chapter twenty-nine-a of this code.

CHAPTER 147

(S. B. 337—By Senator Cook, Senator Boettner, Senator Nelson and Senator Chace)

[Passed March 9, 1984; in effect July 1, 1984. Approved by the Governor.]
thereto a new article, designated article thirty, relating to the licensing of social workers; purpose; definitions; examining board created; powers and duties; license required; prohibited practices; criminal penalties; license classification; qualifications; exemptions; grounds for disciplinary proceedings; temporary permit; renewal of license; display of license; fees; contributions; privileged communications; open meetings provision; and program termination.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 30. SOCIAL WORKERS.

§ 30-30-1. Purpose.

§ 30-30-2. Definitions.

§ 30-30-3. Board of social work examiners.

§ 30-30-4. License required; penalties; exceptions.

§ 30-30-5. License classification; qualification.

§ 30-30-6. Exemptions from requirements.

§ 30-30-7. Grounds for disciplinary proceedings.

§ 30-30-8. Disciplinary proceedings.

§ 30-30-9. Temporary permit to practice social work.

§ 30-30-10. Renewal of license; display of license.

§ 30-30-11. Fees; contributions.

§ 30-30-12. Privileged communications.

§ 30-30-13. Termination of program by law.

§ 30-30-1. Purpose.

1 The Legislature finds that the profession of social work profoundly affects the lives of the people of this state.

2 The profession of social work exists to provide humane and effective social services to individuals, families, groups, communities and society in order that social functioning may be enhanced and the quality of life improved.

3 Social workers are involved with individuals who are hurt, vulnerable and having difficulty in areas of their lives which are extremely sensitive. Failure to help these individuals, whether through incompetence or irresponsibility, is a serious matter. These individual citizens have the potential to be greatly harmed by the
services of ill-prepared and incapable persons acting as social workers. The economic burden of social services which do not give effective aid is a serious social problem.

It is the purpose of this article to protect the public by setting standards of qualification, education, training and experience for those who seek to engage in the practice of social work and to promote high standards of professional performance for those engaged in the profession of social work.

§30-30-2. Definitions.

(a) "Board" means the state board of social work examiners established by this article.

(b) "Social work" means the profession that provides the formal knowledge base, theoretical concepts, specific functional skills and essential social values which are used to implement society's mandate to provide safe, effective and constructive social services through the professional activities of helping individuals, groups or communities enhance or restore their capacity for social functioning, and preventing or controlling social problems and altering societal conditions as a means toward enabling people to attain their maximum potential.

(c) "Social worker" means a person who represents himself or herself to the public by the title "social worker," and under this title offers to render or renders services involving the application of principles, methods and procedures of the profession of social work to individuals, families, corporations or the public for financial compensation: Provided, That social workers as defined by this article, does not mean any person who may voluntarily serve in an advisory capacity in situations dealing with social and family matters while not holding himself or herself out to the public as a social worker.

(d) "Social work practice" means the professional application of social work values, principles and techniques to one or more of the following ends: Enhancing the developmental, problem-solving and coping capacities of people; promoting the effective and humane operations of systems that provide resources and services to people;
linking people with systems that provide them with resources, services and opportunities; contributing to the development and improvement of social policy; engaging in research related to these ends and principles; and organizations or agencies engaged in such practice. Such social work interventions are provided to individuals, families, small groups, organizations, neighborhoods and communities. The practice of social work is guided by knowledge of social resources, social systems, human behavior and social, economic and cultural institutions and the interaction of all such factors.

§30-30-3. Board of social work examiners.

(a) For the purpose of carrying out the provisions of this article, there is hereby created a West Virginia board of social work examiners, consisting of seven members who shall be appointed by the governor, subject to the following requirements:

(1) No person may be excluded from serving on the board by reason of race, sex or national origin;

(2) Two members shall be certified social workers, two members shall be graduate social workers and two members shall be social workers. All such members must be licensed under the provisions of this article in accordance with their respective titles. In addition, there shall be one member of the board chosen from the general public: Provided, That those members who are appointed by the governor to serve as the first board after the effective date of this article shall be persons eligible for the licensing required under this article: Provided, however, That the member from the general public shall never be required to be eligible for licensing;

(3) The members of the first board to serve after the effective date of this article shall be appointed within ninety days thereof;

(4) The term of office for each member of the board shall be three years: Provided, That one of the members of the first board to serve after the effective date of this article shall serve a term of two years, three of them shall serve a term of three years and the remaining three shall serve a
term of four years: Provided, however, That no member shall serve more than four consecutive years; and

(5) The governor shall, whenever there is a vacancy on the board due to circumstances other than the expiration of the term of a member, appoint another member with the same qualifications as the member who has vacated to serve the duration of the unexpired term.

For the purpose of accepting nominations for the replacement of a member, the governor shall cause a notice of the vacancy to be published at least thirty days prior to an announcement of the replacement member, as a Class I-0 legal advertisement, in accordance with the provisions of section two, article three, chapter fifty-nine of this code. The publication area shall be statewide.

If the governor fails to make appointment in 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.

(b) Any members of the board may be removed from office for cause, in accordance with procedures set forth in this code for the removal of public officials from office.

(c) Members of the board shall receive appropriate compensation, not to exceed the amount specified for attendance of similar board meetings as provided elsewhere in this code, for attending meetings of the board. In addition to such compensation, each member of the board shall be reimbursed out of moneys appropriated for such purposes, reasonable expenses and all sums which he or she necessarily shall expend in the discharge of his or her duties as a member of the board, not to exceed the prevailing rate paid to employees of the state: Provided, That such compensation and such expenses shall not exceed the amount received by the board from licensing fees and penalties imposed under subdivision (4), subsection (c) of this section.

(d) The board shall hold an annual election for the purpose of electing a chairman, vice chairman and secretary. The requirements for meetings and management
of the board shall be established in regulations promulgated by the board as required by this article.

(e) In addition to the duties set forth in other provisions of this article, the board shall:

(1) Recommend to the Legislature any proposed modifications to this article;

(2) Report to county prosecutors any suspected violations of this article: Provided, That no report shall be made until the board has given the suspected violator ninety days written notice of the suspected violation and the violator has, within such ninety day period, been afforded an opportunity to respond to the board with respect to the allegation;

(3) Publish an annual report listing the names and addresses of all persons who have been licensed in accordance with the provisions of this article as a certified social worker, graduate social worker or social worker;

(4) Establish a fee schedule for the initial examination, license fee and the annual license renewal;

(5) Establish standards and requirements for continuing education. In establishing these requirements the board shall consult with professional groups and organizations representing all levels of practice provided for in this article and the board shall consider recognized staff development programs, continuing education programs offered by colleges and universities having social work programs approved or accredited by the council on social work education, and continuing education programs offered by recognized state and national social work bodies: Provided, That such standards and requirements for continuing education shall not be construed to alter or affect in any way the standards and requirements for licensing as set forth elsewhere in this article; and

(6) Conduct its proceedings in accordance with provisions of article nine-a, chapter six of this code.

§30-30-4. License required; penalties; exceptions.

(a) After twenty-four months have passed from the
effective date of this article, no person may represent that he or she is a social worker by using such titles as certified social worker, graduate social worker, social worker or any other title that includes a facsimile of such words unless he or she is duly licensed under the provisions of this article or specifically exempted hereunder; nor may any person represent himself or herself to be a certified social worker, graduate social worker or other type of social worker by adding the letters CSW, GSW, SW or any other letters, words or insignia which induce or tend to induce the belief that the person is qualified to engage in the practice of social work unless the person is licensed in accordance with the provisions of this article.

(b) After twenty-four months have passed from the effective date of this article, no person may engage in the private, independent practice of social work unless he or she is already licensed under this article.

(c) Any person violating the provisions of subsection (a) or (b) of this section is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five hundred dollars, or imprisoned in the county jail for a term not to exceed one year, or both fined and imprisoned.

(d) Nothing in this article shall be construed to prevent duly licensed physicians, surgeons, psychologists, attorneys, members of the clergy or any other professional from working within the standards and ethics of their respective professions and fulfilling their professional responsibilities: Provided, That no such professional may represent to the public, either by title or training, that he or she is engaged in the practice of social work: Provided, however, That any student enrolled in a recognized program of study leading to a social work degree may practice only under the supervision of a social worker duly licensed in accordance with the provisions of this article.

Nothing in this article shall be construed to prevent any person from volunteering his or her services in a manner as defined in subsection (c), section two of this article.

§30-30-5. License classification; qualification.

The board shall issue a license as a certified social worker, graduate social worker or social worker.
(a) The board shall issue a license as a certified social worker to an applicant who:

(1) Has a doctorate or master's degree from a school of social work accredited by the council on social work education;

(2) Has completed a minimum of two years experience in the practice of social work after having received a master's degree in social work;

(3) Has received certification by the academy of certified social workers or has passed an examination approved by the board for certification purposes;

(4) Has satisfied the board that he or she merits the public trust, as evidenced by three letters of recommendation from persons not related to the applicant and a sworn statement from the applicant indicating he or she has never been convicted of a felony involving moral turpitude; and

(5) In lieu of the foregoing requirements, any person who has been continuously employed for seven years as a social worker under the supervision of any certified social worker; has satisfactorily completed fifty-six hours of graduate social work study as accredited by the council on social work education; has passed an examination approved by the board for certification purposes; and has satisfied the board that he or she merits the public trust, as evidenced by three letters of recommendation from persons not related to the applicant and a sworn statement from the applicant indicating that he or she has never been convicted of a felony involving moral turpitude, may be licensed by the board as a certified social worker: Provided, That the board may exempt any applicant for licensing from specific hours of social work curriculum where the applicant has demonstrated to the satisfaction of the board a proficient knowledge of the subject matter contained in the particular course of social work curriculum to be exempted.

(b) The board shall issue a license as a graduate social worker to an applicant who:

(1) Has a master's degree in social work from a school of
social work accredited by the council on social work education;

(2) Has passed an examination approved by the board;

(3) Has satisfied the board that he or she merits the public trust, as evidenced by three letters of recommendation from persons not related to the applicant and a sworn statement from the applicant indicating he or she has never been convicted of a felony involving moral turpitude; and

(4) In lieu of the foregoing requirements, any person who has been continuously employed for five years as an apprentice social worker under the supervision of any certified social worker; has satisfactorily completed forty-five graduate hours of social work study as accredited by the council on social work education; has passed an examination approved by the board; and has satisfied the board that he or she merits the public trust, as evidenced by three letters of recommendation from persons not related to the applicant and a sworn statement from the applicant indicating he or she has never been convicted of a felony involving moral turpitude, may be licensed by the board as a graduate social worker: Provided, That the board may exempt any applicant for licensing from specific hours of social work curriculum where the applicant has demonstrated to the satisfaction of the board a proficient knowledge of the subject matter contained in the particular course of social work curriculum to be exempted.

(c) The board shall issue a license as a social worker to an applicant who:

(1) Has a baccalaureate degree in social work from a program accredited by the council on social work education;

(2) Has passed an examination approved by the board;

(3) Has satisfied the board that he or she merits the public trust, as evidenced by three letters of recommendation by persons not related to the applicant and a sworn statement from the applicant indicating he or she has never been convicted of a felony involving moral turpitude; and
(4) In lieu of the foregoing requirements, any person who has been continuously employed for four years as a social worker under the supervision of any certified social worker; has satisfactorily completed thirty-six hours of social work study as accredited by the council on social work education; has passed an examination approved by the board; and has satisfied the board that he or she merits the public trust, as evidenced by three letters of recommendation from persons not related to the applicant and a sworn statement from the applicant indicating he or she has never been convicted of a felony involving moral turpitude, may be licensed by the board as a social worker:

Provided, That the board may exempt any applicant for licensing from specific hours of social work curriculum where the applicant has demonstrated to the satisfaction of the board a proficient knowledge of the subject matter contained in the particular course of social work curriculum to be exempted.

§30-30-6. Exemptions from requirements.

(a) From the effective date of this article to twenty-four months hence, an applicant shall be exempt from the education and examination requirements for licensure as a certified social worker, as required by this section and section four of this article, if he or she satisfies the board that he or she holds a doctorate or master's degree in social work, or a doctorate or master's degree in a field related to social work, and that he or she has been engaged, for at least two years of the five years immediately preceding the date of the license application, in the practice for which the examination would otherwise be required, then the applicant shall become so licensed without additional educational and examination requirements.

(b) From the effective date of this article to twenty-four months hence, an applicant shall be exempt from the education and examination requirements for licensure as a social worker, as required by this section and section four of this article, if he or she satisfies the board that he or she has been actively engaged, for at least two years of the five years immediately preceding the date of the license application, in the practice for which the examination would otherwise
be required, then the applicant shall become so licensed without additional educational and examination requirements.

(c) An applicant shall be exempted from the requirement of any examination provided herein if:

(1) The applicant satisfies the board that he or she is licensed under the laws of a state or territory of the United States that impose substantially the same requirements as this article; or

(2) The applicant has taken and passed an examination similar to that for which exemption hereunder is sought, pursuant to the laws of a state or territory of the United States.

(d) All social workers employed by county boards of education shall not be subject to the licensing requirements of this article, but shall continue to be certified by the state board of education.

§30-30-7. Grounds for disciplinary proceedings.

(a) The board may refuse to issue or renew a license, or may suspend or revoke an existing license. The determination shall be made after a hearing and an opportunity to be heard has been afforded the applicant or licensee. The determination may be made by the board upon proof that the person has engaged in unprofessional conduct within the last five years, including, but not limited to, the following:

(1) Has been convicted of a felony;

(2) Is unable to perform the functions of his or her licensed title by reason of mental or physical illness or some other infirmity or impairment;

(3) Has been grossly negligent or exhibited unprofessional or unethical conduct in the practice of social work;

(4) Has assisted or participated with a person not licensed under this article in the false representation that the person is licensed;
(5) Has failed to obtain a license renewal after expiration or revocation of same but has continued to represent that he or she is duly licensed hereunder;

(6) Has been found guilty by the board of unprofessional conduct in accordance with the rules and regulations promulgated by the board;

(7) Has obtained or attempted to obtain a license or renewal thereof by bribery or false representations;

(8) Has knowingly made a false statement in connection with any application required under this article; or

(9) Has knowingly made a false statement on any form or written statement submitted to the board.

(b) Although the board has the authority to refuse to issue or renew, or to revoke or suspend a license, the intention of this article is not to prohibit the practice of social work by competent and qualified individuals, but rather the intention is to protect the general public from the unprofessional practice of social work.

§30-30-8. Disciplinary proceedings.

All hearings with respect to any disciplinary action shall be conducted by the board and any decisions shall be made upon a majority vote of the board members. All hearings shall be stenographically recorded. The applicant or licensee shall be given twenty days notice of the hearing date and the issue pending before the board. This notice shall be by registered mail, return receipt requested, or by personal service. For purposes of the hearing, the applicant or licensee shall be afforded: (1) The right to representation by legal counsel; (2) the right to cross-examine witnesses; and (3) the right to present evidence in his or her behalf, including the right to call witnesses and present documentary evidence. For purposes of the hearing, the board has the power to subpoena witnesses and documentation. The applicant or licensee may apply to the board for the issuance of a subpoena to secure the attendance of a witness or to secure any documentary evidence for the hearing. The board shall notify the applicant or licensee of its decision within a reasonable
time after the hearing. The decision shall be in writing and shall be forwarded to the applicant or licensee by registered mail, return receipt requested.

Any party adversely affected by the final determination of the board shall be entitled to judicial review in accordance with articles five and six, chapter twenty-nine-a of this code.

§30-30-9. Temporary permit to practice social work.

The board shall promulgate rules and regulations to provide for the issuance of a temporary permit to practice social work to individuals eligible for a license under the provisions of this article. After the temporary permit has been issued, it shall expire within sixty days from the date of the next examination scheduled by the board for the type of license sought by the applicant: Provided, That the provisions of this section shall not apply to those persons who shall automatically be licensed on the effective date of this article as provided in section six of this article.

§30-30-10. Renewal of license.

All licenses are effective on the date of issuance from the board and shall expire in twenty-four months and the number of days remaining in the month after the date the license was issued. A license may be renewed upon payment of the renewal fee set by the board and upon execution of a sworn statement on a form provided by the board indicating the license has not been revoked and is not currently suspended. At the time of renewal, each applicant shall submit satisfactory evidence that he or she has completed the continuing educational requirements as specified by the board during the tenure of his or her license: Provided, That the board may waive these requirements upon a showing that the applicant suffered from a prolonged illness during the license period or upon proof of other extenuating circumstances which hindered the completion of the requirement: Provided, however, That no waiver may be granted in succession.

The application for renewal of a license must be made within sixty days after a license has expired or within sixty days of a termination or suspension period.
§30-30-11. Fees; contributions.

All fees shall be established and published by the board of examiners. All fees collected under this article are not refundable and shall be deposited in an operating fund of the board, created in the state treasury. The fund shall be a revolving fund from which all operation and administration expenses of the board shall be paid.

The board may accept contributions and bequests from individuals, organizations and corporations. These funds shall be deposited by the board into the operating fund heretofore created.

§30-30-12. Privileged communications.

(a) No person licensed under this statute or an employee of the licensee may disclose any confidential information he or she may have acquired from persons consulting him or her in his or her professional capacity except:

(1) With the written consent of the person or persons, or in the case of death or disability, of his or her personal representative, other person authorized to sue or the beneficiary of an insurance policy on his or her life, health or physical condition;

(2) When a communication reveals the contemplation of a crime or harmful act;

(3) When the person waives the privilege by initiating formal charges against the certified social worker, graduate social worker or social worker;

(4) When the person is a minor under the laws of this state and the information acquired by the certified social worker, graduate social worker or social worker indicates that the minor has been the victim or subject of a crime, and the certified social worker, graduate social worker or social worker may be required to testify fully in any examination, trial or other proceeding in which the commission of a crime is the subject of inquiry; or

(5) Where otherwise required by law.

(b) Nothing in this section shall be construed, however, to prohibit any board licensee from testifying in juvenile
proceedings concerning matters of adoption, child abuse, child neglect or other matters pertaining to the welfare of children.

§30-30-13. Termination of program by law.

1 This board and the provisions provided in this article shall be terminated on the first day of July, one thousand nine hundred eighty-six, 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 148
(H. B. 2078—By Delegate Polan)

[Passed March 10, 1984; in effect July 1, 1984. Approved by the Governor.]

AN ACT to amend and reenact section three, article one, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the salaries of the members of the public service commission together with assignment of new, substantial additional duties embracing new areas and fields of activity under certain legislative enactments; and specifying effective date.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL PROVISIONS.

§24-1-3. Commission continued; membership; chairman; compensation.

1 (a) The public service commission of West Virginia, here-
advice and consent of the Senate. The commissioners shall be citizens and residents of this state and at least one of them shall be duly licensed to practice law in West Virginia, of not less than ten years' actual experience at the bar. No more than two of said commissioners shall be members of the same political party. Each commissioner shall, before entering upon the duties of his office, take and subscribe to the oath provided by section five, article four of the constitution, which oath shall be filed in the office of the secretary of state. The governor shall designate one of the commissioners to serve as chairman at the governor's will and pleasure. The chairman shall be the chief administrative officer of the commission. The governor may remove any commissioner only for incompetency, neglect of duty, gross immorality, malfeasance in office or violation of subsection (c) of this section.

(b) The unexpired terms of members of the public service commission at the time this subsection becomes effective are continued through the thirtieth day of June, one thousand nine hundred seventy-nine. In accordance with the provisions of subsection (a) of this section, the governor shall appoint three commissioners, one for a term of two years, one for a term of four years and one for a term of six years, all the terms beginning on the first day of July, one thousand nine hundred seventy-nine. All future appointments are for terms of six years, except that an appointment to fill a vacancy is for the unexpired term only. The commissioners whose terms are terminated by the provisions of this subsection are eligible for reappointment.

(c) No person while in the employ of, or holding any official relation to, any public utility subject to the provisions of this chapter, or holding any stocks or bonds thereof, or who is pecuniarily interested therein, may serve as a member of the commission or as an employee thereof. Nor may any such commissioners be a candidate for or hold public office, or be a member of any political committee, while acting as such commissioner; nor may any commissioner or employee of said commission receive any pass, free transportation or other thing of value, either directly or indirectly, from any public utility or motor carrier subject to the provisions of
this chapter. In case any of the commissioners becomes a
candidate for any public office or a member of any political
committee, the governor shall remove him from office and
shall appoint a new commissioner to fill the vacancy created.

(d) Effective the first day of July, one thousand nine
hundred eighty-one, and in light of the new, substantial addi-
tional duties embracing new areas placed upon the commis-
sion by Enrolled Senate Bill No. 95, Enrolled Senate Bill
No. 571, and Enrolled House Bill No. 1479, all acts of the
Legislature, regular session, one thousand nine hundred eighty-
one, for the administration of this chapter, chapter twenty-
four-a and chapter twenty-four-b of this code, each commis-
sioner shall receive a salary of thirty-six thousand five hundred
dollars a year to be paid in monthly installments from the
special funds in such amounts as follows:

(1) From the public service commission fund collected
under the provisions of section six, article three of this chap-
ter, twenty-eight thousand one hundred dollars;

(2) From the public service commission motor carrier fund
collected under the provisions of section six, article six,
chapter twenty-four-a of this code, seven thousand dollars;
and

(3) From the public service commission gas pipeline safety
fund collected under the provisions of section three, article
five, chapter twenty-four-b of this code, one thousand four
hundred dollars.

In addition to this salary provided for all commissioners,
the chairman of the commission shall receive three thousand
five hundred dollars a year to be paid in monthly install-
ments from the public service commission fund collected
under the provisions of section six, article three of this chapter,
on and after the first day of July, one thousand nine hundred
eighty-one.

(e) Effective the first day of July, one thousand nine hun-
dred eighty-four, and in light of the assignment of new,
substantial additional duties embracing new areas and fields
of activity under certain legislative enactments, each com-
missioner shall receive a salary of thirty-nine thousand two
hundred forty dollars a year to be paid in monthly installments
from the special funds in such amounts as follows:

(1) From the public service commission fund collected
under the provisions of section six, article three of this chap-
ter, thirty thousand two hundred ten dollars;

(2) From the public service commission motor carrier
fund collected under the provisions of section six, article six,
chapter twenty-four-a of this code, seven thousand five hun-
dred twenty-five dollars; and

(3) From the public service commission gas pipeline safety
fund collected under the provisions of section three, article
five, chapter twenty-four-b of this code, one thousand five
hundred-five dollars.

In addition to this salary provided for all commissioners,
the chairman of the commission shall receive three thousand
five hundred dollars a year to be paid in monthly installments
from the public service commission fund collected under the
provisions of section six, article three of this chapter, on and
after the first day of July, one thousand nine hundred eighty-
four.

CHAPTER 149
(Com. Sub. for H. B. 1461—By Delegate Albright)

[Passed March 9, 1984; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article two, chapter
twenty-four of the code of West Virginia, one thousand nine
hundred thirty-one, as amended; and to further amend said
article by adding thereto a new section, designated section
twelve-a, relating to the powers and duties of the public
service commission generally; prohibiting certain acts by public
utilities without prior consent of such commission; the power
and duty of the commission to review the transfer of control
of a public utility; and requiring prior approval of the issuance
of stock by a public utility; and providing certain exceptions thereto.

Be it enacted by the Legislature of West Virginia:

That section twelve, article two, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section twelve-a, to read as follows:

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-12. What acts may not be done without consent of commission; consent in advance of exemption of transactions; when sale, etc., of franchises, mergers, etc., void.

§24-2-12a. Issuance of stock; requirement of applying to commission for orders authorizing issuance; hearing and investigation on application; order; when issuance is void.

§24-2-12. What acts may not be done without consent of commission; consent in advance of exemption of transactions; when sale, etc., of franchises, mergers, etc., void.

1 Unless the consent and approval of the public service commission of West Virginia is first obtained: (a) No public utility subject to the provisions of this chapter, except railroads other than street railroads, may enter into any contract with any other utility to operate any line or plant of any other utility subject thereto, nor which will enable such public utility to operate their lines or plants in connection with each other, but this shall not be construed to prevent physical connections between utilities supplying the same service or commodity, for temporary purposes only, upon condition, however, that prompt notice thereof be given to the commission for such action, if any, as it may deem necessary, and thereafter the commission may require such connection to be removed or discontinued; (b) no public utility subject to the provisions of this chapter, except railroads other than street railroads, may purchase, lease, or in any other manner acquire control, direct or indirect, over the franchises, licenses, permits, plants, equipment, business
or other property of any other utility; (c) no public utility subject to the provisions of this chapter, except railroads other than street railroads, may assign, transfer, lease, sell, or otherwise dispose of its franchises, licenses, permits, plants, equipment, business or other property or any part thereof; but this shall not be construed to prevent the sale, lease, assignment or transfer by any public utility of any tangible personal property which is not necessary or useful, nor will become necessary or useful in the future, in the performance of its duties to the public; (d) no public utility subject to the provisions of this chapter, except railroads other than street railroads, may, by any means, direct or indirect, merge or consolidate its franchises, licenses, permits, plants, equipment, business or other property with that of any other public utility; (e) no public utility subject to the provisions of this chapter, except railroads other than street railroads, may purchase, acquire, take or receive any stock, stock certificates, bonds, notes or other evidence of indebtedness of any other public utility; (f) no public utility subject to the provisions of this chapter, except railroads other than street railroads, may, by any means, direct or indirect, enter into any contract or arrangement for management, construction, engineering, supply or financial services or for the furnishing of any other service, property or thing, with any affiliated corporation, person or interest; (g) no person or corporation, whether or not organized under the laws of this state, may acquire either directly or indirectly a majority of the common stock of any public utility organized and doing business in this state.

The commission may grant its consent in advance or exempt from the requirements of this section all assignments, transfers, leases, sales or other disposition of the whole or any part of the franchises, licenses, permits, plants, equipment, business or other property of any public utility, or any merger or consolidation thereof and every contract, purchase of stocks, arrangement, transfer or acquisition of control, or other transaction referred to in this section, upon proper showing that the terms and conditions thereof are reasonable and that neither party thereto is given an undue advantage over the other, and do not adversely affect the public in this state.
The commission shall prescribe such rules and regulations as, in its opinion, are necessary for the reasonable enforcement and administration of this section, including the procedure to be followed, the notice to be given of any hearing hereunder, if it deems a hearing necessary, and after such hearing or in case no hearing is required, the commission shall, if the public will be conformed thereby, enter such order as it may deem proper and as the circumstances may require, attaching thereto such conditions as it may deem proper, consent to the entering into or doing of the things herein provided, without approving the terms and conditions thereof, and thereupon it shall be lawful to do the things provided for in such order.

Every assignment, transfer, lease, sale or other disposition of the whole or any part of the franchises, licenses, permits, plant, equipment, business or other property of any public utility, or any merger or consolidation thereof and every contract, purchase of stock, arrangement, transfer or acquisition of control or other transaction referred to in this section made otherwise than as hereinbefore provided shall be void to the extent that the interests of the public in this state are adversely affected, but this shall not be construed to relieve any utility from any duty required by this section.

§24-2-12a. Issuance of stock; requirement of applying to commission for orders authorizing issuance; hearing and investigation on application; order; when issuance is void.

The power of public utilities to issue stocks and stock certificates or other evidence of interest or ownership is a special privilege, the right of supervision, regulation, restriction and control of which is vested in the state, and such power shall be exercised as provided by law under such rules and regulations as the commission may prescribe.

No public utility may issue stocks and stock certificates, or other evidence of interest or ownership unless, in addition to the other requirements of law, it shall first have secured from the commission an order authorizing the issue, stating the amount thereof and the purposes to which the issue or the proceeds thereof are to be applied, and that, in the opinion
of the commission, the issue is reasonably required for the purposes specified in the order: Provided, That the issuance of stocks and stock certificates or other evidence of interest or ownership by a corporation which devotes one or more of its divisions to the provision of a public service shall be exempted from the requirements hereof when the gross revenues generated by all such divisions represent less than twenty-five percent of the gross revenues generated by the corporation.

Preferred stock which has no voting rights for the election of directors or which has such voting rights only upon the failure of the corporation to meet its obligation to pay dividends on such stock and, in either case, which preferred stock is not capable of conversion into common equity shall not be subject to the provisions of this section.

To enable the commission to determine whether it will issue such order, the commission may hold a hearing and may make such additional inquiry or investigation, examine such witnesses, books, papers, documents and contracts and require the filing of such data as it deems of assistance. The commission may by its order grant permission for the issue of such stocks or stock certificates or other evidence of interest or ownership in the amount applied for, or in a lesser amount, or refuse such permission, or grant it subject to such conditions as it deems reasonable and necessary. All stock and every stock certificate or other evidence of interest or ownership of a public utility issued without an order of the commission authorizing the issue thereof or not conforming in its provisions to any of the provisions which it is required by the order of authorization to contain is void.

CHAPTER 150

(Com. Sub. for S. B. 338—By Senator Boettner)

[Passed March 8, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and two, article one, chapter twenty-four-b of the code of West Virginia, one
thousand nine hundred thirty-one, as amended; to amend and reenact sections one and four, article two of said chapter; and to amend and reenact sections one, two and three, article five of said chapter, all relating to the authority of the public service commission to regulate pipeline safety; permitting the public service commission to regulate hazardous liquid pipelines in accordance with the provisions of the "Hazardous Liquid Pipeline Safety Act of 1979"; and limiting the commission to the regulation of hazardous liquid pipelines to the extent hazardous liquids are defined by regulations lawfully promulgated under such act of 1979.

Be it enacted by the Legislature of West Virginia:

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

Article
1. Purpose and Definitions.
2. Powers and Duties of the Commission.
3. Employees of Commission; Funding.

ARTICLE 1. PURPOSE AND DEFINITIONS.

§24B-1-1. Purpose.

§24B-1-1. Purpose.
1. It is hereby declared to be the purpose and policy of the Legislature in enacting this chapter to empower the public service commission of West Virginia, in addition to all other powers conferred and duties imposed upon it by law, to prescribe and enforce safety standards for pipeline facilities as hereinafter defined, and to regulate safety practices of persons engaged in the transportation of gas or hazardous liquids as hereinafter defined.

1. When used in this chapter:
(1) "Person" means any individual, firm, joint venture, partnership, corporation, association, state, municipality, cooperative association or joint-stock association, and includes any trustee, receiver, assignee or personal representative thereof;

(2) "Gas" means natural gas, flammable gas or gas which is toxic or corrosive;

(3) "Transportation of gas" means the gathering, transmission or distribution of gas by pipeline or its storage;

(4) "Hazardous liquid" means:

(a) Petroleum or any petroleum product; and

(b) Any substance or material which is in liquid state (excluding liquefied natural gas) when transported by pipeline facilities and which, as determined by the commission, may pose an unreasonable risk to life or property when transported by pipeline facilities: Provided, That a hazardous liquid as herein defined shall not be construed so as to include or permit the regulation of any substance transported through pipeline or otherwise when used in the operation of coal mines, coal processing plants or coal slurry pipelines: Provided, however, That the commission shall not determine that any substance or material is a hazardous liquid under this section if the Secretary has not determined that the substance or material is a hazardous liquid under regulations promulgated in accordance with Section 202(2) of the Hazardous Liquid Pipeline Safety Act of 1979;

(5) "Transportation of hazardous liquids" means the movement of hazardous liquids by pipeline, or their storage incidental to such movements; except that it shall not include any such movement through gathering lines in rural locations or on shore production, refining or manufacturing facilities or storage or in-plant piping systems associated with any of such facilities;

(6) "Pipeline facilities" means, without limitation, new and existing pipe, pipe rights-of-way and any equipment, facility, or building used in the transportation of gas or the
40 treatment of gas during the course of transportation, or
41 used in the transportation of hazardous liquid or the
42 treatment of hazardous liquid during the course of
43 transportation: but "rights-of-way" as used in this chapter
44 does not authorize the commission to prescribe the location
45 or routing of any pipeline facility;
46
47 (7) "Municipality" means a city, county or any other
48 political subdivision of the state;
49
50 (8) "Interstate transmission facilities" means facilities
51 used in the transportation of gas which are subject to the
52 jurisdiction of the federal power commission under the act
53 of Congress known as the Natural Gas Act;
54
55 (9) "Interstate pipeline facilities" means the pipeline
56 facilities used in the transportation of hazardous liquids in
57 interstate or foreign commerce;
58
59 (10) "Director" means the director of the gas pipeline
60 safety section of the commission;
61
62 (11) "Commission" means the public service
63 commission of West Virginia;
64
65 (12) "Secretary" means the United States secretary of
66 transportation;
67
68 (13) "Pipeline company" means a person engaged in the
69 operation of pipeline facilities or the transportation of gas
70 or hazardous liquids subject to the provisions of this
71 chapter;
72
73 (14) "Act of 1968" means the act of Congress known as
74 the Natural Gas Pipeline Safety Act of 1968; and
75
76 (15) "Act of 1979" means the act of Congress known as
77 the "Hazardous Liquid Pipeline Safety Act of 1979."

ARTICLE 2. POWERS AND DUTIES OF THE COMMISSION.

§24B-2-1. Jurisdiction.
§24B-2-4. Cooperation with the federal government.

§24B-2-1. Jurisdiction.

1 The commission shall have power and authority to
2 prescribe and enforce safety standards for pipeline
facilities, and to regulate safety practices of persons engaged in the transportation of gas or hazardous liquids, to the extent permitted by the "Act of 1968" and the "Act of 1979" and any amendments thereto. Such standards may apply to the design, installation, inspection, testing, construction, extension, operation, replacement and maintenance of pipeline facilities. Standards affecting the design, installation, construction, initial inspection and initial testing shall not be applicable to pipeline facilities in existence on the date such standards are adopted. Whenever the commission shall find a particular facility to be hazardous to life or property, it shall be empowered to require the person operating such facility to take such steps necessary to remove such hazards. Such safety standards shall be practicable and designed to meet the need for pipeline safety. In prescribing such standards, the commission shall consider:

(a) Relevant available pipeline safety data;

(b) Whether such standards are appropriate for the particular type of pipeline transportation;

(c) The reasonableness of any proposed standards; and

(d) The extent to which such standards will contribute to public safety.

§24B-2-4. Cooperation with the federal government.

The commission shall cooperate with the secretary and other agencies of the United States in the enforcement of this chapter and the "Act of 1968" and amendments thereto; and to this end, the commission shall take such steps as may be necessary to make annual certifications to the secretary under section five (a) of the "Act of 1968," and shall file such certificates with the secretary. The commission is hereby authorized and empowered (a) to act as the secretary's agent in the enforcement of the "Act of 1968" and amendments thereto with respect to interstate transmission facilities; and (b) to accept for the state of West Virginia, and to expend for the purpose designated, any funds that may hereafter be made available to the commission out of the federal treasury by an act or acts of
Congress and allocated to this state for the purpose of carrying out the provisions of this chapter and the "Act of 1968" and amendments thereto.

The commission shall further cooperate with the secretary and other agencies of the United States in the enforcement of the "Act of 1979" and amendments thereto; and to this end the commission shall take such steps as may be necessary to make annual certifications to the secretary under section two hundred five-a of the "Act of 1979" and shall file such certificates with the secretary. The commission is hereby authorized and empowered (a) to act as the secretary's agent in the enforcement of the "Act of 1979" and amendments thereto with respect to interstate pipeline facilities; and (b) to accept for the state of West Virginia, and expend for the purpose designated, any funds that may hereafter be made available to the commission out of the federal treasury by an act or acts of Congress and allocated to this state for the purpose of carrying out the "Act of 1979" and amendments thereto.

ARTICLE 5. EMPLOYEES OF COMMISSION; FUNDING.

§24B-5-1. Employees.

§24B-5-2. Compensation to commissioners.

§24B-5-3. Funding; property and revenue license fees.

§24B-5-1. Employees.

The commission shall appoint a director of the pipeline safety section of the public service commission and such employees as may be necessary to carry out the provisions of this chapter, and shall fix their respective salaries or compensation. The commission may designate such employees as it deems necessary to take evidence at any hearing held or required by the provisions of this chapter, which employees are hereby empowered to administer oaths in all parts of this state so far as the exercise of such power is properly incidental to the performance of their duties in connection with the provisions of this chapter.

§24B-5-2. Compensation to commissioners.

Each member of the commission shall receive a salary in the amount set forth in section three, article one, chapter
§24B-5-3. Funding; property and revenue license fees.

(a) Every pipeline company shall pay a special license fee in addition to those now required by law. The amount of such fees shall be fixed by the public service commission and levied by it upon each of such pipeline companies according to the number of three-inch equivalent pipeline miles included in its pipeline facilities, and shall be apportioned among such pipeline companies upon the basis of the pipeline companies' reports submitted to the commission in such form as the commission may prescribe, so as to produce a revenue of not more than three hundred thousand dollars per annum, which fees shall be paid on or before the first day of July in each year.

(b) Such sums collected under subsection (a) of this section shall be paid into the state treasury and kept as a special fund, designated "public service commission pipeline safety fund," to be appropriated as provided by law for the purpose of paying the salaries, compensation, costs and expenses of its employees. Any balance in said fund at the end of any fiscal year shall not revert to the treasury, but shall remain in said fund and may be appropriated as provided in this subsection. All funds which heretofore were in the "public service commission gas pipeline safety fund" shall be transferred to the "public service commission pipeline safety fund."

CHAPTER 151

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

[Passed March 10, 1984; in effect July 1, 1984. Approved by the Governor.]

AN ACT to amend and reenact article five, chapter five of the code of West Virginia, one thousand nine hundred thirty-
one, as amended, relating to granting incremental salary increases to public employees based on years of service.

Be it enacted by the Legislature of West Virginia:

That article five, 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 5. SALARY INCREASE FOR STATE EMPLOYEES.

§5-5-1. Definitions.
§5-5-2. Granting incremental salary increases based on years of service.

§5-5-1. Definitions.

1 For the purposes of this article: (1) “Eligible employee” means any regular full-time employee of the state or any spending unit thereof who is eligible for membership in any state retirement system of the state of West Virginia or other retirement plan authorized by the state: Provided, That the mandatory salary increase required by this article shall not apply to any faculty employee at public institutions of higher learning or any employee of the state whose compensation is fixed by statute or by statutory schedule, nor shall this article be construed to mandate an increase in the salary of any elected or appointed officer of the state; (2) “years of service” means full years of service as an employee of the state of West Virginia; (3) “spending unit” means any state office, department, agency, board, commission, institution, bureau or other designated body authorized to hire employees.

§5-5-2. Granting incremental salary increases based on years of service.

1 Effective for the fiscal year beginning the first day of July, one thousand nine hundred eighty-five, every eligible employee with three or more years of service shall receive an annual salary increase equal to thirty-six dollars times the employees’ years of service, not to exceed twenty years of service. In each fiscal year thereafter and on the first day thereof, each such employee shall
receive an annual increment increase of thirty-six dollars for such fiscal year: *Provided,* That every employee becoming newly eligible as a result of meeting the three years of service minimum requirement on the first day of July in any fiscal year subsequent to one thousand nine hundred eighty-five, shall be entitled to the annual salary increase equal to the aforesaid thirty-six dollars times the employee's years of service, where he has not theretofore received the benefit of any such increment computation; and shall receive a single annual increment increase thereafter of thirty-six dollars for each such subsequent fiscal year. These incremental increases shall be in addition to any across-the-board, cost-of-living or percentage salary increases which may be granted in any fiscal year by the Legislature. This article shall not be construed to prohibit other pay increases based on merit, seniority, promotion or other reason, if funds are available for such other pay increases: *Provided, however,* That the executive head of each spending unit shall first grant the herein mandated increase in compensation to all eligible employees prior to the consideration of any increases based on merit, seniority, promotion or other reason.

CHAPTER 152

(Com. Sub. for H. B. 1338—By Mr. Speaker, Mr. See)

[Passed March 10, 1984; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-one, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections three, fourteen, sixteen, seventeen, eighteen, twenty-two, twenty-five, thirty-four and thirty-five, article seven-a, chapter eighteen of said code, all relating to the state public employees retirement act and the state teachers retirement system; providing for certain early retirement provisions for both public employees, under their act, and teachers, under
their system, with actuarial reduction of benefits therefor; providing for generally updating the state teachers retirement system including: Defining teacher member and nonteaching member; removing the continuous service requirements from the definition of "present teacher"; amending the definition of "average final salary" to mean the average of the member's five highest fiscal year salaries within the last fifteen years of total service on which contributions were made; allowing exceptions to the limit on contributions by members employed by the West Virginia board of regents at institutions of higher education; removing the requirement that all employer contributions be credited to the employer's accumulation fund; requiring state contributions and employer contributions to the teachers retirement system to be deposited in the employer's accumulation fund; requiring deficits in the benefit fund to be met by transfers from the employer's accumulation fund and, if necessary, from the teachers accumulation fund; requiring all gifts, bequests and interest earnings from investments received by the teachers retirement board to be deposited in the reserve fund; specifying persons who are eligible for prior service pensions; providing increased loans to members and exceptions thereto; and granting service credit toward teachers retirement to cooperative extension service employees employed for thirty hours or more per week and providing for payment.

Be it enacted by the Legislature of West Virginia:

That section twenty-one, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections three, fourteen, sixteen, seventeen, eighteen, twenty-two, twenty-five, thirty-four and thirty-five, article seven-a, chapter eighteen of said code be amended and reenacted, all to read as follows:

Chapter

5. General Powers and Authority of The Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, Etc.

18. Education.
§5-10-21. Deferred retirement and early retirement.

(a) Any member, who has five or more years of credited service in force, of which at least three years are contributing service, and who leaves the employ of a participating public employer prior to his attainment of age sixty years, for any reason except his disability retirement or death, shall be entitled to an annuity computed according to section twenty-two hereof, as the said section was in force as of the date of his said separation from the employ of a participating public employer: Provided, That he does not withdraw his accumulated contributions from the members' deposit fund. His said annuity shall begin the first day of the calendar month next following the month in which his application for same is filed with the board of trustees on or after his attainment of age sixty-two years.

(b) Any member who qualifies for deferred retirement benefits in accordance with subsection (a) of this section, and has ten or more years of credited service in force and who has attained age fifty-five as of the date of his separation may, prior to the effective date of his retirement, but not thereafter, elect to receive the actuarial equivalent of his deferred retirement annuity as a reduced annuity commencing on the first day of any calendar month between his date of separation and his attainment of age sixty-two years and payable throughout his life.

(c) Any member who qualifies for deferred retirement benefits in accordance with subsection (a) of this section, and has twenty or more years of credited service in force, may elect to receive the actuarial equivalent of his deferred retirement annuity as a reduced annuity commencing on the first day of any calendar month between his fifty-fifth birth-
day and his attainment of age sixty-two years and payable throughout his life.

(d) Notwithstanding any of the other provisions of this section or of this article and pursuant to regulations promulgated by the board, any member who has thirty or more years of credited service in force, at least three of which are contributing service, and who elects to take early retirement, which for the purposes of this subsection shall mean retirement prior to age sixty, whether an active employee or a separated employee at the time of application, shall be entitled to the full computation of annuity according to section twenty-two of this article, as the said section was in force as of the date of retirement application, but with the reduced actuarial equivalent of the annuity the member would have received if his benefit had commenced at age sixty when he would have been entitled to full computation of benefit without any reduction.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-14. Contributions by members.
§18-7A-17. Statement and computation of teachers' service.
§18-7A-18. Funds created; fund transfers.
§18-7A-25. Eligibility for retirement allowance.
§18-7A-34. Loans to members.
§18-7A-35. Coverage for nonteaching employees; prior service credit.


"Teacher member" includes the following persons, if regularly employed for at least half-time service: (a) Any person employed for instructional service in the public schools of West Virginia; (b) principals; (c) public school librarians; (d) superintendents of schools and assistant county superintendents of schools; (e) any county school attendance director holding a West Virginia teacher's certificate; (f) the executive secretary of the retirement board; (g) members of the research, extension, administrative or library staffs of the public schools; (h) the state superintendent of schools, heads and assistant
heads of the divisions under his supervision, or any other employee thereunder performing services of an educational nature; (i) employees of the state board of education who are performing services of an educational nature; (j) any person employed in a nonteaching capacity by the state board of education, the West Virginia board of regents, any county board of education, the state department of education or the teachers retirement board, if such person was formerly employed as a teacher in the public schools; (k) all classroom teachers, principals and educational administrators in schools under the supervision of the department of corrections, the department of health or the department of human services; (l) employees of the state board of school finance if such person was formerly employed as a teacher in the public schools.

“Nonteaching member” means any person, except a teacher member, who is regularly employed for full-time service by (a) any county board of education, (b) the state board of education, (c) the West Virginia board of regents or (d) the teachers retirement board.

“Members of the administrative staff of the public school” includes deans of instruction, deans of men, deans of women, and financial and administrative secretaries.

“Members of the extension staff” of the public schools includes every agricultural agent, boys’ and girls’ club agent, and every member of the agricultural extension staff whose work is not primarily stenographic, clerical or secretarial.

“Retirement system” means the state teachers retirement system provided for in this article.

“Present teacher” means any person who was a teacher within the thirty-five years beginning July one, one thousand nine hundred thirty-four, and whose membership in the retirement system is currently active.

“New entrant” means a teacher who is not a present teacher.

“Present member” means a present teacher who is a member of the retirement system.
"Total service" means all service as a teacher while a member of the retirement system since last becoming a member and, in addition thereto, his credit for prior service, if any.

"Prior service" means all service as a teacher completed prior to July first, one thousand nine hundred forty-one, and all service of a present member who was employed as a teacher, and did not contribute to a retirement account because he was legally ineligible for membership during such service.

"Average final salary" means the average of the five highest fiscal year salaries earned as a member within the last fifteen fiscal years of total service credit, including military service as provided herein, or if total service is less than fifteen years, the average annual salary for the period on which contributions were made.

"Accumulated contributions" means all deposits and all deductions from the earnable compensation of a contributor minus the total of all supplemental fees deducted from his compensation.

"Regular interest" means interest at three percent compounded annually, or a higher earnable rate if approved by the retirement board.

"Refund interest" means interest compounded annually at a rate of three percent.

"Employer" means the agency of and within the state which has employed or employs a member.

"Contributor" means a member of the retirement system who has an account in the teachers accumulation fund.

"Beneficiary" means the recipient of annuity payments made under the retirement system.

"Refund beneficiary" means the estate of a deceased contributor, or such person as he shall have nominated as beneficiary of his contributions by written designation duly executed and filed with the retirement board.
"Earnable compensation" means the full compensation actually received by members for service as teachers whether or not a part of such compensation is received from other funds, federal or otherwise, than those provided by the state or its subdivisions. Allowances from employers for maintenance of members shall be deemed a part of earnable compensation for such members whose allowances were approved by the teachers retirement board and contributions to the teachers retirement system were made, in accordance therewith, on or before the first day of July, one thousand nine hundred eighty.

"Annuities" means the annual retirement payments for life granted beneficiaries in accordance with this article.

"Member" means a member of the retirement system.

"Public schools" means all publicly supported schools, including normal schools, colleges and universities in this state.

"Deposit" means a voluntary payment to his account by a member.

The masculine gender shall be construed so as to include the feminine.

Age in excess of seventy years shall be deemed to be seventy years.

§18-7A-14. Contributions by members.

At the end of each month every member of the retirement system shall contribute six percent of his monthly earnable compensation to the retirement board: Provided, That any member employed by the West Virginia board of regents at an institution of higher education under its control shall contribute on his full earnable compensation, unless otherwise provided in section fourteen-a of this article.

Annually, the contributions of each member shall be credited to his account in the teachers accumulation fund. The contributions shall be deducted from the salaries of the members as herein prescribed, and every member shall be deemed to have given his consent to such deductions. No deductions,
however, shall be made from the earnable compensation of any member who retired because of age or service, and then resumed service unless as provided in section thirteen-a of this article.

The aggregate of employer contributions, due and payable under this article, shall equal annually the total deductions from the earnable compensation of members required by this section.

Payment by an employer to a member of the sum specified in the employment contract minus the amount of the employee's deductions shall be deemed to be a full discharge of the employer's contractual obligation as to earnable compensation.

Each contributor shall file with the retirement board or with the employer to be forwarded to the retirement board an enrollment form showing his date of birth and other data needed by the retirement board.


The retirement board, on receipt of contributions from teachers deducted and remitted by employers as provided in section fifteen of this article, shall make requisition on the state auditor for an amount equaling such contributions. On receipt of the requisitions duly certified, the state auditor shall transfer the amount so requisitioned from the general state revenue fund to the employers accumulation fund.

At the beginning of each quarter the governor shall transfer to the employers accumulation fund one fourth of the annual appropriations therefor.

§18-7A-17. Statement and computation of teachers' service.

Under such rules and regulations as the retirement board may adopt, each teacher shall file a detailed statement of his length of service as a teacher for which he claims credit. The retirement board shall determine what part of a year is the equivalent of a year of service. In computing such service, however, it shall credit no period of more than a month's duration during which a member was absent without pay,
nor shall it credit for more than one year of service performed in any calendar year.

For the purpose of this article, the retirement board shall grant prior service credit to new entrants and other members of the retirement system for service in any of the armed forces of the United States in any period of national emergency within which a Federal Selective Service Act was in effect. For purposes of this section, "armed forces" shall include Women's Army Corps, Women's Appointed Volunteers for Emergency Service, Army Nurse Corps, Spars, Women's Reserve and other similar units officially parts of the military service of the United States. Such military service shall be deemed equivalent to public school teaching, and the salary equivalent for each year of such service shall be the actual salary of the member as a teacher for his first year of teaching after discharge from military service. Prior service credit for military service shall not exceed ten years for any one member, nor shall it exceed twenty-five percent of total service at the time of retirement.

For service as a teacher in the employment of the federal government, or a state or territory of the United States, or a governmental subdivision of such state or territory, the retirement board shall grant credit to the member: Provided, That the member shall pay to the system double the amount he contributed during the first full year of current employment, times the number of years for which credit is granted, plus interest at a rate to be determined by the retirement board. Such interest shall be deposited in the reserve fund and service credit so granted at the time of retirement shall not exceed the lesser of ten years or fifty percent of the member's total service as a teacher in West Virginia. Any transfer of out-of-state service, as provided in this article, shall not be used to establish eligibility for a retirement allowance and the retirement board shall grant credit for such transferred service as additional service only: Provided, however, That a transfer of out-of-state service shall be prohibited if such service is used to obtain a retirement benefit from another retirement system: Provided further, That salaries paid to members for service prior to entrance into the retirement system shall not
be used to compute the average final salary of such member under the retirement system.

No member shall be deemed absent from service as a teacher while serving as a member of the Legislature of the state of West Virginia during any duly constituted session of that body: Provided, That the member makes contributions to the system equal to what would have been contributed during the period of absence had he performed his duties as a teacher.

No member shall be deemed absent from service as a teacher while serving on leave of absence as an officer with a statewide professional teaching association, or who has served in such capacity, and no retired teacher, who served on such leave of absence while a member, shall be deemed to have been absent from service as a teacher by reason of such service on leave of absence: Provided, That the period of service credit granted for such service on leave of absence shall not exceed two years: Provided, however, That a member or retired teacher who is serving or has served as an officer of a statewide professional teaching association shall make deposits to the teachers retirement board, for the time of any such absence, in an amount double the amount which he would have contributed in his regular assignment for a like period of time.

The teachers retirement board shall grant service credit to any former or present member of the West Virginia public employees retirement system who has been a contributing member for more than three years, for service previously credited by the public employees retirement system, and (1) shall require the transfer of the member's contributions to the teachers retirement system or (2) shall require a repayment of the amount withdrawn any time prior to the member's retirement: Provided, That there shall be added by the member to the amounts transferred or repaid under this paragraph an amount which shall be sufficient to equal the contributions he would have made had the member been under the teachers retirement system during the period of his membership in the public employees retirement system plus interest at a rate
of six percent compounded annually from the date of withdrawal to the date of payment. The interest paid shall be deposited in the reserve fund.

If a member is not eligible for prior service credit or pension as provided in this article, then his prior service shall not be deemed a part of his total service.

A member who withdrew from membership shall be permitted to regain his former membership rights as specified in section thirteen of this article only in case he has served two years since his last withdrawal.

Subject to the above provisions, the board shall verify as soon as practicable the statements of service submitted. The retirement board shall issue prior service certificates to all persons eligible therefor under the provisions of this article. Such certificates shall state the length of such prior service credit, but in no case shall the prior service credit exceed forty years.

§18-7A-18. Funds created; fund transfers.

The funds created are the teachers accumulation fund, the employers accumulation fund, the benefit fund, the reserve fund and the expense fund. Each fund shall constitute a separate trust.

(a) The teachers accumulation fund shall be the fund in which the contributions of members shall be accumulated. The accumulated contributions of a member returned to him upon his withdrawal, or paid to his estate or designated beneficiary in the event of death, shall be paid from the teachers accumulation fund. Any accumulated contributions forfeited by failure to claim such contributions shall be transferred from the teachers accumulation fund to the reserve fund.

(b) Beginning on the first day of July, one thousand nine hundred eighty-four, contributions of employers, equalling annually the members' contributions, shall be deposited in the employers accumulation fund through state appropriations, and such amounts shall be included in the budget bill submitted annually by the Governor.
(c) The benefit fund shall be the fund from which annuities shall be paid. Upon the retirement of a member, his accumulated contributions shall be transferred from the teachers accumulation fund to the benefit fund; the accumulated employers' contribution shall be transferred from the employers accumulation fund to the benefit fund; and annually a sum for prior service pension and disability credits, if needed, shall be transferred from the reserve fund to the benefit fund. Any deficit occurring in the benefit fund which is not automatically met by payments to that fund, as provided for by this article, shall be met by additional transfers from the employers accumulation fund and, if necessary, by transfers from the teachers accumulation fund.

(d) The retirement board is hereby authorized to accept gifts and bequests. All gifts, bequests and interest earnings from investments received by the board shall be deposited in the reserve fund. Any funds that may come into possession of the retirement system in this manner or which may be transferred from the teachers accumulation fund by reason of the lack of a claimant or because of a surplus in any of the funds, or any other moneys the disposition of which is not otherwise provided for, shall be credited to the reserve fund. The retirement board shall allow interest on the contributions in the teachers accumulation fund. Such interest shall be paid from the reserve fund and credited to the teachers accumulation fund. Any deficit occurring in any fund which would not be automatically covered by the payments to that fund as otherwise provided by this article shall be met by transfers from the reserve fund to such fund. In the reserve fund shall be accumulated moneys from retirement board appropriations to pay the accrued liabilities of the system, caused by the granting of prior service, ad hoc increases granted prior to the first day of July, one thousand nine hundred eighty, and disability pensions. Costs associated with board investments, such as premiums, accrued interest and commissions, shall be paid from the reserve fund.

(e) The expense fund shall be the fund from which shall be paid the expense incurred in the administration of the retirement system. The retirement board is herewith authorized
to pay, from the expense fund, membership fees in such voluntary organizations as the national council on teacher retirement, anything in this code to the contrary notwithstanding. Interest on loans to members shall be deposited in the expense fund.

The retirement board is herewith given sole authority to direct and approve the making of any and all fund transfers as provided herein, anything in this code to the contrary notwithstanding.


1 The following shall be eligible for prior service pensions:
2 (a) Present members upon retirement;
3 (b) Any person who has served at least twenty-five years as a teacher prior to July one, one thousand nine hundred forty-one; and
4 (c) A new entrant who becomes a present teacher.

§18-7A-25. Eligibility for retirement allowance.

1 Any member who has attained the age of sixty years or who has had thirty-five years of total service as a teacher in West Virginia, regardless of age, shall be eligible for an annuity. No new entrant nor present member shall be eligible for an annuity, however, if either has less than five years of service to his credit.

2 Any member who has attained the age of fifty-five years and who has served thirty years as a teacher in West Virginia shall be eligible for an annuity.

3 Any member who has served at least thirty but less than thirty-five years as a teacher in West Virginia and is less than fifty-five years of age shall be eligible for an annuity, but the same shall be the reduced actuarial equivalent of the annuity the member would have received if such member were age fifty-five at the time such annuity was applied for.

4 The request for any annuity shall be made by the member in writing to the retirement board, but in case of retirement for disability, the written request may be made by either the member or the employer.
A member shall be eligible for annuity for disability if he satisfies the conditions in both (a) and (b) as follows:

(a) His service as a teacher in West Virginia must total at least ten years, and service as a teacher must have been terminated because of disability, which disability must have caused absence from service for at least six months before his application for disability annuity is approved.

(b) An examination by a physician or physicians selected by the retirement board must show that the member is at the time mentally or physically incapacitated for service as a teacher, that for such service the disability is total and likely to be permanent, and that he should be retired in consequence thereof.

Continuance of the disability of the retired teacher shall be established by medical examination, as prescribed in the preceding paragraph, annually for five years after retirement, and thereafter at such times as the retirement board may require. Payment of the disability annuity provided in this article shall cease immediately if the retirement board finds that the disability of the retired teacher no longer exists, or if the retired teacher refuses to submit to medical examination as required by this section.

§18-7A-34. Loans to members.

A member of the retirement system upon written application may borrow from his individual account in the teachers accumulation fund, subject to these restrictions:

(1) Loans shall be made in multiples of ten dollars, the minimal loan being one hundred dollars and the maximum being eight thousand dollars except if the total amount of loaned money outstanding exceeds twenty million dollars, the maximum will be three thousand dollars until the teachers retirement board determines that loans outstanding have been reduced to an extent that eight thousand dollar loans are again authorized.

(2) Loans to any one member shall not exceed one half of his contributions to his individual account in the teachers accumulation fund.
(3) Interest charged on the amount of the loan shall be six percent per annum, or a higher rate as set by the teachers retirement board. If repayable in installments, the interest shall not exceed the annual rate so established upon the principal amount of the loan, for the entire period of the loan, and such charge shall be added to the principal amount of the loan. The minimal interest charge shall be for six months.

(4) No member shall be eligible for more than one loan in any one year.

(5) If a refund or benefit is payable to the borrower or his beneficiary before he repays the loan with interest, the balance due with interest to date shall be deducted from such benefit or refund.

(6) From his monthly salary as a teacher the member shall pay the loan and interest by deductions which will pay the loan and interest in not more than sixty nor less than six months. Upon notice of loan granted and payment due, the employer shall be responsible for making such salary deductions and reporting them to the retirement board. At the option of the retirement board, loan deductions may be collected as prescribed herein for the collection of members' contribution, or may be collected through issuance of warrant by employer. If the borrower decides to make loan payments while not paid for service as a teacher, the retirement board must accept such payments.

§18-7A-35. Coverage for nonteaching employees; prior service credit.

(a) Nonteaching employees shall mean all persons, except teachers, regularly employed for full-time service by the following educational agencies: (a) Any county board of education, (b) the state board of education, (c) the West Virginia board of regents, and (d) the teachers retirement board.

(b) Such nonteaching employees shall be entitled to all the rights, privileges and benefits provided for teachers by this article, upon the same terms and conditions as are
herein prescribed for teachers. Any member who was employed as a regular full-time employee in a nonteaching capacity by a board of education, school principal or school administrator, prior to the time he became eligible for membership in the state teachers retirement system, shall be granted prior service credit for such service upon making application to the retirement board and providing satisfactory evidence of such service.

(c) Except as provided in section thirteen-b of this article, employees of the cooperative extension service and its predecessors in title, (agricultural extension division, West Virginia extension agency, and West Virginia University cooperative extension service) shall be entitled to all the rights, privileges and benefits provided for teachers by this article, upon the same terms and conditions as are herein prescribed for teachers. Any member of the extension service or its predecessors in title, who was employed for thirty hours or more per week, prior to the time he became eligible for membership in the state teachers retirement system, shall be granted service credit for such service upon making application to the retirement board and providing satisfactory evidence of such service. When the prior service is credited, each member of the retirement system so credited shall contribute an amount equal to the amount he would have contributed had he been a member of the retirement system during the period credited.

CHAPTER 153

(Com. Sub. for S. B. 257—By Mr. McGraw, Mr. President, et al.)

[Passed March 10, 1984; in effect July 1, 1984. Approved by the Governor.]

AN ACT to amend and reenact section twenty-two-b, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section twenty-six-h, article seven-a, chapter eighteen of said code, all relating to the state public employees retirement act and the state teachers retirement system; providing increased supplemental benefits for
certain annuitants receiving less than a specified annual annuity, contingent on legislative budgetary action; and specifying factors for eligibility and computation thereof.

Be it enacted by the Legislature of West Virginia:

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

Chapter

5. General Powers and Authority of The Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, Etc.

18. Education.

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-22b. Supplemental benefits for certain annuitants.

1 Any annuitant who is receiving a retirement annuity of less than seven thousand five hundred dollars annually on the effective date of this section shall receive, upon application, a supplemental benefit, prospectively, under this section in any fiscal year for which the Legislature provides by line item appropriation for the payment of such benefit: Provided, That the effective date of retirement for such annuitant was prior to the first day of July, one thousand nine hundred seventy-eight, and he had ten years or more of credited service at the time of such retirement. For the purposes of this section, "effective date of retirement" means the last day of actual employment, or the last day carried on the payroll of the employer, whichever is later, together with a meeting
fully of all eligibility requirements for retirement prior to the aforesaid effective date. Any annuitant retired pursuant to the disability provisions of this article shall be considered to have had ten years or more credited service at the time of such retirement.

Each such annuitant shall receive as his supplemental benefit an increased annual amount which is the product of the sum of fifteen dollars multiplied by his years of credited service: Provided, That the total annuity of any annuitant affected by the provisions of this section, together with any of the other provisions of this article shall not exceed seven thousand five hundred dollars annually.

Any annuitant receiving the supplemental benefit provided for herein for the annuity payment period just prior to the first day of July, one thousand nine hundred eighty-four, or any annuitant made newly eligible for receipt of such supplemental benefit on such date, shall receive a nineteen percent increase in the amount of such supplemental benefit prior received or newly calculated, effective on and after the first day of July, one thousand nine hundred eighty-four; and irrespective of the maximum total annuity proviso and limitation of seven thousand five hundred dollars annually.

For the purpose of calculating the supplemental benefit provided in this section, fractional parts of a service credit year are to be disregarded unless in excess of one half of a credited service year, in which event the same shall constitute a full year of service credit.

On and after the first day of July, one thousand nine hundred eighty-two, for the purpose of computation for determination of eligibility and for the amount of any supplemental benefit hereunder, separate computation shall be made of a retirant's own benefit and that which may be receivable as beneficiary of another, under the provisions of this article, with each such benefit being eligible for the supplemental benefit herein provided.
§18-7A-26h. Supplemental benefits for certain annuitants.

Any annuitant who is receiving a retirement annuity of less than seven thousand five hundred dollars annually on the effective date of this section shall receive a supplemental benefit, prospectively, under this section in any fiscal year for which the Legislature provides by line item appropriation for the payment of such benefit: Provided, That the effective date of retirement for such annuitant was prior to the first day of July, one thousand nine hundred seventy-eight, and he had ten years or more of credited service at the time of such retirement. For the purposes of this section, “effective date of retirement” means the last day of actual employment, or the last day carried on the payroll of the employer, whichever is later, together with a meeting fully of all eligibility requirements for retirement prior to the aforesaid effective date. Any annuitant retired pursuant to the disability provisions of this article shall be considered to have had ten years or more credited service at the time of such retirement.

Each such annuitant shall receive as his supplemental benefit an increased annual amount which is the product of the sum of fifteen dollars multiplied by his years of credited service: Provided, That the total annuity of any annuitant affected by the provisions of this section, together with any of the other provisions of this article, shall not exceed seven thousand five hundred dollars annually.

Any annuitant receiving the supplemental benefit provided for herein for the annuity payment period just prior to the first day of July, one thousand nine hundred eighty-four, or any annuitant made newly eligible for receipt of such supplemental benefit on such date, shall receive a nineteen percent increase in the amount of such supplemental benefit prior received or newly calculated, effective on and after the first day of July, one thousand nine hundred eighty-four; and irrespective of the maxi-
mum total annuity proviso and limitation of seven thousand five hundred dollars annually. In any fiscal year in which pay increases are granted by the Legislature to active teachers, there shall also be given an increase in retirement benefits for retired teachers if funding is available for this purpose.

For the purpose of calculating the supplemental benefit provided in this section, fractional parts of a service credit year are to be disregarded unless in excess of one half of a credited service year, in which event the same shall constitute a full year of service credit.

On or after the first day of July, one thousand nine hundred eighty-two, for the purpose of computation for determination of eligibility and for the amount of any supplemental benefit hereunder, separate computation shall be made of a retirant's own benefit and that which may be receivable as beneficiary of another under the provisions of this article, with each such benefit being eligible for the supplemental benefit herein provided.

CHAPTER 154

(Com. Sub. for H. B. 1622—By Delegate Goff and Delegate Hutchinson)

[Passed March 8, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia public employees insurance act; authority to establish group insurance plans, including group life and accidental death insurance plans; providing for increasing the maximum under the optional group life and accidental death insurance plan, payable in full by the employee; and making the employee’s spouse and dependents includable therein.

Be it enacted by the Legislature of West Virginia:

That section seven, article sixteen, chapter five of the code of
ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-7. Authorization to establish group hospital and surgical insurance plan, group major medical insurance plan and group life and accidental death insurance plan; rules and regulations for administration of plans; what plans may provide; optional plans; separate rating for claims experience purposes.

1 The board is hereby empowered and authorized to establish a group hospital and surgical insurance plan or plans, a group major medical insurance plan or plans, and a group life and accidental death insurance plan or plans for those employees herein made eligible, and to establish and promulgate rules and regulations for the administration of such plans, subject to the limitations contained in this article. Such plans may provide for group hospital and surgical and group major medical insurance against the financial cost of hospitalization, surgical and medical treatment and care, and may also include, among other things, prescribed drugs, medicines, prosthetic appliances, hospital inpatient and outpatient service benefits, and medical expenses and indemnifying benefits, and group life and accidental death insurance, and such other coverage and benefits deemed appropriate and desirable by the board.

17 The board shall make available to each employee herein made eligible, at full cost to the employee, the opportunity to purchase optional group life and accidental death insurance in an amount not to exceed fifty thousand dollars for life insurance and fifty thousand dollars for accidental death insurance as established under the rules and regulations of the board. In addition, each employee shall be entitled to have his spouse and dependents, as defined by the rules and regulations of the board, included in such optional coverage, at full cost to the employee, in an amount not to exceed five thousand dollars for life insurance and five thousand dollars for accidental death insurance for the spouse and not to exceed
two thousand dollars in life insurance and two thousand dollars in accidental death insurance for each eligible dependent; and with full authorization hereby to the board to make the same available and provide such opportunity of purchase to each employee.

The board may cause to be separately rated for claims experience purposes (1) all employees of the state of West Virginia, (2) all teaching and professional employees of the West Virginia board of regents and county boards of education, (3) all nonteaching employees of the West Virginia board of regents and county boards of education, or (4) any other categorization which would ensure the stability of the overall program.

CHAPTER 155

(Com. Sub. for H. B. 1429—By Delegate Murensky and Delegate Riffle)

[Passed March 10, 1984; in effect July 1, 1984. Approved by the Governor.]

AN ACT to amend and reenact sections twelve and eighteen, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia public employees’ insurance system; providing for crediting accrued annual leave and sick leave toward extended insurance coverage for retired employees, their spouses and dependents; requiring the public employees’ insurance board to promulgate rules and regulations; providing for extended insurance coverage for retired employees, their spouses and dependents based upon credit for the employees’ accrued annual leave and sick leave.

Be it enacted by the Legislature of West Virginia:

That sections twelve and eighteen, article sixteen, 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 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-12. Payment of costs by employer and employee; coverage for employee's spouse and dependents generally; short term continuance of coverage for involuntary employee termination; extended insurance coverage for retired employees with accrued annual leave and sick leave.

§5-16-18. Rules and regulations for administration of article; eligibility of certain retired employees and dependents of deceased members for coverage; employees on medical leave of absence entitled to coverage.

§5-16-12. Payment of costs by employer and employee; coverage for employee's spouse and dependents generally; short term continuance of coverage for involuntary employee termination; extended insurance coverage for retired employees with accrued annual leave and sick leave.

The board is hereby authorized to provide under any contract or contracts entered into under the provisions of this article that the costs of any such group hospital and surgical insurance, group major medical insurance, group life and accidental death insurance benefit plan or plans may be paid by the employer and employee. In addition, each employee shall be entitled to have his spouse and dependents, as defined by the rules and regulations of the board, included in any group hospital and surgical insurance or group major medical insurance coverage provided. The board shall adopt rules and regulations according to chapter twenty-nine-a of this code governing the discontinuance and resumption of any employee's coverage for his spouse and dependents.

Should a participating employee be terminated from employment involuntarily or in reduction of work force, the employee's insurance coverage provided under this article shall continue for a period of three months at no additional cost to the employee: Provided, That an employee discharged for misconduct shall not be eligible for extended benefits under this section: Provided, however, That coverage may be extended up to the maximum period of three months, while administrative remedies contesting the charge of misconduct are pursued: Provided further, That should the discharge for
misconduct be upheld, the full cost of the extended coverage shall be reimbursed by the employee. If the employee is again employed or recalled to active employment within twelve months of his prior termination, he shall not be considered a new enrollee and shall not be required to again contribute his share of the premium cost, if he had already fully contributed such share during the prior period of employment.

When a participating employee is compelled or required by law to retire before reaching the age of sixty-five, or when a participating employee voluntarily retires as provided by law, that employee’s accrued annual leave and sick leave, if any, shall be credited toward an extension of the insurance coverage provided by this article, according to the following formulae: Such insurance coverage for a retired employee shall continue one additional month for every two days of annual leave or sick leave, or both, which the employee had accrued as of the effective date of his retirement. For a retired employee, his spouse and dependents, such insurance coverage shall continue one additional month for every three days of annual leave or sick leave, or both, which the employee had accrued as of the effective date of his retirement.

§5-16-18. Rules and regulations for administration of article; eligibility of certain retired employees and dependents of deceased members for coverage; employees on medical leave of absence entitled to coverage.

The board shall promulgate such rules and regulations as may be required for the effective administration of the provisions of this article. All rules and regulations of the board and all hearings held by the board shall be promulgated and held in accordance with the provisions of chapter twenty-nine-a of the code.

Such regulations shall provide that any employee of the state who has been compelled or required by law to retire before reaching the age of sixty-five years shall be eligible to participate in the public employees' health insurance program at his own expense for the cost of coverage after any extended coverage to which he, his spouse and dependents may be entitled by virtue of his accrued annual leave or sick leave, pur-
suant to the provisions of section twelve of this article, has expired. The dependents of any deceased member shall be entitled to continue their participation and coverage upon payment of the total cost for such coverage. Any employee who voluntarily retires, as provided by law, shall be eligible to participate in the public employees' health insurance program at his own expense for the cost of coverage after any extended coverage to which he, his spouse and dependents may be entitled by virtue of his accrued annual leave or sick leave, pursuant to the provisions of section twelve of this article, has expired.

Any employee who is on a medical leave of absence, approved by his employer, shall, subject to the following provisions of this paragraph, be entitled to continue his coverage until he returns to his employment, and such employee and employer shall continue to pay their proportionate share of premium costs as provided by this article: Provided, That the employer shall be obligated to pay its proportionate share of the premium cost only for a period of one year: Provided, however, That during the period of such leave of absence, the employee shall, at least once each month, submit to the employer the statement of a qualified physician certifying that the employee is unable to return to work.

CHAPTER 156

(Com. Sub. for H. B. 1599—By Delegate Neal and Delegate Burke)

[Passed March 10, 1984; in effect July 1, 1984. Approved by the Governor.]

AN ACT to amend and reenact section five, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; relating to increasing the salaries of the members of the department of public safety; and providing for increasing the maximum supplemental payment receivable for excess hours (overtime) worked.

Be it enacted by the Legislature of West Virginia:

That section five, article two, chapter fifteen of the code of
members called to duty in guard or reserves.

Members of the department shall receive annual salaries pursuant to appropriation by the Legislature, payable at least monthly, as follows:

Any lieutenant colonel shall receive thirty thousand dollars; any major shall receive twenty-seven thousand five hundred dollars; any captain shall receive twenty-five thousand five hundred dollars; any lieutenant shall receive twenty-four thousand dollars; any master sergeant or first sergeant shall receive twenty-two thousand five hundred dollars; any sergeant shall receive twenty-one thousand dollars; any corporal shall receive nineteen thousand five hundred dollars; any trooper first class shall receive eighteen thousand dollars; and any newly enlisted trooper shall receive a salary of one thousand two hundred ninety dollars monthly during the period of his basic training, and upon the satisfactory completion of such training and assignment to active duty, each such trooper shall receive, during the remainder of his first year's service, a salary of one thousand three hundred ninety-four dollars monthly. During the second year of his service in the department, each trooper shall receive an annual salary of seventeen thousand one hundred dollars; during the third year of his service each such trooper shall receive an annual salary of seventeen thousand three hundred eighty-eight dollars; and during the fourth year and fifth year of such trooper's service, and for each year thereafter, he shall receive an annual salary of seventeen thousand six hundred sixteen dollars. Each member of the department whose salary is fixed and specified herein shall receive and be entitled to an increase in salary over that hereinbefore set forth, for grade in rank, based on length of service, including that heretofore and hereafter served with the department, as follows: At the end of five years of service, such member shall receive a salary
increase of three hundred dollars to be effective during his next
three years of service and a like increase at three-year inter-
vals thereafter, with such increases to be cumulative.

In applying the foregoing salary schedule where salary in-
creases are provided for length of service, members of the
department in service at the time this article becomes effective
shall be given credit for prior service and shall be paid such
salaries as the same length of service will entitle them to receive
under the provisions hereof.

The Legislature finds and declares that there is litigation
pending in the circuit court of Kanawha County on the question
of whether members of the department of public safety are
covered by the state wage and hour law, article five-c, chapter
twenty-one of this code. The Legislature further finds and
declares that because of the unique duties of members of
the department, it is not appropriate to apply such wage
and hour provisions to them. Accordingly, members of the
department of public safety are hereby excluded from the
provisions of the wage and hour law. The express exclusion
hereby enacted shall not be construed as any indication
that such members were or were not heretofore covered by
such wage and hour law.

In lieu of any overtime pay they might otherwise have
received under the wage and hour law, and in addition to
their salaries and increases for length of service, members
who have completed basic training may receive supplemental
pay as hereinafter provided.

The superintendent shall, within thirty days after the
effective date hereof, promulgate a rule or regulation to
establish the number of hours per month which shall consti-
tute the standard work month for the members of the depart-
ment. Such rule or regulation shall further establish, on a
graduated hourly basis, the criteria for receipt of a portion or
all of such supplemental payment when hours are worked in
excess of said standard work month. Such rule or regulation
shall be promulgated pursuant to the provisions of chapter
twenty-nine-a of the code. The superintendent shall certify
monthly to the department's payroll officer the names of those
members who have worked in excess of the standard work
month and the amount of their entitlement to supplemental payment.

The supplemental payment shall be in an amount equal to one and one-half percent of the annual salary of a trooper during his second year of service, not to exceed two hundred fifteen dollars monthly. The superintendent and civilian employees of the department shall not be eligible for any such supplemental payments.

Each member of the department, except the superintendent and civilian employees, shall execute, before entering upon the discharge of his duties, a bond with security in the sum of five thousand dollars payable to the state of West Virginia, conditioned upon the faithful performance of his duties, and such bond shall be approved as to form by the attorney general and to sufficiency by the governor.

Any member of the department who is called to perform active duty for training or inactive duty training in the national guard or any reserve component of the armed forces of the United States annually shall be granted upon request leave time not to exceed thirty calendar days for the purpose of performing such active duty for training or inactive duty training, and the time so granted shall not be deducted from any leave accumulated as a member of the department.

CHAPTER 157

(Com. Sub. for H. B. 1985—By Delegate Blatnik)

[Passed March 10, 1984; in effect July 1, 1984. Approved by the Governor.]

AN ACT to amend and reenact section six, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to changing the appeal board composition; including one trooper and one member of each of the six ranks above trooper on the board; removing the provision that a member of the board may not be of the same rank as the person bringing the appeal; and placing the burden
upon the superintendent to prove a transfer is for the purpose of the operational needs of the department.

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

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

**ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.**

§15-2-6. Departmental appeals board; appeal procedures.

Appeals of transfers, suspensions, demotions in rank and discharges shall be heard by boards of appeals convened pursuant to the provisions of this section. The boards shall each consist of seven members and five members shall constitute a quorum. A new board shall be convened to hear and determine each new appeal filed by a member of the department. There may be more than one board in existence at the same time meeting on different appeals. A member of the retirement board is eligible to serve on an appeals board.

The members of a board shall be one member of the department who is of the rank of trooper and six members of the department who are of one of each of the six consecutive ranks above trooper, all of whom shall be chosen by lot by the superintendent with each member to be so chosen from among all the members of each of the seven ranks. No department member may serve on an appeals board if he is a member of the same detachment as the member making the appeal. Within ten days after he has been notified of his selection and assignment to serve on a board, a member may for cause request to be relieved of such assignment. The superintendent shall determine whether the reasons alleged by the member are sufficient cause to relieve the member of such assignment. If such request is granted by the superintendent, a new board member shall be selected by lot from the same rank to replace the member who has been relieved of such assignment.

A chairman shall be selected by the members of the board. Each member of a board shall be reimbursed for all reasonable and necessary expenses actually incurred in attending
meetings of a board. All expenses of a board shall be paid from appropriations to the department.

Within fifteen days after a member of the department has received a notice of transfer or a statement of charges and an order of suspension, demotion in rank or discharge by the superintendent, he may appeal the transfer or order to an appeals board by filing a written notice of appeal with the superintendent. The superintendent shall promptly record and file each appeal, select a board, notify each new board member of his selection, and furnish to each board member a copy of the notice or order appealed from and the notice of appeal. A hearing by a board of appeals shall be held within thirty days after the superintendent has received a member’s notice of appeal. At least fifteen days prior to the hearing date, the board shall notify the superintendent and the member making the appeal of the date, time and place of the hearing.

Any member of the department who makes such an appeal, as aforesaid, may be represented by an attorney or by any member of the department or retired member who is receiving benefits from the death, disability and retirement fund. The superintendent may be represented by counsel of his choice. In the appeal of a transfer, the superintendent has the burden of proof that the transfer is for the purpose of the operational needs of the department. In any other appeal the superintendent has the burden of proof as to the charges alleged. The procedure in any hearing before the board shall be informal and without adherence to the technical rules of evidence required in proceedings in courts of record. All evidence submitted to the board shall be submitted under oath. The chairman, or any member of the board, shall have authority to administer oaths to witnesses, subpoena witnesses and compel the production of books and papers pertinent to any appeal or hearing authorized by this section.

If any person subpoenaed to appear at any appeal or hearing shall refuse to appear, or shall refuse to answer inquiries propounded at the appeal or hearing or shall fail or refuse to produce books and papers which have been subpoenaed which are pertinent to any appeal or hearing authorized by
this section, the board shall report the facts to the circuit
court of Kanawha County or the circuit court of any county
in which the hearing is being conducted and such court may
compel obedience to the subpoena as through such subpoena
had been issued by such court in the first instance. A person
giving testimony at an appeal or hearing authorized by this
section shall not be liable for such testimony given in good
faith and without malicious intent.

The board shall designate a reporter for any such hearing
who shall record and transcribe all of the proceedings. Upon
his demand, the member making the appeal shall have a
public hearing on the charges and in the absence of such
demand, the board may determine whether or not the hearing
should be public. Any hearing may be continued, recessed or
adjourned by the board.

The superintendent shall provide reasonable space for the
conduct of hearings. The charges of the reporter shall be
paid by the superintendent from available appropriations.
At the conclusion of the hearing, the board shall determine
whether or not the superintendent’s order shall be sustained.
The board’s decision shall be issued in writing, with copies
thereof being sent by the board to the superintendent and to
the appealing member by certified mail, return receipt re-
quested. A hearing shall be conducted by at least five
members of the board and the decision of the board shall be
made by a majority vote of all the members of the board.

Either party aggrieved by a decision of a board of appeals
may appeal the decision to the circuit court of Kanawha
County within sixty days of receipt of a copy of the board’s
decision.

The court shall hear the appeal upon the record and de-
terminate all questions submitted to it on appeal.

In the event any decision sustaining the superintendent’s
order or notice is reversed upon judicial review, which reversal
is final, the superintendent shall return the member to his
status prior to the superintendent’s order or notice without
any acts or action of reprisal or reprimand, with full payment
of any compensation withheld and with full credit for service
between the date the superintendent issued his order or notice and the date of the final judicial decision reversing the decision of the board.

CHAPTER 158
(Com. Sub. for S. B. 312—By Senator Boettner)

[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-one, relating to the authorization of charitable raffles; specifying the legislative intent; definitions; specifying when raffle may be conducted without a license; establishing procedure for licensure through the state tax commissioner; providing for annual and limited occasion licenses; setting forth restrictions and limitations with respect to such licenses; establishing license fees; exempting raffle occasions from other fees and taxes; specifying the information required to be submitted for the license application; permitting the amendment of any such license under certain circumstances; authorizing any licensee to adopt rules and regulations governing the conduct of raffle occasions; establishing limitations on the value of raffle prizes which may be awarded; prohibiting certain prizes; prohibiting compensation to individuals who assist in conducting raffle occasions; authorizing concessions in connection with raffle occasions; providing certain conditions and limitations with respect to such concessions; relating to the payment of rent or other fees for the use of premises in conducting raffle occasions; providing conditions and limitations with respect to the use of such premises; providing for the payment of expenses from the gross proceeds of raffle occasions; providing for the disbursement of net proceeds from raffle occasions; requiring that certain records be maintained by licensees; authorizing the state tax commissioner to perform an audit of such records; permitting the advertisement of raffle
occasions; setting forth criminal offenses; providing for criminal penalties; authorizing the state tax commissioner to promulgate rules and regulations to administer the provisions of this article; when a license may be denied, revoked or suspended; relating to notice of revocation or suspension; establishing a procedure for a hearing; providing for judicial review of the commissioner's order; specifying when the commissioner may issue an emergency order suspending a license; requiring every licensee to file financial reports; requiring the filing of a license in the office of the clerk of the county commission of the county in which the raffle occasions are to be held; providing that the license application shall be made available for public inspection; authorizing a county option election to determine whether charitable raffles should continue to be held in such county; setting forth the requirements and procedures for any such county option election; prohibiting certain persons from participating in any raffle activities; providing restrictions on the use of raffle equipment; establishing that net proceeds of any state fair raffle occasion are considered used for charitable or public service purposes; setting forth the procedure for the issuance of a state fair raffle license; and providing a severability clause.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. CHARITABLE RAFFLES.

§47-21-1. Legislative intent.
§47-21-2. Definitions.
§47-21-3. Authorizing the conduct of certain raffles without a license.
§47-21-4. Who may hold raffles; application for license; licenses not transferable.
§47-21-5. Annual license; conditions on holding of raffles.
§47-21-6. Limited occasion license; conditions on holding of raffles.
§47-21-7. License fee and exemption from taxes.
§47-21-8. Information required in application.
§47-21-9. Amendment of license.
§47-21-10. Licensee rules and regulations.
§47-21-11. Limits on prizes awarded—General provisions.
§47-21-12. Compensation generally prohibited.
§47-21-13. Compensation for concession operator; concession operated by charitable or public service organization.
§47-21-14. Rent or other fee for use of premises; rent or other fee received by licensee prohibited; reimbursement of expenses.
§47-21-15. Payment of reasonable expenses from proceeds; net proceeds disbursement.
§47-21-16. Records; commissioner audit.
§47-21-17. Advertising.
§47-21-18. Fraud; penalties.
§47-21-19. Obtaining license fraudulently; penalty.
§47-21-20. Violation of provisions; penalties.
§47-21-21. Administration; rules and regulations.
§47-21-22. Filing of reports.
§47-21-23. Filing of copy of license; application open to public inspection.
§47-21-24. County option election.
§47-21-25. Prohibited acts by convicted persons.
§47-21-26. Restrictions on use of raffle equipment.
§47-21-27. Proceeds of state fair.
§47-21-28. State fair raffle license; rules and regulations.
§47-21-29. Severability.

§47-21-1. Legislative intent.

1 The Legislature, in recognition of the need charitable and public service organizations have for a practicable way of raising funds, declares its intent to grant the privilege of holding raffles to those organizations which qualify as provided in this article.

§47-21-2. Definitions.

1 For purposes of this article, unless specified otherwise:
2 (a) "Charitable or public service activity or endeavor" means any bona fide activity or endeavor which directly benefits one or more people by:
3 (1) Contributing to educational or religious purposes; or
4 (2) Relieving them from disease, distress, suffering, constraint or the effects of poverty; or
5 (3) Increasing their comprehension of and devotion to the principles upon which this nation was founded and to the principles of good citizenship; or
6 (4) Making them aware of or educating them about issues of public concern so long as the activity or endeavor is
(5) By lessening the burdens borne by government or voluntarily supporting, augmenting or supplementing services which government would normally render to the people; or

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

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

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

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

(d) “Concession” means any stand, booth, cart, counter or other facility, whether stationary or movable, where beverages, both alcoholic and nonalcoholic, food, snacks, cigarettes or other tobacco products, newspapers, souvenirs or any other items are sold to patrons by an individual operating the facility. Notwithstanding anything contained in subdivision (2), subsection (a), section twelve, article seven, chapter sixty of this code to the contrary, “concession” includes beverages which are regulated by and shall be subject to the provisions of chapter sixty of this code.

(e) “Conduct” means to direct the actual holding of a raffle by activities including, but not limited to, handing out tickets, collecting money, drawing the winning numbers or names, announcing the winning numbers or names, posting the winning numbers or names, verifying winners and awarding prizes.
(f) "Expend net proceeds for charitable or public service purposes" means to devote the net proceeds of a raffle occasion or occasions to a qualified recipient organization or as otherwise provided by this article and approved by the commissioner pursuant to section fifteen of this article.

(g) "Gross proceeds" means all moneys collected or received from the conduct of a raffle or raffles at all raffle occasions held by a licensee during a license period; this term shall not be deemed to include any moneys collected or received from the sale of concessions at raffle occasions.

(h) "Joint raffle occasion" means a single gathering or session at which a series of one or more successive raffles is conducted by two or more licensees.

(i) "Licensee" means any organization or association granted an annual or limited occasion license pursuant to the provisions of this article.

(j) "Net proceeds" means all moneys collected or received from the conduct of a raffle or raffles at occasions held by a licensee during a license period after payment of the raffle expenses authorized by sections eleven, thirteen and fifteen of this article; this term shall not be deemed to include moneys collected or received from the sale of concessions at raffle occasions.

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

(l) "Patron" means any individual who attends a raffle occasion other than an individual who is participating in the conduct of the occasion or in the operation of any concession, whether or not the individual is charged an entrance fee or participates in any raffle.

(m) "Qualified recipient organization" means any bona fide, not for profit, tax-exempt, as defined in subdivision (p) of this section, incorporated or unincorporated association or organization which is organized and functions exclusively to directly benefit a number of people as provided in subparagraphs (1) through (7), subdivision (a)
of this section. “Qualified recipient organization” includes without limitation any licensee which is organized and functions exclusively as provided in this subdivision.

(n) “Raffle” means a game involving the selling of tickets to participate in such game, certain among which, as determined by drawing after the sale, entitle the holder or holders to a prize or prizes.

(o) “Raffle occasion” or “occasion” means a single gathering or session at which a series of one or more successive raffles is conducted by a single licensee.

(p) “Tax-exempt association or organization” means an association or organization which is, and has received from the “Internal Revenue Service” a determination letter that is currently in effect stating that the organization is, exempt from federal income taxation under subsection 501(a) and described in subsection 501(c) (3), 501(c) (4), 501(c) (8), 501(c) (10), 501(c) (19) or 501(d) of the “Internal Revenue Code.”

§47-21-3. Authorizing the conduct of certain raffles without a license.

Notwithstanding any other provisions of this article to the contrary, any charitable or public service organization which has been in existence in this state for at least one year is hereby authorized to conduct raffles without compliance with the licensing provisions of this article: Provided, That any prize awarded in any single raffle at a raffle occasion may not exceed in value the sum of one thousand dollars: Provided, however, That the cumulative gross proceeds derived from the conduct of raffle occasions by any such charitable or public service organization shall not exceed seven thousand five hundred dollars during any calendar year: Provided further, That any such organization shall not be subject to the record keeping provisions of section sixteen of this article but shall maintain a separate accounting for the operation of raffles. All records required by this section shall be maintained for at least three calendar years and shall be available for reasonable inspection by the commissioner.
§47-21-4. Who may hold raffles; application for license; licenses not transferable.

1 Except as provided in section three of this article, any charitable or public service organization which has been in existence in this state for at least one year prior to filing an application for a raffle license issued pursuant to section five or section six of this article may hold raffle occasions in accordance with the provisions of this article during such time as it holds a valid license.

2 Application for a raffle license shall be made to the tax commissioner and shall be on a form which shall be supplied by him. The application shall contain the information required by section eight of this article and any other information which the commissioner considers necessary. An application shall be filed not less than sixty days before the date when the applicant intends to hold its first raffle occasion. An application which is not denied within thirty days after filing is considered approved and the commissioner shall, within five days after the expiration of such thirty days, send to the applicant its license.

3 For purposes of this article, any application for an annual license or a limited occasion license received prior to the effective date of this article is considered filed on such effective date.

4 No raffle license issued pursuant to this article may be transferred.

§47-21-5. Annual license; conditions on holding of raffles.

1 A charitable or public service organization, or any of its auxiliaries or other organizations otherwise affiliated with it, may apply for an annual license. Only one license per year in the aggregate may be granted to a charitable or public service organization and all of its auxiliaries or other associations or organizations otherwise affiliated with it: Provided, That for purposes of this section, the various branches, chapters or lodges of any national association or organization or local churches of a nationally organized church are not considered affiliates or auxiliaries of each other. The commissioner shall by regulation provide for the
manner for determining to which organization, whether the
parent organization, an affiliate or an auxiliary, the one
license allowed under this section is granted. An annual
license is valid for one year from the date of issuance. No
organizations may hold a joint raffle occasion under any
annual licenses.

A licensee shall display its annual raffle license
conspicuously at the location where the raffle occasion is
held.

§47-21-6. Limited occasion license; conditions on holding of
raffles.

Two or more organizations may hold a joint raffle
occasion provided each participating organization has been
granted a limited occasion raffle license for such jointly
held occasion: Provided, That no licensee which holds an
annual license may obtain more than one limited occasion
license.

A limited occasion license is valid only for the time period
specified in the application and entitles only the licensee to
hold two raffle occasions during the time period so specified
which may not exceed six months from the date of issuance
of such limited occasion license.

Subject to the limitations set forth in this section for
charitable or public service organizations having an annual
license, a charitable or public service organization and all
of its auxiliaries or other associations or organizations
otherwise affiliated with it, may be granted only three
limited occasion licenses per year in the aggregate. For
purposes of this section, the various branches, chapters or
lodges of any national association or organization or local
churches of a nationally organized church are not
considered affiliates or auxiliaries of each other. The
commissioner shall by regulation provide the manner for
determining to which organization, whether the parent
organization, an affiliate or an auxiliary, the three licenses
allowed under this section are granted.

A licensee shall display its limited occasion license
conspicuously at the location where the raffle occasion is
held.
§47-21-7. License fee and exemption from taxes.

(a) A license fee shall be paid to the tax commissioner for annual licenses in the amount of fifty dollars. A license fee shall be paid to the tax commissioner for a limited occasion license in the amount of twenty-five dollars. The license fee imposed by this section is in lieu of all other license or franchise taxes or fees of this state, and no county, municipality or political subdivision of this state is empowered to impose a license or franchise tax or fee on any raffle or raffle occasion.

(b) The gross proceeds derived from the conduct of raffle occasions are exempt from state and local business and occupation taxes, income taxes, excise taxes and all special taxes. Any charitable or public service organization conducting a raffle occasion pursuant to the provisions of this article is exempt from payment of consumers sales and service taxes, use taxes and all other taxes on all purchases for use or consumption in the conduct of a raffle occasion and is exempt from collecting consumers sales taxes on any admission fees and sales of raffle tickets.

§47-21-8. Information required in application.

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

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

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

(c) For a limited occasion license, the names and addresses of two or more bona fide active members of the applicant organization who are charged with overall responsibility for the applicant’s raffle operations, at least one of whom shall be present when the winning numbers or names are drawn, announced, posted and verified and the prizes are awarded; and the names and addresses of the
highest elected officer of the licensee and his officially appointed designee, one of whom shall be present when the winning numbers or names are drawn, announced, posted and verified and the prizes are awarded; for an annual license, the names, addresses and telephone numbers of three or more bona fide active members of the applicant organization who are charged with overall responsibility for the applicant's raffle operations, at least one of whom shall be present when the winning numbers or names are drawn, announced, posted and verified and the prizes are awarded; and the names and addresses and telephone numbers of the highest elected officer of the licensee and his officially appointed designee, one of whom shall be present when the winning numbers or names are drawn, announced, posted and verified and the prizes are awarded;

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

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

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

(2) Being in existence in this state for at least one year prior to filing an application for a raffle license;

(f) Designate the date or dates and the time or times when the raffle occasions will be held;

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

(h) State whether the applicant has ever had a previous application for any raffle license refused, or whether any previous raffle license has been revoked or suspended;

(i) State the charitable or public service purpose or purposes for which the raffle proceeds will be expended;

(j) Provide statements to the effect that the individuals specified in subdivision (c) of this section and the officers of the applicant understand:
(1) That it is a violation of the article to allow any persons other than those authorized by this article to conduct the raffle or concessions operated in conjunction therewith;

(2) That it is required that the reports be filed and the records kept as provided by this article; and

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

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

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

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

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

§47-21-9. Amendment of license.

If circumstances beyond the control of the licensee organization prohibit it from holding any raffle occasion in accordance with the information provided by it in its license application form, the licensee organization may request approval by the commissioner to modify the terms and conditions of its license.

§47-21-10. Licensee rules and regulations.

Each licensee may adopt rules and regulations, not
inconsistent with or in violation of the provisions of this article, or rules or regulations promulgated hereunder, to govern the conduct of raffle occasions.

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

§47-21-11. Limits on prizes awarded—General provisions.

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 raffle occasion, for any raffle occasion held pursuant to a limited occasion license, may not exceed in value seven thousand five hundred dollars.

Prizes may be money, real or personal property, or merchandise other than beer, wine, spirits or alcoholic liquor as defined in section five, article one, chapter forty of this code. If the prizes are real or personal property or merchandise, the value assigned to them is their fair market value at the time of acquisition for the raffle or at the time of purchase.

§47-21-12. Compensation generally prohibited.

Except as otherwise provided in section thirteen of this article, no individual who participates in any manner in the conduct of a raffle occasion or the operation of a concession in conjunction with a raffle occasion may receive or accept either directly or indirectly any commission, wage, salary, reward, tip, donation, gratuity or other form of compensation or remuneration, regardless of the source, for his work, labor or services.

§47-21-13. Compensation for concession operator; concession operated by charitable or public service organization.
A licensee may allow any person to operate concessions in conjunction with raffle occasions, and to be compensated for such operation, in accordance with the following provisions:

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

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

(c) The person which operates the concession at such regular meetings or functions is the same which operates the concessions at the raffle occasion; and

(d) The terms of the agreement under which the person operates the concession at the raffle occasion are the same terms under which the concession is operated at the regular meetings or functions: Provided, That a copy of such agreement is filed at the time the application is made and any changes thereto are filed within ten days of being made.

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

§47-21-14. Rent or other fee for use of premises; rent or other fee received by licensee prohibited; reimbursement of expenses.

(a) No owner or lessee, including his agent, of premises on which raffle occasions are held by one or more licensees holding annual raffle licenses may receive rent or other fee in any amount for the holding of more than two raffle occasions per month on his premises. No owner or lessee, including his agent, of premises on which raffle occasions are held by one or more licensees holding limited occasion licenses may receive rent or other fee in any amount for the holding of more than twelve raffle occasions per year on his premises: Provided, That the total number of raffle occasions for which any owner or lessee, including his
agent, may receive rent or other fee in any one year may not exceed twenty-four.

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

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

§47-21-15. Payment of reasonable expenses from proceeds; net proceeds disbursement.

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

(1) Rent paid for the use of the premises: Provided, That a copy of the rental agreement was filed with the raffle license application with any modifications thereto to be filed within ten days of being made;

(2) The cost of custodial services;

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

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

(5) The cost of hiring security personnel.

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

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

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

§47-21-16. Records; commissioner audit.

Any licensee which holds a raffle occasion as provided by
this article shall maintain a separate account and separate
bookkeeping procedure for its raffle operations. All records
required by this article shall be maintained for at least three
years and shall be open to the commissioner for reasonable
inspection. Whenever the commissioner has reasonable
cause to believe a licensee has violated any of the provisions
of this article, he may perform or cause to be performed an
audit of the licensee's books and records.

§47-21-17. Advertising.

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

§47-21-18. Fraud; penalties.

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

§47-21-19. Obtaining license fraudulently; penalty.

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

§47-21-20. Violation of provisions; penalties.

Any person who knowingly violates any provision of this
article, other than the provisions of sections eighteen and
nineteen, is guilty of a misdemeanor, and, upon conviction
thereof, shall be fined not less than one hundred nor more
than one thousand dollars; and, upon a second or
subsequent conviction thereof, shall be fined not less than
one hundred nor more than one thousand dollars or
imprisoned not more than one year or both fined and
imprisoned.
§47-21-21. Administration; rules and regulations.

(a) The commissioner shall promulgate rules and regulations to administer the provisions of this article in accordance with the provisions of chapter twenty-nine-a of this code.

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

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

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

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

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

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

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

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

(ii) Such action is necessary to prevent a criminal violation of this article; or

(iii) Such action is necessary for the immediate preservation of the public peace, health, safety, morals, good order or general welfare.

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

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

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

§ 47-21-22. Filing of reports.

Each licensee holding an annual, limited or state fair
license shall file with the commissioner a financial report
summarizing its raffle operation within thirty days after
the expiration date of such license.

The reports required by this section shall contain the
name, address and social security number of any individual
who received during the course of a raffle occasion prizes
the aggregate value of which exceeded one hundred dollars,
and other information required by the commissioner.

§47-21-23. Filing of copy of license; application open to public
inspection.

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

§47-21-24. County option election.

The county commission of any county is authorized to call
a local option election for the purpose of determining the
will of the voters as to whether the provisions of this article
shall continue in effect in such county.

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

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

Each of the undersigned certifies that he or she is an
individual residing in . . . . . . County, West Virginia, and
is duly qualified to vote in that county under the laws of the
state, and that his or her name, address and the date of
signing this petition are correctly set forth below.
The undersigned petition the county commission to call and hold a local option election at (1) a special election or (2) the next primary, general or special election [the petition shall specify (1) or (2)] upon the following question: Shall the provisions of article twenty-one, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, continue in effect in ......... County, West Virginia?

Name            Address            Date

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

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

Each individual qualified to vote in the county at any primary, general or special election, shall likewise be qualified to vote at the local option election. The election officers appointed and qualified to serve as such at any primary, general or special election shall conduct the local option election. If the local option election is to be held at the same time as a primary, general or other special election, it shall be held in connection with and as a part of that primary, general or special election. The ballots in the local option election shall be counted and returns made by the election officers and the results certified by the commissioners of election to such county commission which shall canvass the ballots, all in accordance with the laws of the state of West Virginia relating to primary and general elections insofar as the same are applicable. The county commission shall, without delay, canvass the ballots cast at said local option election and certify the result thereof.
§47-21-25. Prohibited acts by convicted persons.

1. Any person convicted of any felony, or of a misdemeanor for a gambling offense, or of a violation of any provision of article twenty of this chapter, is prohibited from directly or indirectly obtaining a raffle license, conducting a raffle game, operating a concession or leasing or providing to a licensee any premises where raffle occasions may be held, within ten years from such conviction.

§47-21-26. Restrictions on use of raffle equipment.

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

§47-21-27. Proceeds of state fair.

1. The Legislature declares that the net proceeds of any raffle game which accrue to the West Virginia state fair are considered used for charitable or public service purposes as defined in section two of this article. Any proceeds allowed by the state fair board to be paid to or retained by persons who conduct raffle occasions at the state fair are deemed to be expenses incurred by the state fair board.

§47-21-28. State fair raffle license; rules and regulations.

1. The West Virginia state fair board may apply annually to the tax commissioner for a state fair raffle license to provide for the conduct of raffle occasions at the state fair. The license shall permit the state fair board to have one or more persons conduct raffle occasions at the state fair who have conducted raffle occasions on a regular basis for at least one year prior to the date of the state fair board’s application. A license fee of five hundred dollars shall be paid to the tax commissioner for the state fair raffle license. The provisions of sections eleven, twelve, fourteen, fifteen and twenty-six of this article do not apply to a state fair raffle license. No state fair raffle license may be issued unless the application includes a copy of any lease or agreement entered into between the state fair board and the persons who are to conduct raffle occasions at the state fair. The state fair board may adopt reasonable rules and regulations, not inconsistent with or in violation of the provisions of this
§47-21-29. Severability.

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

CHAPTER 159

(Com. Sub. for H. B. 1405—By Delegate Minard and Delegate Murensky)

[Passed March 8, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article nine, relating to the West Virginia real estate time-sharing act; short title; purposes; scope; definitions; contracts for purchase of time-share periods; public offering statement; escrow accounts; surety bonds; non-disturbance instruments; reservation agreements; escrows; cancellation; advertising materials; recordkeeping by seller; management; criminal penalties; civil penalties; discharge of management entity; assessment of common expense; liens for overdue assessments; mechanic’s liens; insurance; transfer of seller’s interest to third party; exchange programs; license required to sell; purchasers’ remedies; partition; securities; zoning and building; regulation; annual fee for each time-share period in plan; trust fund created; taxation.

Be it enacted by the Legislature of West Virginia:

That chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article nine, to read as follows:
ARTICLE 9. WEST VIRGINIA REAL ESTATE TIME-SHARING ACT.

§36-9-1. Short title.
1 This article shall be known and may be cited as the “West
2 Virginia time-sharing act.”

1 The purposes of this article are to:
2 (a) Give statutory recognition to real property time-sharing
3 in the state;
4 (b) Establish procedures for the creation, sale and opera-
5 tion of time-sharing plans; and
6 (c) Require every time-sharing plan offered for sale or
7 created and existing in this state to be subjected to the provi-
8 sions of this article.

1 (a) This article applies only to time-sharing plans consisting
of more than seven time-sharing periods other than condominium fee ownership time-sharing plans, except that sections six, ten, eleven, twelve, thirteen, seventeen, twenty, twenty-one, twenty-four, twenty-five and twenty-six of this article shall apply to all time-sharing plans.

(b) All time-sharing accommodations or facilities which are located outside the state but offered for sale in this state shall be subject to all of the provisions of this article except sections eleven through sixteen and twenty through twenty-three.

(c) Notwithstanding other provisions of this article, either expressed or implied, to the contrary, it is the legislative intent that nothing herein be deemed to alter the existing procedure for the assessment and collection of ad valorem taxes on accommodations or facilities subject to a time-sharing plan.

§36-9-4. Definitions.

As used in this article:

(a) "Accommodations" means any apartment, condominium or cooperative unit, cabin, lodge, hotel or motel room or any other private or commercial structure which is situated on real property and designed for occupancy by one or more individuals;

(b) "Assessment" means the share of funds required for the payment of common expenses which is assessed from time to time against each purchaser by the managing entity;

(c) "Common expenses" means those expenses properly incurred for the maintenance, operation and repair of all accommodations or facilities, or both, constituting the time-sharing plan;

(d) "Contract" means any agreement conferring the rights and obligations of the time-sharing plan on the purchaser;

(e) "Developer" means the person creating a time-sharing plan;

(f) "Division" means the division of land sales and condominiums in the office of the state auditor;

(g) "Facilities" means any structure, service, improvement
or real property, improved or unimproved, which is made
available to the purchasers of a time-sharing plan;

(h) "Managing entity" means the person responsible for
operating and maintaining the time-sharing plan;

(i) "Offer to sell," "offer for sale," "offered for sale" or
"offer" means solicitation of purchasers, the taking of reserva-
tions or any other method whereby a purchaser is offered
the opportunity to participate in a time-sharing plan;

(j) "Owners' association" means the association made up
of all purchasers of a time-sharing plan who have purchased
a fee simple interest in real property;

(k) "Purchaser" means any person who is buying or who
has bought a time-share period in a time-sharing plan;

(l) "Seller" means any developer or any other person, or
agent or employee thereof, who is offering time-share per-
iods for sale to the public in the ordinary course of business,
except a person who has acquired a time-share period for his
own occupancy and later offers it for resale;

(m) "Time-share period" means that period of time when a
purchaser of a time-sharing plan is entitled to the possession
and use of the accommodations or facilities, or both, of a
time-sharing plan;

(n) "Time-sharing plan" means any arrangement, plan,
scheme or similar device, other than an exchange program,
whether by membership, agreement, tenancy in common, sale,
lease, deed, rental agreement, license or right-to-use agree-
ment or by any other means, whereby a purchaser, in exchange
for a consideration receives a right to use accommodations or
facilities, or both, for a specific period of time less than a
full year during any given year, but not necessarily for con-
secutive years, and which extends for a period of more than
three years; and

(o) "Time-share unit" means an accommodation or facility
of a time-sharing plan which is divided into time-share periods.

§36-9-5. Contracts for purchase of time-share periods.

No seller of a time-sharing plan shall fail to utilize, and
furnish each purchaser of such plan a fully completed copy
of, a contract pertaining to such sale, which contract shall
include the following information:

(a) The actual date the contract is executed by all parties;

(b) The names and addresses of the seller, the developer
and the time-sharing plan;

(c) The total financial obligation of the purchaser, in­
cluding the initial purchase price and any additional charges
to which the purchaser may be subject, such as reservation,
maintenance, management and recreation charges: Provided,
That those costs which cannot be specified exactly shall be
estimated and the purchaser shall be notified that said costs
are subject to change;

(d) The estimated date of availability of each accommoda­
tion or facility which is not completed at the time the con­
tract is executed by the seller and purchaser;

(e) A description of the nature and duration of the time­
share period being sold, including whether any interest in
real property is being conveyed and the specific number of
years or months constituting the term of the contract;

(f) Immediately prior to the space reserved in the con­
tact for the signature of the purchaser, in boldfaced and
conspicuous type which shall be larger than the type in the
remaining text of the contract, substantially the following
statements:

"YOU MAY CANCEL THIS CONTRACT WITHOUT
ANY PENALTY OR OBLIGATION WITHIN TEN DAYS
FROM THE DATE YOU SIGN THIS CONTRACT, AND
UNTIL TEN DAYS AFTER YOU RECEIVE THE PUBLIC
OFFERING STATEMENT.

IF YOU DECIDE TO CANCEL THIS CONTRACT,
YOU MUST NOTIFY THE SELLER IN WRITING OF
YOUR INTENT TO CANCEL. YOUR NOTICE OF CAN­
CELATION SHALL BE EFFECTIVE UPON THE DATE
SENT AND SHALL BE SENT TO (Name of Seller) AT
(Address of Seller). NO PURCHASER SHOULD RELY
UPON REPRESENTATIONS OTHER THAN THOSE INCLUDED IN THIS CONTRACT.”

If no interest in real property is being conveyed, the contract shall also contain the following statement:

“YOU MAY ALSO CANCEL THIS CONTRACT AT ANY TIME AFTER THE ACCOMMODATIONS OR FACILITIES ARE NO LONGER AVAILABLE AS PROVIDED IN THIS CONTRACT”;

(g) A statement that oral representations cannot be relied upon and that the seller makes no representations other than those contained in the contract and the public offering statement;

(h) A statement that, in the event the purchaser cancels the contract during a ten-day cancellation period, the developer shall refund to the purchaser all payments made under the contract within twenty days after receipt of notice of cancellation;

(i) If no fee interest in real property is being conveyed, a statement that, in the event of any cancellation by the purchaser after the ten-day cancellation periods, the refund shall be the total amount of all payments made by the purchaser under the contract reduced by the proportion of any contract benefits the purchaser actually has received or has had the right to receive under the contract during the time preceding the date when the cancellation becomes effective; and

(j) If the seller is to transfer a fee interest in real property to the purchaser, the seller shall furnish a contract for sale to the purchaser at least ten days before the date of closing.

§36-9-6. Public offering statement.

Each developer shall file with the division a complete copy of the public offering statement to be used in the sale of the time-share periods. Until the division approves such filing, any contract regarding the sale of the time-sharing plan which is the subject of the public offering statement
shall be voidable by the purchaser. The proposed offering statement shall be received, reviewed and monitored in the following manner:

(a) The division shall, upon receiving a public offering statement from a developer, mail the developer an acknowledgment of receipt. The failure of the division to send such acknowledgement shall not, however, relieve the developer from the duty of complying with this section;

(b) Within twenty days after receipt of a public offering statement, the division shall determine whether the proposed public offering statement is adequate to meet the requirements of this section and shall notify the developer by mail that the division has either approved the public offering statement or found specified deficiencies. If the division fails to respond within twenty days, the filing shall be deemed approved. The developer may correct the deficiencies; and, within fifteen days after receipt of materials filed by the developer to correct the deficiencies found by the division, the division shall notify the developer by mail that the division has either approved the filing or found additional specified deficiencies. If the division fails to respond within fifteen days, the filing shall be deemed approved;

(c) Any material change to the public offering statement shall be filed with the division within fifteen days of the change. The division shall approve, or cite for deficiencies, the change within ten days after the date of filing. If the division fails to respond within ten days, the change shall be deemed approved;

(d) Upon filing a public offering statement with the division, a developer shall pay a filing fee of fifty cents for each time-share period which is to be part of the proposed time-sharing plan;

(e) Every public offering statement shall contain the following:

(1) A cover page stating:

(A) The name of the time-sharing plan; and
(B) The following, in conspicuous type:

"THIS PUBLIC OFFERING STATEMENT CONTAINS IMPORTANT MATTERS TO BE CONSIDERED IN ACQUIRING A TIME-SHARE PERIOD. THE STATEMENTS CONTAINED HEREIN ARE ONLY SUMMARY IN NATURE. A PROSPECTIVE PURCHASER SHOULD REFER TO ALL REFERENCES, EXHIBITS HERETO, CONTRACT DOCUMENTS AND SALES MATERIALS. ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECT STATEMENTS OF SELLER REPRESENTATIONS. REFER TO THIS DOCUMENT FOR CORRECT REPRESENTATIONS";

(2) A separate index of the contents and exhibits of the public offering statement;

(3) A text, which shall be a summary of the disclosure required by paragraphs five through thirteen and subsection (f), and a cross-reference to the location in the public offering statement of each exhibit;

(4) Exhibits, setting forth in detail the information summarized in the text of the public offering statement;

(5) An explanation of the time-share form of ownership that is being offered;

(6) A general description of the time-sharing plan, including the numbers of time-share units and time-share periods which are a part of the plan;

(7) An explanation of the purchaser's rights of cancellation;

(8) A copy of each executed escrow agreement and, if applicable, any nondisturbance instrument and/or notice to creditors;

(9) An explanation of the status of the title to the real property underlying the time-sharing plan, including a statement of the existence of any lien, defect, judgment or other encumbrance affecting the title to the property;

(10) A description of any judgment against the seller or
the managing entity and the status of any pending suit to which the seller or the managing entity is a party, which is material to the time-sharing plan, and any other suit material to the time-sharing plan of which the seller has actual knowledge;

(11) A description of the insurance coverage provided for the benefit of the purchasers;

(12) A statement of whether the time-sharing plan is participating in an exchange program and, if so, the name and address of the exchange company offering the exchange program; and

(13) Any other information that the seller, with the approval of the division, desires to include in the public offering statement;

(f) A public offering statement regarding a time-sharing plan shall contain or fully and accurately disclose the following:

(1) The name and address of the developer and the identity of the chief operating officer or principal directing the creation and sale of the time-sharing plan;

(2) The name and address of the accommodations and facilities;

(3) The schedule of commencement and completion of all improvements;

(4) The name of any person who will or may have the right to alter, amend or add to the charges to which the purchaser may be subject and the terms and conditions under which such alterations, amendments or additions may be imposed;

(5) The documents, if any, creating the time-sharing plan;

(6) Any contracts or leases to be signed by purchasers;

(7) The identity of the managing entity and the manner, if any, whereby the seller may change the managing entity or its control;
(8) A copy of the rules, regulations, conditions or limitations on the use of the accommodations or facilities available to purchasers;

(9) Any restrictions on the transfer of any time-share period; and

(10) A description of the recreational and other facilities of the time-sharing plan;

(g) In addition, a public offering statement regarding any time-sharing plan which transfers fee simple interests in real property shall also contain or fully and accurately disclose the following:

(1) All unusual and material circumstances, features and characteristics of the real property;

(2) An estimated operating budget and a schedule of each purchaser's expenses; and

(3) Any service, maintenance or recreation contracts or leases that may be canceled by the purchasers.

§36-9-7. Escrow accounts; surety bonds; nondisturbance instruments.

(a) It is a violation of this article for a seller of a time-sharing plan to fail to:

(1) Place one hundred percent of all funds which are received from purchasers of such time-sharing plan in an escrow account during the ten-day cancellation period provided for by this chapter. The establishment of such an escrow account shall be evidenced by an escrow agreement between the escrow agent and the seller, the provisions of which shall include:

(A) That its purpose is to protect the purchaser's right to a refund if he cancels the contract for the sale of a time-sharing plan within a ten-day cancellation period;

(B) That funds may be disbursed to the seller by the escrow agent from the escrow account only after expiration of the purchasers' ten-day cancellation periods; and
(C) That the escrow agent may release funds to the seller from the escrow account only after receipt of a sworn statement from the seller that no cancellation notice postmarked on a date within the ten-day cancellation period was received from the purchasers whose funds are being released to the seller.

(2) Place fifty percent of the funds received from purchasers, after the ten-day cancellation periods have expired, in an escrow account when a time-sharing plan is being sold which does not convey fee interests in real property:

(A) The establishment of such escrow accounts shall be evidenced by an executed escrow agreement between the escrow agent and the seller, the provisions of which shall include:

(i) That its purpose is to protect the purchaser's right to a refund, at any time the accommodations or facilities of the time-sharing plan are no longer available as provided in the contract entered into by the seller and the purchaser, in an amount representing the purchaser's pro rata share of the moneys escrowed;

(ii) That funds may be disbursed to the seller by the escrow agent from the escrow account periodically in the ratio of the amount of time the purchasers have already used or had the right to use the accommodations or facilities of the time-sharing plan at the time of the disbursement in relation to the total time sold to the purchasers; and

(iii) That the escrow agent may release funds to the seller from the escrow account only after receipt of a statement signed by the purchaser indicating that such purchaser has used or has had the right to use a specific number of days out of the total time period purchased. If a purchaser refuses to sign such a statement when tendered, the seller may submit a sworn statement to the escrow agent that the purchaser used or had the right to use a specific number of days, but that the purchaser refused to sign a statement to that effect.

(B) The seller may elect to terminate use of an escrow account established pursuant to this paragraph if, at a later date, such seller complies with the requirements of subdivision (4) or subdivision (5). Any funds remaining in such escrow
account at the time a seller elects to terminate its use shall be
disbursed to the seller by the escrow agent only when the seller
has transmitted to the escrow agent and to each purchaser
affected a copy of the surety bond or, if applicable, a nondis-
turbance instrument or notice to creditors. A sworn statement
from the seller that the purchasers have been furnished these
required documents shall also be given to the escrow agent
and the division before the funds may be released to the seller
from the escrow account.

(3) Place one hundred percent of all funds received from
purchasers of such time-sharing plan, after the ten-day can-
cellation periods have expired, in an escrow account when
interests in real property are being sold, whether by means of
deeds, agreements for deed or other agreements which will
subsequently transfer title to the purchasers. The establishment
of such an escrow account shall be evidenced by an executed
escrow agreement between the escrow agent and the seller, the
provisions of which shall include:

(A) That its purpose is to protect all deposits and pay-
ments made by a purchaser toward the purchase price until
the deed is transferred to the purchaser or until the purchaser
and seller enter into a contract for deed or any other agree-
ment which will subsequently transfer title to the purchaser;
and

(B) That funds may be disbursed to the seller by the
escrow agent from the escrow account only after title has
been delivered to the purchaser or delivered for recording
to the clerk of the county commission in the county where the
real property underlying the time-sharing plan is located.
However, in the case of a time-share period sold by agreement
for deed, funds only may be disbursed to the seller after a
notice to creditors and, if the property is encumbered by a
mortgage, a nondisturbance instrument has been recorded in
the public records of the county or counties in which the time-
sharing plan is located; or alternatively, after the seller re-
cords a notice to creditors and obtains a release of lien for a
time-share unit, funds may be disbursed pertaining to the time-
share periods within that unit.
(4) In lieu of establishing the escrow account described by subdivision (2), post a surety bond, in the total amount of the contract, with the clerk of the county commission in the county where the time-sharing plan accommodations or facilities are located. Such bond shall be executed by the seller as principal and by a surety company authorized to do business in this state as surety. The bond shall be conditioned upon the faithful compliance of the seller with the provisions of both this section and the contract between the seller and the purchaser and shall run to the division for the benefit of any purchaser injured by the seller's violation of this section or failure to perform pursuant to the contract between the seller and the purchaser. The bond may be reduced periodically in the ratio of the amount of time used by purchasers in relation to the total time sold to purchasers.

(5) In lieu of either establishing the escrow account described by subdivision (2) or posting a surety bond described by subdivision (4), provide the purchaser with a nondisturbance instrument or notice to creditors, as follows:

(A) Each purchaser shall be furnished with a copy of a recorded nondisturbance instrument from every lienholder who has a recorded lien against the property upon which the accommodations or facilities to be used by the purchaser are situated. The nondisturbance instrument shall provide that, in the event of foreclosure of such lien, the succeeding owner shall take title to the property subject to the possessory rights of the purchasers;

(B) Each purchaser shall also be furnished with a copy of a recorded instrument which provides to all subsequent creditors of the seller notice of the existence of the time-sharing plan and notice of the rights of purchasers in the time-sharing plan from any claims by subsequent creditors;

(C) However, if the seller owns the real property and any accommodations or facilities constituting the time-sharing plan, free and clear of any mortgage, lien or other encumbrance, the seller need only furnish to each purchaser a notice to creditors; and

(D) A copy of any recorded nondisturbance instrument or
notice to creditors shall be provided to each purchaser by the seller at the time the contract between them is executed, unless the seller has initially utilized the escrow provisions of subsection (b), in which case the nondisturbance instrument or notice to creditors shall be provided to the purchaser before the seller obtains funds from the escrow agent, as provided in subdivision (2).

(6) Place any fund escrowed pursuant to this section into an escrow account established solely for that purpose with an attorney who is a member of the state bar; a bank having trust powers and located in this state; a savings and loan company located in this state; a trust company located in this state; or a real estate broker registered under chapter forty-seven of this code. In lieu of the foregoing, with the approval of the division, the funds may be escrowed in an account required by the jurisdiction in which the sale of the time-sharing plan took place. In lieu of any escrows required by this section, the director of the division shall have the discretion to accept other assurances, including, but not limited to, a surety bond or an irrevocable letter of credit in an amount equal to the escrow requirements of this section. Determination of default and refund of deposits shall be governed by the escrow release provision of this subsection.

(b) An escrow agent holding funds escrowed pursuant to this section may invest such escrowed funds in securities of the United States government, or any agency thereof, or in savings or time deposits in institutions insured by an agency of the United States government. The right to receive the interest generated by any such investments shall be as specified by contract.

(c) Each escrow agent shall maintain separate books and records for each time-sharing plan and shall maintain such books and records in accordance with good accounting practices.

(d) Any seller who intentionally fails to pay all required funds into the escrow accounts required by this section is guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary not less than one nor more than five years.
§36-9-8. Reservation agreements; escrows.

(a) (1) Prior to filing the public offering statement with the division a seller shall not offer a time-sharing plan for sale but may accept reservation deposits upon approval by the division of a fully executed escrow agreement and reservation agreement properly filed with the division.

(2) Reservations shall not be taken on a time-sharing plan unless the seller has an ownership interest or leasehold interest of a duration at least equal to the duration of the proposed time-sharing equal to the duration of the proposed time-sharing plan in the land upon which the time-sharing plan is to be developed.

(b) Each executed reservation agreement shall be signed by the seller and the escrow agent and shall contain the following:

(1) A statement that the escrow agent will grant a prospective purchaser an immediate, unqualified refund of the reservation deposit upon either the purchaser’s or the seller’s written request directed to the escrow agent;

(2) A statement that the escrow agent may not otherwise release moneys unless a contract is signed by the purchaser, authorizing the release of the escrowed reservation deposit as a deposit on the purchase price. Such deposit shall then be subject to the requirements of section seven of this article, relating to escrow accounts, surety bonds and nondisturbance instruments;

(3) A statement of the obligation of the developer to file a public offering statement with the division prior to entering into binding contracts;

(4) A statement of the rights of the purchaser to receive the public offering statement required by this chapter;

(5) The name and address of the escrow agent and a statement that the purchaser may obtain a receipt from the escrow agent upon request; and

(6) A statement that the seller assures that the purchase price represented in or pursuant to the reservation agree-
ment will be the price in the contract for the purchase or that the price represented may be exceeded within a stated amount or percentage or a statement that no assurance is given as to the price in the contract for purchase.

(c) (1) The total amount paid for a reservation shall be deposited into a reservation escrow account.

(2) All funds paid in connection with the reservation of a time-share shall be placed in an escrow account established solely for that purpose with an attorney who is a member of the state bar; a bank having trust powers and located in this state; a savings and loan company located in this state; a trust company located in this state; or a real estate broker registered under chapter forty-seven of this code. In lieu of the foregoing, with the approval of the division, the funds may be deposited into an escrow account required by the jurisdiction in which the sale took place.

(3) The escrow agent may invest the escrowed funds in securities of the United States government, or any agency thereof, or in savings or time deposits in institutions insured by an agency of the United States government. The right to receive the interest generated from any such investments shall be as specified by the reservation agreement.

(4) The escrowed funds shall at all reasonable times be available for withdrawal in full by the escrow agent.

(5) Each escrow agent shall maintain separate books and records for each time-sharing plan and shall maintain such books and records in accordance with good accounting practices.

(d) Any seller who intentionally fails to pay all required funds into the escrow account required by this section is guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary not less than one nor more than five years.


1 No seller shall:

2 (a) Fail to honor the request of a purchaser to cancel a
contract made between the seller and purchaser pertaining to
the sale of a time-sharing plan if the request is made as
provided in the contract;

(b) Misrepresent in any manner the purchaser's right to
cancel;

(c) Fail to refund all payments made by the purchaser
under the contract and return all negotiable instruments,
other than checks, executed by the purchaser in connection
with the contract within twenty days from receipt of the
notice of cancellation transmitted to the seller from the
purchaser, if the purchaser has received no benefits under the
contract; and

(d) Fail to refund all payments made by the purchaser
under the contract which exceed a pro rata portion of the
total price representing the proportion of any contract bene-
fits actually received by the purchaser during the time pre-
ceding the date when cancellation becomes effective, within
twenty days from receipt of the purchaser's notice of can-
cellation, if the purchaser has received benefits under the
time-sharing plan.

§36-9-10. Advertising materials.

(a) All advertising materials shall be filed with the division
within ten days of use. “Advertising materials” include:

(1) Promotional brochures, pamphlets, advertisements or
other materials to be disseminated to the public in connection
with the sale of time shares;

(2) Transcripts of radio and television advertisements;

(3) Lodging certificates;

(4) Transcripts of standard verbal sales presentations; and

(5) Any other advertising materials.

(b) No advertising shall:

(1) Misrepresent a fact or create a false or misleading im-
pression regarding the time-sharing plan;

(2) Make a prediction of specific or immediate increases
in the price or value of time-share periods;
(3) Contain a statement concerning future price increases by the seller which are nonspecific or not bona fide;

(4) Contain any asterisk or other reference symbol as a means of contradicting or substantially changing any previously made statement or as a means of obscuring a material fact;

(5) Describe any improvements to the time-sharing plan that is not required to be built or that is uncompleted unless the improvement is conspicuously labeled as "NEED NOT BE BUILT," "PROPOSED" or "UNDER CONSTRUCTION" with the date or promised completion clearly indicated;

(6) Misrepresent the size, nature, extent, qualities or characteristics of the offered accommodations or facilities;

(7) Misrepresent the amount or period of time during which the accommodations or facilities will be available to any purchaser;

(8) Misrepresent the nature or extent of any services incident to the time-sharing plan;

(9) Make any misleading or deceptive representation with respect to the contents of the public offering statement and the contract or the purchasers' rights, privileges, benefits or obligations under the contract or this chapter; and

(10) Misrepresent the conditions under which a purchaser may exchange the right to use accommodations or facilities in one location for the right to use accommodations or facilities in another location.

(c) No promotional device, including any sweepstakes, lodging certificate, gift award, premium, discount, drawing or display booth, may be utilized without a disclosure that:

(1) The promotional device is being used for the purpose of soliciting sales of time-share periods; and

(2) The promotional device is being used to obtain the names and addresses of prospective purchasers and that any names and addresses acquired may be used for the purpose of soliciting sales of time-share periods.
(d) When a time-share project uses free offers, gift enterprises, drawings, sweepstakes or discounts as a promotional program, the rules of such promotional program shall be disclosed to the public and shall state:

1. The name of each time-sharing plan or business entity participating in the program;
2. The day and year by which all prizes listed or offered will be awarded; and
3. The method by which all prizes are to be awarded.

(e) At least one of each prize featured in a promotional program shall be awarded by the day and year specified in the promotion. When a promotion promises the award of a certain number of each prize, such number of prizes shall be awarded by the date and year specified in the promotion. A record shall be maintained containing the names and addresses of winners of the prizes and the record shall be made available upon request, to the public, upon payment of reasonable reproduction costs.

(f) The division shall require full disclosure of all pertinent information concerning the use of lodging certificates in a promotional campaign, including the terms and conditions of the campaign and the fact and extent of participation in such campaign by the developer. The division further may require reasonable assurances that the obligation incurred by a seller or the seller's agent in a lodging certificate program can be met. Such programs are subject to the prior approval of the division.

(g) If at any time the division determines that any advertising fails to meet the requirements of this section, the division may undertake enforcement action under the provisions of section twenty-three of this article.

§36-9-11. Recordkeeping by seller.

Each seller of a time-sharing plan shall maintain among its business records the following:

(a) A copy of each contract for the sale of a time-share period, which contract has not been canceled. If fee title
is being conveyed, the seller is required to retain a copy of the contract only until a deed of conveyance is recorded in the office of the clerk of the county commission in the county wherein the plan is located; and

(b) A list of all salespersons of the seller and their last known addresses. The names and addresses of such salespersons whose employments terminate shall be retained for three years after termination of employment. If the seller has a contract with any entity not owned or controlled by the seller for the sale of the time-sharing plan, that entity shall be responsible for maintaining a record of current employees involved in the sale of the time-sharing plan and a record of any former employees involved in the sale of such plan within the previous three years.

§36-9-12. Management.

(a) Before the first sale of a time-share period, the developer shall create or provide for a managing entity, which may be the developer, a separate management firm or an owners' association, or some combination thereof.

(b) The managing entity shall act in the capacity of a fiduciary to the purchasers of the time-sharing plan.

(c) The duties of the managing entity shall include, but are not limited to:

(1) Management and maintenance of all accommodations and facilities constituting the time-sharing plan;

(2) Collection of all assessments for common expenses;

(3) Providing each year to all purchasers an itemized annual budget, which shall include all receipts and expenditures;

(4) Maintenance of all books and records concerning the time-sharing plan on the premises of the accommodations or facilities of such plan and making all such books and records reasonably available for inspection by any purchaser or the authorized agent of such purchaser;

(5) Arranging for an annual independent audit to be
conducted of all the books and financial records of the
time-sharing plan by a certified public accountant in accord­
ance with the standards of the accounting standards board of
the American institute of certified public accountants. A

copy of the audit shall be forwarded to the officers of the
owners' association; or, if no association exists, the owner of
each time-share period shall be notified that such audit is
available upon request;

(6) Making available for inspection by the division any
books and records of the time-sharing plan, upon the request
of the division;

(7) Scheduling occupancy of the time-share units, when
purchasers are not e·litled to use specific time-share periods,
so that all purchasers will be provided the use and possession
of the accommodations and facilities of the time sharing
plan which they have purchased; and

(8) Performing any other functions and duties which are
necessary and proper to maintain the accommodations or
facilities as provided in the contract and as advertised.

(d) Any managing entity, or employee or agent thereof,
who willfully misappropriates the property or funds of a
time-sharing plan is guilty of a felony, and, upon conviction
thereof, shall be imprisoned in the penitentiary for not less
than one nor more than five years.


(a) If a fee simple interest in real property is being
sold to purchasers of a time-sharing plan, the contract re­
taining a managing entity shall be automatically renewable
every three years, beginning with the third year after the
managing entity is first created or provided for the time­
sharing plan, unless the purchasers vote to discharge the
managing entity. Such a vote shall be conducted by the board
of the owners' association. The managing entity shall be dis­
charged if at least sixty-six percent of the purchasers voting,
which shall be at least fifty percent of all votes allocated to
purchasers, vote to discharge the managing entity.

(b) In the event the managing entity is discharged, the
board of the owners' association shall be responsible for obtaining another managing entity.

(c) The managing entity of a condominium time-sharing plan may be discharged in the same manner.


(a) Until a managing entity is created or provided the developer shall pay all common expenses.

(b) After the creation or provision of a managing entity, the managing entity shall make an annual assessment against each purchaser for the payment of common expenses, based on the projected annual budget, in the amount specified by the contract between the seller and the purchaser. The seller shall be assessed for the share of common expenses allocated to all time-share periods still owned by the seller at the time such assessment is made, unless the seller guarantees all common expenses of the time-share plan pursuant to the provisions of the contract or until the time control is turned over to the purchasers.

(c) Past-due assessments may bear interest at the legal rate or at some lesser rate established by the managing entity.

(d) Unless otherwise specified in the contract between the seller and the purchaser, any common expenses benefiting fewer than all purchasers shall be assessed only against those purchasers benefited.

(e) Any assessments for common expenses which have not been spent for common expenses during the year for which such assessments were made shall be shown as an item on the annual budget.

§36-9-15. Liens for overdue assessments; mechanic's liens; insurance.

(a) The managing entity has a lien on a time-share period for any assessment levied against that time-share period from the date such assessment becomes due.

(b) The managing entity may bring an action in its name to foreclose a lien for assessments, in the manner a mortgage of real property is foreclosed, and may also bring an action to
recover a money judgment for the unpaid assessments without waiving any claim of lien. However, in the case of a time-sharing plan in which no interest in real property is conveyed, the managing entity may bring an action under chapter forty-six of this code.

(c) The lien is effective from the date of recording a claim of lien in the public records of the county or counties in which the accommodations or facilities constituting the time-sharing plan are located. The claim of lien shall state the name of the time-sharing plan and identify the time-share period for which the lien is effective, state the name of the purchaser, state the assessment amount due, and state the due dates. The lien is effective until satisfied or until barred by law. The claim of lien may include only assessments which are due when the claim is recorded. A claim of lien shall be signed and acknowledged by an officer or agent of the managing entity. Upon full payment, the person making the payment is entitled to a satisfaction of the lien.

(d) A judgment in any action or suit brought under this section shall include costs and reasonable attorney's fees for the prevailing party.

(e) Labor performed on a unit, or materials furnished to a unit, shall not be the basis for the filing of a lien pursuant to the mechanic's lien law against the time-share unit of any time-share period owner not expressly consenting to or requesting the labor or materials.

(f) The seller, initially, and thereafter the managing entity, shall be responsible for obtaining insurance to protect the accommodations and facilities of the time-sharing plan in an amount equal to the replacement cost of such accommodations and facilities.

A copy of each policy of insurance in effect shall be made available for reasonable inspection by purchasers and their authorized agents.

§36-9-16. Transfer of seller's interest to third party.

No seller shall sell, lease, assign, mortgage or otherwise
transfer the seller's interest in the accommodations or facilities
of a time-sharing plan to a third party, unless:

(a) The third party agrees in writing to honor fully the
rights of purchasers of the time-sharing plan to occupy and
use the accommodations or facilities;

(b) The third party agrees in writing to honor fully the
rights of purchasers of the time-sharing plan to cancel their
contracts and receive appropriate refunds, as provided in
this article;

(c) The third party agrees in writing to comply with the
provisions of this article for as long as the third party con-
tinues to sell the time-sharing plan or for as long as purchasers
of the time-sharing plan are entitled to occupy the accommo-
dations or use the facilities, whichever is longer in time;

(d) The third party agrees to assume all obligations of
the seller to purchasers; and

(e) Notice is mailed to each purchaser of the time-sharing
plan affected thereby within thirty days of the sale, lease, as-
assignment or other transfer.

Persons who hold mortgages on the property constituting
a time-sharing plan before the public offering statement of such
plan is approved by the division shall not be considered third
parties for the purposes of this section.

§36-9-17. Exchange programs.

(a) If a purchaser is offered the opportunity to subscribe
to any program that provides exchanges of time-share periods
among purchasers in either the same time-sharing plan or
other time-sharing plans, or both, the seller shall deliver to
the purchaser, together with the public offering statement,
and prior to the execution of any contract between the pur-
chaser and the company offering the exchange program, writ-
ten information regarding such exchange program and the
purchaser shall certify in writing to the receipt of such writ-
ten information, which information shall include, but is not
limited to, the following:

(1) The name and address of the exchange company;
(2) The names of all officers, directors and shareholders of the exchange company;

(3) Whether the exchange company or any of its officers or directors has any legal or beneficial interest in any developer, seller or managing entity for any time-sharing plan participating in the exchange program and, if so, the name and location of the time-sharing plan and the nature of the interest;

(4) Unless otherwise stated, a statement that the purchaser's contract with the exchange company is a contract separate and distinct from the purchaser's contract with the seller of the time-sharing plan;

(5) Whether the purchaser's participation in the exchange program is dependent upon the continued affiliation of the time-sharing plan with the exchange program;

(6) A statement that the purchaser's participation in the exchange program is voluntary;

(7) A complete and accurate description of the terms and conditions of the purchaser's contractual relationship with the exchange program and the procedure by which changes thereto may be made;

(8) A complete and accurate description of the procedure to qualify for and effectuate exchanges;

(9) A complete and accurate description of all limitations, restrictions or priorities employed in the operation of the exchange program, including, but not limited to, limitations on exchanges based on seasonality, unit size or levels of occupancy, expressed in boldfaced type, and, in the event that such limitations, restrictions or priorities are not uniformly applied by the exchange program, a clear description of the manner in which they are applied;

(10) Whether exchanges are arranged on a space-available basis and whether any guarantees of fulfillment of specific requests for exchanges are made by the exchange program;

(11) Whether and under what circumstances a purchaser, in dealing with the exchange program, may lose the use and
occupancy of his time-share period in any properly applied for exchange without his being provided with substitute accommodations by the exchange program;

(12) The fees or range of fees for participation by purchasers in the exchange program, a statement whether any such fees may be altered by the exchange company and the circumstances under which alterations may be made;

(13) The name and address of the site of each accommodation or facility included in the time-sharing plan participating in the exchange program;

(14) The number of the time-share units in each time-sharing plan which are available for occupancy and which qualify for participation in the exchange program expressed within the following numerical groupings: 1-5; 6-10; 11-20; 21-50 and 51 and over;

(15) The number of currently enrolled purchasers for each time-sharing plan participating in the exchange program, expressed within the following numerical groupings: 1-100; 101-249; 250-499; 500-999 and 1,000 and over; and a statement of the criteria used to determine those purchasers who are currently enrolled with the exchange program;

(16) The disposition made by the exchange company of the time-share periods deposited with the exchange program by purchasers enrolled in the exchange program and not used by the exchange company in effecting exchanges;

(17) The following information, which shall be independently audited by a certified public accountant or accounting firm in accordance with the standards of the accounting standards board of the American institute of certified public accountants and reported on an annual basis beginning no later than the first day of July, one thousand nine hundred eighty-four:

(A) The number of purchasers currently enrolled in the exchange program;

(B) The number of accommodations and facilities that have current affiliation agreements with the exchange program;
(C) The percentage of confirmed exchanges, which shall be the number of exchanges confirmed by the exchange program divided by the number of exchanges properly applied for, together with a complete and accurate statement of the criteria used to determine whether an exchange request was properly applied for;

(D) The number of time-share periods for which the exchange program has an outstanding obligation to provide an exchange to a purchaser who relinquished a time-share period during the year in exchange for a time-share period in any future year; and

(E) The number of exchanges confirmed by the exchange program during the year.

(18) A statement in boldfaced type to the effect that the percentage described in subparagraph (C), subdivision (17) of this subsection is a summary of the exchange requests entered with the exchange program in the period reported and that the percentage does not indicate a purchaser's probabilities of being confirmed to any specific choice or range of choices.

(b) Each exchange company offering an exchange program to purchasers in this state shall file the information specified in subsection (a) with the division annually. If at any time the division determines that any of such information supplied by an exchange company fails to meet the requirements of this section, the division may undertake enforcement action against the exchange company in accordance with the provision of section twenty-three of this article. No developer shall have any liability with respect to any violation of this chapter arising out of the publication by the developer of information provided to it by an exchange company pursuant to this section. No exchange company shall have any liability with respect to any violation of this chapter arising out of the use by a developer of information relating to an exchange program other than that provided to the developer by the exchange company.

(c) Only a person who has purchased a time-share period in a time-share unit may participate in an exchange program.
(d) The failure of an exchange company to observe the requirements of this section, or the use of any unfair or deceptive act or practice in connection with the operation of an exchange program, is a violation of this article.

§36-9-18. License required to sell.

1 Any seller of a time-sharing plan shall be a licensed real estate salesman, broker or broker-salesman, pursuant to chapter forty-seven of the code or its successor, and shall be subject to all of the provisions of that article. This section shall not apply to those individuals who are exempt from chapter forty-seven of the code or to those time-sharing plans which are registered with the securities and exchange commission.


1 An action for damages or injunctive or declaratory relief for a violation of this article may be brought by any purchaser or association of purchasers against the developer, a seller or the managing entity. The prevailing party in any such action may be entitled to reasonable attorney's fees. Relief under this section does not exclude any other remedies provided by law.

§36-9-20. Partition.

1 No action for partition of any time-share unit shall lie, unless otherwise provided for in the contract between the seller and the purchaser.


1 Time-sharing plans are not securities under the provisions of this code.


1 All laws, ordinances and regulations concerning buildings or zoning shall be construed and applied with reference to the nature and use of the real estate time-sharing plan property, without regard to the form of ownership.

§36-9-23. Regulation by division.

1 The division of land sales and condominiums is hereby
created in the office of the state auditor to administer the provisions of this article. The division has the power and authority to enforce and ensure compliance with the provisions of this article. In performing its duties, the division shall have the following powers and duties:

(a) To aid in the enforcement of this chapter, the division may make necessary public or private investigations within or outside this state to determine whether any person has violated or is about to violate this article;

(b) The division may require or permit any person to file a written statement under oath or otherwise, as the division determines, as to the facts and circumstances concerning a matter under investigation;

(c) For the purpose of any investigation under this chapter, the director of the division or any officer or employee designated by the director may administer oaths or affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the identity, existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence. Upon failure to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected thereby, the division may apply to the circuit court for an order compelling compliance;

(d) The division may prepare and disseminate a prospectus and other information to assist prospective purchasers, sellers and managing entities of time-sharing plans in assessing the rights, privileges and duties pertaining thereto; and

(c) Notwithstanding any remedies available to purchasers, if the division has reasonable cause to believe that a violation of this chapter has occurred, the division may institute enforcement proceedings in its own name against any developer, exchange program, seller, managing entity, association or other person as follows:
(1) The division may permit any person whose conduct or actions may be under investigation to waive formal proceedings and enter into a consent proceeding whereby an order, rule or letter of censure or warning, whether formal or informal, may be entered against that person;

(2) The division may issue an order requiring a developer, exchange program, seller, managing entity, association or other person, or other assignees or agents, to cease and desist from an unlawful practice under this article and take such affirmative action as in the judgment of the division will carry out the purposes of this article;

(3) The division may bring an action in circuit court for declaratory or injunctive relief;

(4) (A) The division may impose a civil penalty against any developer, exchange program, seller, managing entity, association or other person for a violation of this chapter. A penalty may be imposed on the basis of each day of continuing violation, but in no event shall the penalty for any offense exceed ten thousand dollars. All accounts collected shall be deposited with the treasurer to the credit of the West Virginia real estate time-sharing trust fund;

(B) If a developer, exchange program, seller or other person fails to pay the civil penalty, the division shall thereupon issue an order directing that such developer, exchange program, seller or other person cease and desist from further operation until such time as the civil penalty is paid; or the division may pursue enforcement of the penalty in a court of competent jurisdiction. If an association or managing entity fails to pay the civil penalty, the division shall thereupon pursue enforcement in a court of competent jurisdiction;

(5) In order to permit the developer, exchange program, seller, managing entity, association or other person an opportunity either to appeal such decision administratively or to seek relief in a court of competent jurisdiction, the order imposing the civil penalty or the cease and desist order shall not become effective until twenty days after the date of such order; and

(6) Any action commenced by the division shall be brought in the county in which the violation occurred.

1 On or before the first day of July of each year, each managing entity shall collect as a common expense and pay to the division an annual fee of fifty cents for each time-share period within the time-sharing plan.

§36-9-25. West Virginia real estate time-sharing trust fund.

1 There is created within the state treasury the West Virginia real estate time-sharing trust fund to be used for the administration and operation of this article by the division. All funds collected by the division and any amounts paid as fees or penalties under this article shall be deposited in the state treasury to the credit of the trust fund created by this section.


1 For purposes of local real property taxation, each time-share unit, other than a unit operated for time-share use, shall be valued in the same manner as if such unit were owned by a single taxpayer. The total cumulative purchase price paid by the time-share owners for a unit shall not be utilized by the local assessing officers as a factor in determining the assessed value of such unit. A unit operated as a time-share use, however, may be assessed the same as other income-producing and investment property. Tax records in a time-share unit shall be in the name of the association or the managing agent.

CHAPTER 160
(S. B. 214—By Senator Davis)

[Passed March 9, 1964; in effect ninety days from passage. Approved by the Governor]
ed, relating to uniform limited partnership act generally; specifying method of withdrawal for person who erroneously believes himself a limited partner; and relating to liabilities of general partner.

Be it enacted by the Legislature of West Virginia:

That sections twenty, twenty-four and thirty-one, article nine, 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 9. UNIFORM LIMITED PARTNERSHIP ACT.

§47-9-20. Person erroneously believing himself limited partner.


§47-9-31. Interim distributions.

§47-9-20. Person erroneously believing himself limited partner.

1. (a) Except as provided in subsection (b) of this section, a person who makes a contribution to a business enterprise and erroneously but in good faith believes that he has become a limited partner in the enterprise is not a general partner in the enterprise and is not bound by its obligations by reason of making the contribution, receiving distributions from the enterprise or exercising any rights of a limited partner, if, on ascertaining the mistake, he:

10. (1) Causes an appropriate certificate of limited partnership or a certificate of amendment to be executed and filed; or

13. (2) Withdraws from future equity participation in the enterprise by executing and filing in the office of the secretary of state a certificate declaring withdrawal under this section.

17. (b) A person who makes a contribution of the kind described in subsection (a) of this section, is liable as a general partner to any third party who transacts business with the enterprise (i) before the person withdraws and
an appropriate certificate is filed to show withdrawal, or
(ii) before an appropriate certificate is filed to show his
status as a limited partner and, in the case of an amend-
ment, after expiration of the thirty-day period for filing
an amendment relating to the person as a limited partner
under section nine of this article, but in either case only
if the third party actually believed in good faith that the
person was a general partner at the time of the trans-
action.


(a) Except as provided in this article or in the partner-
ship agreement, a general partner of a limited partnership
has the rights and powers and is subject to the restrictions
of a partner in a partnership without limited partners.

(b) Except as provided in this article, a general part-
ner of a limited partnership has the liabilities of a partner
in a partnership without limited partners to persons
other than the partnership and the other partners. Except
as provided in this article or in the partnership agree-
ment, a general partner of a limited partnership has the
liabilities of a partner in a partnership without limited
partners to the partnership and to other partners.

§47-9-31. Interim distributions.

 Except as provided in this article, a partner is entitled
to receive distributions from a limited partnership before
his withdrawal from the limited partnership and before
the dissolution and winding up thereof:

(1) To the extent and at the times or upon the happen-
ing of the events specified in the partnership agreement;
and

(2) If any distribution constitutes a return of part of
his contribution under subsection (c), section thirty-eight
of this article, to the extent and at the times or upon the
happening of the events specified in the certificate of
limited partnership.
AN ACT to amend and reenact sections three and four, article twenty-three, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to conferring authority upon county planning commissions to make initial determinations on the licensing of salvage yards by granting or denying approval permit; requiring salvage yard owners or operators to first comply and meet county standards set by county planning commissions; issuance of approval permits; application for license to the commissioner of the department of highways; fee; issuance; renewal; disposition of fee.

Be it enacted by the Legislature of West Virginia:

That sections three and 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.

§17-23-3. License required; issuance; fee; renewal; disposition of fees.

§17-23-4. Areas where establishment prohibited; screening requirements; existing licensed yards; approval permit required; issuance; county planning commission criteria satisfied; fee.

§17-23-3. License required; issuance; fee; renewal; disposition of fees.

1 No salvage yard or any part thereof shall be established, operated or maintained without a state license. The commissioner shall have the sole authority to issue such a state license, and he shall charge therefor a fee of fifty dollars payable annually in advance. All licenses issued under this section shall expire on the first day of January following the date of issuance. A license may be renewed from year to year upon paying the commissioner the sum of fifty dollars for each such renewal. All such renewal license fees collected under the provisions of this article shall be deposited in the special fund provided for in section ten of this article.
§17-23-4. Areas where establishment prohibited; screening requirements; existing licensed yards; approval permit required; issuance; county planning commission criteria satisfied; fee.

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, however, 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, 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 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 reclassified as expressway, trunk-
line or feeder, or any road within the state road system
designated and classified 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-four, any owner or operator establishing,
operating or maintaining a salvage yard for which a license is
required under the provisions of this article is hereby re-
quired to first obtain an approval permit from the county plan-
ing commission, or if the county does not have a county
planning commission, from an appropriate office or agency
designated by the county commission, in which the salvage
yard is located. The county planning commission or designated
agency or office shall promulgate such reasonable rules and
regulations including, but not limited to, determining the
effect of the proposed salvage yard on residential, business
or commercial property investment and values, and the social,
economic and environmental impact on community growth
and development in utilities, health, education, recreation,
safety, welfare and convenience, if any, before issuing such
approval permit. The fee for the approval permit shall be
twenty-five dollars, payable upon the filing of the application
on forms to be designated and approved by the county
planning commission or designated office or agency.
Upon the granting of an approval permit by the county planning commission, the owner or operator shall then apply to the commissioner for a license to operate. The commissioner may issue a license to the applicant, but only after an approval permit has issued in the first instance and the location of the salvage yard is in compliance with the location requirements of section four of this article. The approval 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-four.

CHAPTER 162

(Com. Sub. for S. B. 155—By Senator Tucker)

[Passed March 9, 1984; in effect ninety days from passage. Approved by the Governor]

AN ACT to amend chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article four-a, relating to skin and scuba diving; permitting such diving in all waters within the state, including natural and artificial lakes, except in certain designated areas; requiring display of the international code flag “A” as a “diver down” flag at all times when a diver is in the water; providing “diver down” flag specifications; requiring a diver to surface within one hundred feet of a “diver down” flag; and specifying criminal penalties.

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 four-a, to read as follows:
ARTICLE 4A. SKIN AND SCUBA DIVING.

§20-4A-1. Waters where diving is permitted; exceptions.

§20-4A-2. "Diver down" flag required; flag specifications.


§20-4A-1. Waters where diving is permitted; exceptions.

(a) Skin and scuba (self-contained underwater breathing apparatus) diving is permitted in all waters in this state, including natural and artificial lakes, except in the following areas:

(1) Within one hundred feet of boat ramps, controlled swimming areas, marina areas and fishing piers marked for use by physically disabled persons;

(2) Designated hazards areas;

(3) Areas near dams and outlet structures in artificial lakes;

(4) Heavily traveled boat lanes;

(5) Narrow channels; and

(6) Areas where visibility is obscured.

(b) The provisions of this section shall not apply to professional skin or scuba divers engaged in demolition, salvage, construction, rescue or repair work in the regular course of their business.

§20-4A-2. "Diver down" flag required; flag specifications.

(1) No person may skin or scuba dive in any waters of the state that are used by motorboats unless the diving area is marked by one "diver down" flag displayed at all times while a diver is in the water.

(2) The "diver down" flag shall be a red field with a white diagonal stripe not less than one and one-half inches wide running upper left to lower right. The dimensions of the flag shall be not less than ten inches by ten inches and the top of the flag shall be at least three feet above the surface of the water.

(3) The "diver down" flag shall be anchored and affixed to a separate flotation device. No such flag may be attached
13 to any navigational device or placed so as to obstruct boat
14 traffic.

15 (4) A diver must surface within one hundred feet of the
16 “diver down” flag marking his diving area.


1 Any person violating any of the provisions of this article
2 is guilty of a misdemeanor, and, upon conviction thereof,
3 shall be fined not less than twenty nor more than three
4 hundred dollars, or confined in jail not less than ten nor
5 more than one hundred days, or both fined and imprisoned.

CHAPTER 163
(Com. Sub. for H. B. 1452—By Delegate Harman and Delegate J. Martin)

[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]  

AN ACT to amend chapter twenty of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, by adding
thereto a new article, designated article three-a, relating to ski
areas generally; the operation of such areas and of aerial tram­
ways in connection therewith; providing definitions of certain
terms with respect thereto; the relative duties of operators,
aerial tramway passengers and skiers; and setting forth the
liabilities of such operators, passengers and skiers.

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 three-a, to read as follows:

ARTICLE 3A. SKIING RESPONSIBILITY ACT.

§20-3A-1. Legislative purpose.
§20-3A-3. Duties of ski area operators with respect to ski areas.
§20-3A-4. Responsibilities of passengers.
§20-3A-1. Legislative purpose.

The Legislature finds that the sport of skiing is practiced by a large number of citizens of West Virginia and also attracts to West Virginia a large number of nonresidents, significantly contributing to the economy of West Virginia. Since it is recognized that there are inherent risks in the sport of skiing which should be understood by each skier and which are essentially impossible to eliminate by the ski area operator, it is the purpose of this article to define those areas of responsibility and affirmative acts for which ski area operators shall be liable for loss, damage or injury and those risks which the skier expressly assumes for which there can be no recovery.


Unless the context of usage clearly requires otherwise:

(a) "Aerial passenger tramway" means any device operated by a ski area operator used to transport passengers, by single or double reversible tramway; chair lift or gondola lift; T-bar lift, J-bar lift, platter lift or similar device; or a fiber rope tow.

(b) "Passenger" means any person who is lawfully using an aerial passenger tramway, or is waiting to embark or has recently disembarked from an aerial passenger tramway and is in its immediate vicinity.

(c) "Ski area" means any property owned or leased and under the control of the ski area operator or operators within West Virginia.

(d) "Ski area operator" means any person, partnership, corporation or other commercial entity and their agents, officers, employees or representatives, or the state of West Virginia, or any political subdivision thereof, who has operational responsibility for any ski area or aerial passenger tramway.

(e) "Skiing area" means all slopes and trails not including any aerial passenger tramway.

(f) "Skier" means any person present at a skiing area
under the control of a ski area operator for the purpose of engaging in the sport of skiing by utilizing the ski slopes and trails, but does not include a passenger using an aerial passenger tramway.

(g) "Ski slopes and trails" means those areas designated by the ski area operator to be used by skiers for the purpose of participating in the sport of skiing.

§20-3A-3. Duties of ski area operators with respect to ski areas.

Every ski area operator shall:

1. Mark all trail maintenance vehicles and furnish such vehicles with flashing or rotating lights which shall be in operation whenever the vehicles are working or are in movement in the skiing area.

2. Mark with a visible sign or other warning implement the location of any hydrant or similar equipment used in snowmaking operations and located on ski slopes and trails.

3. Mark conspicuously the top or entrance to each ski slope, trail or area to designate open or closed and relative degree of difficulty using the appropriate symbols approved by the national ski areas association as of the effective date of this article and as may thereafter be modified by the association.

4. Maintain one or more trail boards at prominent locations at each ski area displaying that area's network of ski trails and slopes with each trail and slope rated thereon in accordance with the aforementioned symbols' code and containing a key to the code in accordance with designations in subdivision (3) herein.

5. Designate by trail board or otherwise which trails or slopes are open or closed.

6. Place, or cause to be placed, whenever snow grooming or snowmaking operations are being undertaken upon any trail or slope while such trail or slope is open to the public, a conspicuous notice to that effect at or near the top of the trail or slope.
(7) Post notice at prominent locations of the requirements of this article concerning the use of ski retention devices. This obligation shall be the sole requirement imposed upon the ski area operator regarding the requirement for or use of ski retention devices.

(8) Maintain the ski areas in a reasonably safe condition, except that such operator shall not be responsible for any injury, loss or damage caused by the following: Variations in terrain; surface or subsurface snow or ice conditions; bare spots, rocks, trees, other forms of forest growth or debris; collisions with pole lines, lift towers or any component thereof; or, collisions with snowmaking equipment which is marked by a visible sign or other warning implement in compliance with subdivision two of this section.

(9) When no certified ambulance service is available in the vicinity, have on duty at or near the skiing area, during all times that skiing areas are open for skiing, at least one trained and currently certified emergency medical technician.

§20-3A-4. Responsibilities of passengers.

No passenger shall:

1. Board or embark upon or disembark from an aerial passenger tramway except at an area designated for such purpose;

2. Drop, throw or expel any object from an aerial passenger tramway;

3. Perform any act which interferes with the running or operation of an aerial passenger tramway;

4. Enter the boarding area of or use any aerial passenger tramway without requesting and receiving instruction on its use from the ski area operator, unless the passenger has the ability to use it safely without instruction;

5. Engage in any harmful conduct, or willfully or negligently engage in any type of conduct which contributes to or causes injury to any person; or

6. Embark on an aerial passenger tramway without the authority, expressed or implied, of the ski area operator.
§20-JA-5. Duties of skiers.

1. It is recognized that skiing as a recreational sport is hazardous to skiers, regardless of all feasible safety measures which can be taken.

2. Each skier expressly assumes the risk of and legal responsibility for any injury, loss or damage to person or property which results from participation in the sport of skiing including, but not limited to, any injury, loss or damage caused by the following: Variations in terrain; surface or subsurface snow or ice conditions; bare spots, rocks, trees, other forms of forest growth or debris; collisions with pole lines, lift towers or any component thereof; or, collisions with snow-making equipment which is marked by a visible sign or other warning implement in compliance with section three of this article. Each skier shall have the sole individual responsibility for knowing the range of his own ability to negotiate any slope or trail, and it shall be the duty of each skier to ski within the limits of the skier's own ability, to maintain reasonable control of speed and course at all times while skiing, to heed all posted warnings, to ski only on a skiing area designated by the ski area operator and to refrain from acting in a manner which may cause or contribute to the injury of anyone. If while actually skiing, any skier collides with any object or person, except an obviously intoxicated person of whom the ski area operator is aware, the responsibility for such collision shall be solely that of the skier or skiers involved and not that of the ski area operator.

3. No person shall place any object in the skiing area or on the uphill track or on any aerial passenger tramway which may cause a passenger or skier to fall; or which crosses the track of any T-bar lift, J-bar lift, platter lift or similar device, or a fiber rope tow except at a designated location; nor shall any person involved in a skiing accident depart the ski area without leaving personal identification, including name and address, or without notifying the proper authorities or without obtaining assistance when that person knows or reasonably should know that any other person involved in the accident is in need of medical or other assistance. No skier shall fail
to wear retention straps or other devices to help prevent runaway skis.


Any ski area operator shall be liable for injury, loss or damage caused by failure to follow the duties set forth in section three of this article where the violation of duty is causally related to the injury, loss or damage suffered. A ski area operator shall not be liable for any injury, loss or damage caused by the negligence of any person who is not an agent or employee of such operator, nor shall a ski area operator be liable for any injury, loss or damage caused by any object dropped, thrown or expelled by a passenger from an aerial passenger tramway. Every ski area operator shall carry public liability insurance in limits of no less than one hundred thousand dollars per person, three hundred thousand dollars per occurrence and ten thousand dollars for property damage.


Any passenger shall be liable for injury, loss or damage resulting from violations of the duties set forth in section four.


Any skier shall be liable for injury, loss or damage resulting from violations of the duties set forth in section five.

CHAPTER 164

(Com. Sub. for H. B. 1485—By Delegate Polan)

[Passed March 10, 1984; in effect January 1, 1985. Approved by the Governor.]

AN ACT to amend and reenact section two, article seven, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to salaries of certain state officers; increasing by twenty percent the salaries of the governor, attorney general, auditor, secretary of state, commissioner of agriculture and treasurer.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. COMPENSATION AND ALLOWANCES.

§6-7-2. Salaries of certain state officers.

Effective on and after the first Monday after the second Wednesday in January, one thousand nine hundred eighty-five the salary of the governor shall be seventy-two thousand dollars per year.

The salary of the attorney general shall be fifty thousand four hundred dollars per year; the salary of the auditor shall be forty-six thousand eight hundred dollars per year; the salary of the secretary of state shall be forty-three thousand two hundred dollars per year; the salary of the commissioner of agriculture shall be forty-six thousand eight hundred dollars per year; and the salary of the state treasurer shall be fifty thousand four hundred dollars per year.

AN ACT to amend and reenact section two-a, article seven, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to salaries of certain appointive state officers.

Be it enacted by the Legislature of West Virginia:

That section two-a, article seven, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 7. COMPENSATION AND ALLOWANCES.

§6-7-2a. Terms of certain appointive state officers; appoint­
1 ment; qualifications; powers and salaries of such
2 officers.
3
4 Notwithstanding any other provision of this code to
5 the contrary, each of the appointive state officers named
6 in this section shall be appointed by the governor, by and
7 with the advice and consent of the Senate. Each of such
8 appointive state officers shall serve at the will and
9 pleasure of the governor for the term for which the gov-
10 ernor was elected and until the respective state officers' 
11 successors have been appointed and qualified. Each of
12 such appointive state officers shall hereinafter be subject
13 to the existing qualifications for holding each such respec-
14 tive office and each shall have and is hereby granted all
15 of the powers and authority and shall perform all of the
16 functions and services heretofore vested in and per-
17 formed by virtue of existing law respecting each such
18 office. Beginning on the first day of July, one thousand
19 nine hundred eighty-four, the annual salary of each such
20 named appointive state officer shall be as follows:
21
22 The commissioner of highways, forty-seven thousand
23 five hundred dollars; commissioner of finance and ad-
24 ministration, forty-five thousand five hundred dollars;
25 tax commissioner, forty-seven thousand five hundred
26 dollars; director of the department of health, fifty-four
27 thousand five hundred dollars; director of the department
28 of natural resources, forty-five thousand five hundred
29 dollars; commissioner of the department of human ser-
30 vices, forty-five thousand five hundred dollars; super-
31 intendent of the department of public safety, forty-two
32 thousand five hundred dollars; alcohol beverage control
33 commissioner, thirty-six thousand five hundred dollars;
34 commissioner of banking, thirty-six thousand five hun-
35 dred dollars; director of the department of mines, forty-
36 two thousand five hundred dollars; state workers' com-
37 pensation commissioner, thirty-six thousand five hundred
38 dollars; director of personnel, civil service commission,
39 thirty-six thousand five hundred dollars; commissioner
36 of corrections, thirty-six thousand five hundred dollars;  
37 commissioner of culture and history, thirty-six thousand  
38 five hundred dollars; labor commissioner, thirty-four  
39 thousand dollars; commissioner of employment security,  
40 thirty-four thousand dollars; insurance commissioner,  
41 thirty-five thousand dollars; commissioner of motor  
42 vehicles, thirty-six thousand five hundred dollars; adj-  
43 jutant general, thirty-four thousand dollars; director of  
44 emergency services, thirty thousand five hundred dollars;  
45 nonintoxicating beer commissioner, thirty thousand five  
46 hundred dollars; director of veterans affairs, thirty thou-  
47 sand five hundred dollars; members of the board of re-  
48 view of employment security and members of workers’  
49 compensation appeal board, seventeen thousand dollars;  
50 and members of the board of probation and parole,  
51 twenty-seven thousand dollars.

CHAPTER 166
(H. B. 1216—By Delegate Knight and Delegate Faircloth)

[Passed March 6, 1984; 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 rescheduling the termination date 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:

(1) On the first day of July, one thousand nine hundred eighty-one: Judicial council of West Virginia; geological and economic survey commission; motor vehicle certificate appeal board; child welfare licensing board.

(2) On the first day of July, one thousand nine hundred eighty-two: Ohio River basin commission; commission on post-mortem examination; state commission on manpower, training and technology.

(3) On the first day of July, one thousand nine hundred eighty-three: Anatomical board; economic opportunity advisory commission; community development authority board.

(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 or programs or the department of agriculture: Soil conservation committee, rural resource division, meat inspection; and the following divisions or programs of the department of natural resources: U.S. geological survey, rabies control, work incentive program; West Virginia alcoholic beverage control licensing advisory board; driver's licensing advisory board; oil and gas inspectors' examining board; women's commission.

(5) On the first day of July, one thousand nine hundred eighty-five: Department of welfare; beautification commission; labor management advisory council; employment security advisory council; oil and gas conservation commission; board of regents; water resources board; water resources division of the department of natural resources.

(6) On the first day of July, one thousand nine hundred eighty-six: Division of archives and history; state board of
Provided, That in the case of the public service commission, the study by the committee required by this article shall be completed on or before the first day of July, one thousand nine hundred eighty-five, and shall be by such date transmitted to the joint committee on government and finance for review by the joint committee or its subcommittee designated pursuant to section one, article one, chapter twenty-four of this code for review, examination and study of the operations of the public service commission; state building commission; public employees insurance board.

(7) On the first day of July, one thousand nine hundred eighty-seven: The geological and economic survey; the commission on uniform state laws; department of labor; civil service commission advisory board; council of finance and administration; motorcycle safety standards and specifications board.

(8) On the first day of July, one thousand nine hundred eighty-eight: Information system advisory commission; veteran's council; labor management relations board; board of investments; records management and preservation advisory committee; minimum wage rate board; Ohio River Valley water sanitation commission; southern regional education board; department of corrections.

(9) On the first day of July, one thousand nine hundred eighty-nine: Mental retardation advisory committee; interagency committee on pesticides; commission on charitable organizations; board of school finance; veteran's affairs advisory council; emergency medical services advisory council; pesticides board of review; reclamation commission.

(10) On the first day of July, one thousand nine hundred ninety: Consumer affairs advisory council; savings and loan association; forest industries industrial foundation.
AN ACT to amend and reenact sections two, three and five, article four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to form of landbooks; definitions used in the assessment of real property; and information to be obtained from landowners by assessor.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. ASSESSMENT OF REAL PROPERTY.

§11-4-2. Form of landbooks.

 §11-4-3. Definitions.

§11-4-5. Information to be obtained from landowners by assessor; corrections in landbook of previous year.

§11-4-2. Form of landbooks.

1 The tax commissioner shall prescribe a form of landbook and the information and itemization to be entered therein, which shall include separate entries of:

4 (1) All real property or whatever portion thereof in square feet that is owned, used and occupied by the owner exclusively for residential purposes, including mobile homes, permanently affixed to the land and owned by the owner of the land; (2) all farms including land used for agriculture, horticulture and grazing occupied by the owner or bona fide tenant; (3) all other real property; and, for each entry there shall be shown; (4) the value of land, the value of buildings and the aggregate value; (5) the character and estate of the owners, the number of acres or lots and the local description of the tracts or lots; (6) the amount of taxes assessed against each tract or lot for all purposes.
§ 11-4-3. Definitions.

For the purpose of giving effect to the "Tax Limitations Amendment" this chapter shall be interpreted in accordance with the following definitions, unless the context clearly requires a different meaning:

"Owner" shall mean the person who is possessed of the freehold, whether in fee or for life. A person seized or entitled in fee subject to a mortgage or deed of trust securing a debt or liability shall be deemed the owner until the mortgagee or trustee takes possession, after which such mortgagee or trustee shall be deemed the owner. A person who has an equitable estate of freehold, or is a purchaser of a freehold estate who is in possession before transfer of legal title shall also be deemed the owner.

"Used and occupied by the owner thereof exclusively for residential purpose" shall mean actual habitation by the owner of all or a portion of a parcel of real property as a place of abode to the exclusion of any commercial use. If a license is required for an activity on the premises or if an activity is conducted thereon which involves the use of equipment of a character not commonly employed solely for domestic as distinguished from commercial purposes, the use shall not be construed to be exclusively residential.

"Farm" shall mean a tract or contiguous tracts of land used for agriculture, horticulture or grazing.

"Occupied and cultivated" shall mean subjected as a unit to farm purposes, whether used for habitation or not, and although parts may be lying fallow, in timber or in wastelands.

§ 11-4-5. Information to be obtained from landowners by assessor; corrections in landbook of previous year.

The assessor and his deputies shall annually, when listing and assessing personal and real property, make diligent inquiry of every resident landowner, and of the resident agents of any nonresident landowner, as to the number of acres of land owned by them, the number of acres in each tract, and the number of town lots owned by them, and the
value per acre of each tract and the local description thereof, and the value and location of the town lots.

They shall determine the nature and extent of the interest of the owner, whether in fee and undivided or otherwise, and the character of use to which the property is put, whether residential or agricultural or otherwise. They shall also inquire of such owners or agents whether the entries charged against them in the landbooks of the previous year are correct, whether any part thereof ought to be transferred to any other person, and if so to whom, and the nature of the evidence to authorize such transfer; also, whether any other land in the county ought to be charged to such resident or non-resident, and whether the description given to any tract of land or town lot in the book of the previous year is incorrectly given. It shall be the duty of such owners and agents to answer all of such inquiries on oath. The assessor shall provide for himself, and for each one of his deputies, a copy of so much of the landbook of the previous year as contains a list of the land in the tax districts severally apportioned to them, and shall note in such copies such changes and corrections as ought to be made in the landbook of the previous year, according to the information obtained. The deputy assessor shall report any such changes and corrections, as appear to them should be made, to the assessor at some of the stated meetings provided for. The assessor shall make such use of the information so obtained as he can properly make, consistent with the other provisions of this chapter, in making out the landbook of the county for the current year.

CHAPTER 168

(Com. Sub. for S. B. 696—By Senator Williams and Senator Spears)

[Passed March 10, 1984; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article six, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to assessment of public service corporations and businesses for ad
valorem tax purposes; approving, codifying and directing continuance of the long-term method of apportionment of the state auditor, consistently engaged in, for apportioning the values of operating properties of public service corporations and businesses among the counties, districts and municipalities; providing sufficient minimal guidelines as basis for state auditor to promulgate reasonable rules and regulations in respect to long-term consistently engaged in apportionment method; and directing that the state auditor proceed in a timely manner to perform all actions required of him in respect to such apportionment as heretofore.

Be it enacted by the Legislature of West Virginia:

That section thirteen, article six, 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 6. ASSESSMENT OF PUBLIC SERVICE CORPORATIONS.

§11-6-13. Apportionment of value among counties, districts and municipalities.

In case the list and valuation of the property filed with the tax commissioner as aforesaid, be satisfactory to the board of public works, or upon assessment of the property of such owner or operator being made by the board of public works as aforesaid, the auditor shall immediately apportion to each county, both as to the fixed situs property and the nonfixed but distributable and apportionable operating property, the relative value of such operating property within each county to the value of the total operating property within the state, to be determined upon such factors as the auditor shall deem proper and in respect to the value of property of every such owner or operator as valued or assessed as aforesaid; and further shall apportion such value as aforesaid among the several districts, school districts and independent school districts therein, according to the value thereof, as near as may be and forthwith shall certify to the county commission of such county the values so apportioned. The clerk of the county commission shall forthwith certify such values to
the several districts, school districts, independent school
districts and municipalities, respectively, in such county.

Inasmuch as there is currently litigation challenging
the long-term apportionment method and manner consis-
tently engaged in by the state auditor under the provi-
sions of this section and by which the valuation of oper-
able public service corporations properties, for ad valorem
tax purposes, were apportioned; and which method or
manner is nationally recognized as a proper apportion-
ment of operating properties and values without fixed
situs but requiring fair apportionment, which proper
method is hereby approved fully and codified by this
section for the purpose of setting forth sufficient minimal
guidelines as a basis from which the auditor is hereby
authorized to promulgate reasonable rules and regulations
in respect to such long-term consistently engaged in
apportionment method. All calculations, apportionments,
distributions or other required actions by the state audi-
tor in respect to the requirements of this section or related
statutes in connection with his duties of apportionment
are hereby directed to proceed in a timely manner and on
the basis of said approval and codification of such long-
term prior apportionment method.

CHAPTER 169
(Com. Sub. for H. B. 1017—By Delegate Spencer)

[Passed March 10, 1984; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article twelve, chapter
eleven; to amend article two, chapter twenty-one-a, by adding
thereto a new section, designated section six-b; and to amend
and reenact section two, article two, chapter twenty-three
of the code of West Virginia, one thousand nine hundred
thirty-one, as amended, all relating to reciprocal exchange
of business franchise registration information for the pur-
pose of joint registration of business; creating a single point
of registration program within the tax department and the departments of employment security and workers' compensation; providing for the exchange of information among these departments; mandating that the commissioners of employment security and workers' compensation initiate contact with new business; making it a misdemeanor to misuse information received pursuant to the single point of registration program; and allocating costs of the exchange of information to the receiving department.

Be it enacted by the Legislature of West Virginia:

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

Chapter

11. Taxation.
21A. Unemployment Compensation.
23. Workers' Compensation.

CHAPTER 11. TAXATION.

ARTICLE 12. BUSINESS FRANCHISE REGISTRATION TAX.

§11-12-7. Display of registration certificate; injunction; public information, reciprocal exchange of information.

Any person to whom a certificate of registration shall be issued under the provisions of section four of this article shall keep such certificate posted in a conspicuous position in the place where the privilege of such business is exercised. Such certificate of registration shall be produced for inspection whenever required by the tax commissioner or by any law-enforcement officers of this state, county or municipality where-in the privileges to conduct business are exercised.

No injunction shall issue from any court in the state enjoining the collection of any business registration certificate
tax required herein; and any person claiming that any busi-
ness certificate is not due, for any reason, shall pay the same
under protest and petition the tax commissioner for a refund in
accordance with the provisions of section fourteen, article
ten of this chapter.

If any person engaging in or prosecuting any business, or
trade, contrary to any other provisions of this article, whether
without obtaining a business certificate therefor before com-
mencing the same, or by continuing the same after the termina-
tion of the effective period of any such business certificate,
the circuit court or the judge thereof in vacation, of the
county in which such violation occurred, shall, upon proper
application in the name of the state, and after ten days' 
written notice thereof to such person, grant an injunction
prohibiting such person from continuing such business, activity
or trade until he has fully complied with the provisions of this
article. The remedy provided in this section shall be in addi-
tion to all other penalties and remedies provided by law.

The tax commissioner shall make available, when requested,
information as to whether a person is registered to do business
in the state of West Virginia.

The tax commissioner shall deliver to the commissioner of
employment security and the department of workers' compen-
sation, the information contained in the business franchise
registration certificate, when this information is used to im-
plement and administer a single point of registration program
for persons engaging in any business activity in the state of
West Virginia. The single point of registration program shall
provide that, once an individual has received a business fran-chise registration certificate, the tax commissioner shall notify
the commissioners of the department of workers' compensation
and the department of employment security of the names, ad-
dresses and other identifying information of that individual
or entity. Upon receiving this information the commissioners
of the department of workers' compensation and the depart-
ment of employment security shall contact all businesses re-
ceiving a business franchise registration certificate and provide
all necessary forms and paperwork to register the business
within their respective departments, pursuant to subsection (b), section six-b, article two, chapter twenty-one-a and subsection (c), section two, article two, chapter twenty-three of this code.

Notwithstanding the provisions of section five, article ten of this chapter, the tax commissioner may enter into a reciprocal agreement with the governor’s office of economic and community development and other departments or agencies of this state for the exchange of information contained in the application for a business franchise registration certificate filed under section four of this article, when the purpose for the exchange is to implement and administer a single-point registration program for persons engaging in business in this state. Such other departments and agencies shall have authority to enter into a reciprocal exchange agreement for this purpose notwithstanding any provision of this code to the contrary.

CHAPTER 21A. UNEMPLOYMENT COMPENSATION.

ARTICLE 2. THE COMMISSIONER OF EMPLOYMENT SECURITY.

§21A-2-6b. Commissioner to be furnished information by state tax commissioner; secrecy of information; violation a misdemeanor.

(a) Notwithstanding the provisions of any other statute in this code, specifically, but not exclusively, section five, article ten, chapter eleven of this code, the state tax commissioner shall deliver to the commissioner of employment security the following information: The names, addresses and other identifying information of all businesses receiving a business franchise registration certificate.

(b) All information acquired by the employment security commissioner pursuant to subsection (a) of this section shall be used to implement and administer a single point of registration program as created in section seven, article twelve, chapter eleven of this code. The commissioner of employment security, upon receiving the business franchise certificate information made available pursuant to subsection (a) of this section, shall contact all businesses receiving a business franchise registration certificate and provide all necessary forms to
register the business under the provisions of article five of this chapter.

(c) Any officer or employee of this state who uses the aforementioned information in any manner other than the one stated herein or authorized elsewhere in this code or who divulges or makes known in any manner any of the aforementioned information shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars or imprisoned in the county jail for not more than one year, or both, together with cost of prosecution.

(d) Reasonable cost of compilation and production of any information made available pursuant to subsection (a) of this section shall be charged to the department of employment security.

(e) Information acquired by the employment security commissioner pursuant to subsection (a) of this section shall not be subject to disclosure under the provisions of chapter twenty-nine-b of this code.

CHAPTER 23. WORKERS' COMPENSATION.

ARTICLE 2. EMPLOYERS AND EMPLOYEES SUBJECT TO CHAPTER; EXTRATERRITORIAL COVERAGE.

§23-2-2. Commissioner to be furnished information by employers. state tax commissioner and commissioner of the department of employment security; secrecy of information; examination of employers, etc.; violation a misdemeanor.

(a) Every employer shall furnish the commissioner, upon request, all information required by him to carry out the purposes of this chapter. The commissioner, or any person employed by the commissioner for that purpose, shall have the right to examine under oath any employer or officer, agent or employee of any employer.

(b) Notwithstanding the provisions of any other statute, specifically, but not exclusively, section five, article ten, chapter eleven of this code, and section eleven, article ten, chapter
twenty-one-a of this code, the commissioner of workers’ compen-

(1) Upon written request to the state tax commissioner: The
names, addresses and other identifying information of all busi-
nesses filing state business and occupation tax returns and/or
receiving a business franchise registration certificate.

(2) Upon written application to the commissioner of the
department of employment security: The names, addresses and
other identifying information of all employing units filing re-
ports and information pursuant to section eleven, article ten,
chapter twenty-one-a of this code as well as information con-
tained in those reports regarding the number of employees em-
ployed and the gross quarterly wages paid by each employing
unit.

(c) All information acquired by the workers’ compensation
commissioner pursuant to subsection (b) of this section shall be
used only for auditing premium payments and registering busi-
nesses under the single point of registration program as de-
dined in section two, article one, chapter eleven of this code.
The workers’ compensation commissioner, upon receiving the
business franchise registration certificate information made
available pursuant to subsection (b) of this section, shall con-
tact all businesses receiving a business franchise registration
certificate and provide all necessary forms to register the busi-
ness under the provisions of this article. Any officer or em-
ployee of this state who uses the aforementioned information in
any manner other than the one stated herein or elsewhere au-
thorized in this code, or who divulges or makes known in any
manner any of the aforementioned information shall be guilty
of a misdemeanor, and, upon conviction thereof, shall be fined
not more than one thousand dollars or imprisoned in the coun-
ty jail for not more than one year, or both, together with
cost of prosecution.

(d) Reasonable costs of compilation and production of any
information made available pursuant to subsection (b) of this
section shall be charged to the department of workers’ com-
pensation.
Information acquired by the workers’ compensation commissioner pursuant to subsection (b) of this section shall not be subject to disclosure under the provisions of chapter twenty-nine-b of this code.

CHAPTER 170
(Com. Sub. for S. B. 333—By Senator Boettner)

[Passed March 3, 1984; in effect July 1, 1984. Approved by the Governor.]

AN ACT to repeal section twelve, article twelve; section twenty-two, article twelve-a; section twenty-one, article thirteen; section nine, article fourteen; section ten, article fourteen-a; section twenty-nine, article fifteen; sections eight, nineteen and twenty, article fifteen-a; section ninety-two, article twenty-one; and section thirty-eight, article twenty-four, all of chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend said chapter by adding thereto a new article, designated article nine; and to amend and reenact section four, article fifteen of said chapter, all relating generally to criminal offenses and criminal penalties for certain violations of state tax law; making it a misdemeanor to: Willfully fail to pay tax for more than thirty days after its due date; willfully fail to file a tax return or report for more than thirty days after its due date; willfully fail to account for and pay over another’s tax in the manner required by law for more than thirty days after its due date when the amount of tax is less than one thousand dollars; willfully fail to collect or withhold tax in manner required by law; represent, advertise or state to public or any purchaser, lessee or employee that tax to be collected or withheld will be absorbed or assumed or that such tax is not part of the sales price or wages payable; willfully fail to maintain any records in manner required by law or regulation to compute, assess, withhold or collect any tax; willfully fail to supply any information in manner required by law or regulation to compute, assess, withhold or collect any tax; present to any vendor a certification for the purpose of obtaining exemption from consumers sales and service or
use taxes and then knowingly using the item or service purchased in manner that is not exempt from tax without remitting such tax in manner required by law; knowingly aid, abet, assist or counsel another person in commission of any criminal violation of this article; engage in business for more than thirty days without obtaining a business franchise registration certificate when required by law; engage in business for more than thirty days without posting business franchise registration certificate in place of business as required by law; engage in business for more than thirty days without payment of business franchise registration tax as required by law; engage in business for more than thirty days after expiration of period of time for which business franchise registration certificate was granted without obtaining a new certificate; engage in business for more than thirty days after business franchise registration certificate has been revoked; providing criminal penalties for such misdemeanor offenses; making it a felony to: Willfully fail to account for and pay over another's tax in the manner required by law for more than thirty days after its due date when amount of tax is one thousand dollars or more; knowingly file false or fraudulent return, report or other document; willfully deliver or disclose to tax commissioner any list, return, account, statement, record or other document known by person delivering or disclosing same to be fraudulent or false as to any material matter and with intent of obtaining or assisting another in obtaining any credit, refund, deduction, exemption or reduction in tax not otherwise permitted by law; willfully attempt in any manner to evade tax or payment thereof; providing criminal penalties for such felony offenses; providing short title of article; providing rules of construction; specifying tax laws to which this article applies; defining certain terms; authorizing release on probation of offenders convicted pursuant to this article; providing that a period of public service may be imposed as a condition of such probation; prescribing venue for institution of criminal proceedings; providing a three-year statute of limitations for commencement of such criminal proceedings; making article effective on the first day of July, one thousand nine hundred eighty-four; and preserving existing law as to
criminal violations occurring prior to effective date of this article.

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

That section twelve, article twelve; section twenty-two, article twelve-a; section twenty-one, article thirteen; section nine, article fourteen; section ten, article fourteen-a; section twenty-nine, article fifteen; sections eight, nineteen and twenty, article fifteen-a; section ninety-two, article twenty-one; and section thirty-eight, article twenty-four, all of chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that said chapter eleven be amended by adding thereto a new article, designated article nine; and that section four, article fifteen of said chapter eleven be amended and reenacted, all to to read as follows:

Article


15. Consumers Sales Tax.

ARTICLE 9. CRIMES AND PENALTIES.

§11-9-1. Short title; arrangement; classification.

§11-9-2. Application of this article.


§11-9-4. Failure to pay tax or file return or report.

§11-9-5. Failure to account for and pay over another's tax.

§11-9-6. Failure to collect or withhold tax.

§11-9-7. False statements to purchasers, lessees or employees relating to tax.

§11-9-8. Willful failure to maintain records or supply information; misuse of exemption certificate.

§11-9-9. Aiding, abetting, assisting or counseling in criminal violation.

§11-9-10. Attempt to evade tax.

§11-9-11. Engaging in business without payment of business franchise registration tax; posting business franchise certificate.

§11-9-12. Engaging in business without a business franchise registration certificate.

§11-9-13. Release on probation; conditions of probation.


§11-9-15. Limitation on prosecution.

§11-9-16. Effective date; former law preserved for certain purposes.

§11-9-1. Short title; arrangement; classification.

1 This article may be cited as the “West Virginia Tax
2 Crimes and Penalties Act.” No inference, implication or
presumption of legislative construction shall be drawn or made by reason of the location or grouping of any particular section or provision or portion of this article, and no legal effect shall be given to any descriptive matter or headings relating to any part, section, subsection or paragraph of this article.

§11-9-2. Application of this article.

(a) The provisions of this article shall apply to the following taxes imposed by chapter eleven: (1) The inheritance and transfer taxes imposed by article eleven; (2) the business franchise registration tax imposed by article twelve; (3) the annual tax on incomes of certain carriers imposed by article twelve-a; (4) the business and occupation tax imposed by article thirteen; (5) the gasoline and special fuels excise tax imposed by article fourteen; (6) the motor carrier road tax imposed by article fourteen-a; (7) the consumers sales and service tax imposed by article fifteen; (8) the use tax imposed by article fifteen-a; (9) the cigarette tax imposed by article seventeen; (10) the soft drinks tax imposed by article nineteen; (11) the personal income tax imposed by article twenty-one; and (12) the corporation net income tax imposed by article twenty-four.

(b) The provisions of this article shall also apply to the West Virginia tax procedures and administration act in article ten of chapter eleven.

(c) Each and every provision of this article shall apply to the articles of this chapter listed in subsections (a) and (b), with like effect.


For the purposes of this article, the term:

(1) "Person" means any individual, firm, partnership, limited partnership, copartnership, joint venture, association, corporation, municipal corporation, organization, receiver, estate, trust, guardian, executor, administrator, and any officer, employee or member of any of the foregoing who, as such officer, employee or member, is under a duty to perform or is responsible for the performance or nonperformance of the act in respect of which a violation occurs under this article.
(2) "Return or report" means any return or report required to be filed by any article of this chapter imposing any tax to which this article applies as specified in section two of this article.

(3) "Tax" or "taxes" means any tax to which this article applies, as specified in section two of this article, and includes additions to tax, penalties and interest unless the intention to give it a more limited meaning is disclosed by the context in which the term "tax" or "taxes" is used.

(4) "Tax commissioner" or "commissioner" means the tax commissioner of the state of West Virginia or his delegate.

(5) "This chapter" means chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and shall include only those articles of chapter eleven listed in section two of this article.

(6) "Willfully" means the intentional violation of a known legal duty to perform any act, required to be performed by any provision of this chapter, in respect of which the violation occurs: Provided, That the mere failure to perform any act shall not be a willful violation under this article. A willful violation of this article requires that the defendant had knowledge of or notice of a duty to perform such act, and that the defendant, with knowledge of or notice of such duty, intentionally failed to perform such act.

(7) "Evade" means to willfully and fraudulently commit any act with the intent of depriving the state of payment of any tax which there is a known legal duty to pay under this chapter.

(8) "Fraud" means any false representation or concealment as to any material fact made by any person with the knowledge that it is not true and correct, with the intent that such representation or concealment be relied upon by the state.

§11-9-4. Failure to pay tax or file return or report.

Any person required by any provision of this chapter to pay any tax, or to file any return or report, who willfully
fails to pay such tax, or willfully fails to file such return or report, more than thirty days after the date such tax is required to be paid by law, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than one thousand dollars, or imprisoned in the county jail not more than six months, or both fined and imprisoned. Each failure to pay tax, or file a return or report, more than thirty days after its due date for any tax period is a separate offense under this section and punishable accordingly: Provided, That thirty days prior to instituting criminal proceedings under this section, the tax commissioner shall give the person written notice of any failure to pay a tax or to file a return or report. Such notice shall be served on the person by certified mail or by personal service. The provisions of this section shall not apply to the business franchise registration tax imposed by article twelve of chapter eleven.

§11-9-5. Failure to account for and pay over another's tax.

Any person required by any provision of this chapter to collect, or withhold, account for and pay over any tax, who willfully fails to truthfully account for and pay over such tax in the manner required by law, more than thirty days after the date such tax is required to be accounted for and paid over by law, is guilty of a felony if the amount of tax not paid over is one thousand dollars or more, and, upon conviction thereof, shall be fined not less than five thousand dollars nor more than twenty-five thousand dollars, or imprisoned in the penitentiary not less than one nor more than three years, or, in the discretion of the court be confined in the county jail not more than one year, or both fined and imprisoned; or, is guilty of a misdemeanor if the amount of tax not paid over is less than one thousand dollars, and, upon conviction thereof, shall be fined not less than five hundred dollars nor more than five thousand dollars, or imprisoned in the county jail not more than six months, or both fined and imprisoned. Each failure to account for and pay over tax for any tax period under this section is a separate offense and punishable accordingly: Provided, That thirty days prior to instituting a criminal proceeding under this section, the tax commissioner shall
give the person written notice of the failure to truthfully account for and pay over tax. Such notice shall be served on the person by certified mail or personal service.

§11-9-6. Failure to collect or withhold tax.

Any person required by any provision of this chapter to collect or withhold any tax, who willfully fails to collect or withhold such tax in the manner required by law, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars, or imprisoned in the county jail not more than six months, or both fined and imprisoned. Each month or fraction thereof during which such failure continues is a separate offense under this section and punishable accordingly.

§11-9-7. False statements to purchasers, lessees or employees relating to tax.

Any person required by law to collect or withhold any tax, who represents, advertises or states to the public or to any purchaser, lessee or employee that he will absorb or assume payment of any part of such tax or that such tax is not to be considered as part of or added to the sales price, or wages payable, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than one thousand dollars, or imprisoned in the county jail not more than six months, or both fined and imprisoned.

§11-9-8. Willful failure to maintain records or supply information; misuse of exemption certificate.

If any person: (1) Willfully fails to maintain any records, or supply any information, in the manner required by this chapter or regulations therefor promulgated in accordance with law, to compute, assess, withhold or collect any tax imposed by this chapter; or (2) presents to any vendor a certificate for the purpose of obtaining an exemption from the tax imposed by article fifteen or fifteen-a of this chapter and then knowingly uses the item or service purchased in a manner that is not exempt from such tax without remitting such tax in the manner required by law, such person is guilty of a misdemeanor, and, upon
conviction thereof, shall be fined not less than one hundred
dollars nor more than one thousand dollars, or imprisoned
in the county jail not more than six months, or both fined
and imprisoned.

§11-9-9. Aiding, abetting, assisting or counseling in criminal
violation.

Any person who shall knowingly aid or abet or assist or
counsel another person in the commission of any act
prohibited by this article, whether or not such act is with
the knowledge or consent of the person required by law to
do the act, is guilty of a misdemeanor, and, upon conviction
thereof, shall be fined not less than one hundred dollars nor
more than one thousand dollars, or imprisoned in the
county jail not more than six months, or both fined and
imprisoned.

§11-9-10. Attempt to evade tax.

If any person: (1) Knowingly files a false or fraudulent
return, report or other document under any provision of this
chapter; or (2) willfully delivers or discloses to the tax
commissioner any list, return, account, statement, record or
other document known by him to be fraudulent or false as to
any material matter with the intent of obtaining or assisting
another person in obtaining any credit, refund, deduction,
exemption or reduction in tax not otherwise permitted by
this chapter; or (3) willfully attempts in any other manner to
evade any tax imposed by this chapter or the payment
thereof, is guilty of a felony, and, notwithstanding any other
 provision of the code, upon conviction thereof, shall be
fined not less than one thousand dollars nor more than ten
thousand dollars, or imprisoned in the penitentiary not less
than one nor more than three years, or, in the discretion of
the court be confined in the county jail not more than one
year, or both fined and imprisoned.

§11-9-11. Engaging in business without payment of business
franchise registration tax; posting business franchise
registration certificate.

If any person for more than thirty days:

(1) Engages in business without posting a business
franchise registration certificate in the place of business in the manner required by law; (2) engages in business without payment of the business franchise registration tax when required by law; (3) engages in business after expiration of the period of time for which such certificate was granted without obtaining a new certificate; or (4) engages in business after the business franchise registration has been revoked, such person is guilty of a misdemeanor, and, upon conviction thereof, shall be fined one hundred dollars. Each day or part thereof that any violation continues is a separate offense and punishable accordingly: Provided, That the tax commissioner shall promulgate rules and regulations pursuant to chapter twenty-nine-a of this code relating to the posting of business franchise registration certificates, and violations of those rules and regulations shall constitute an offense under this section.

§11-9-12. Engaging in business without a business franchise registration certificate.

If any person engages in business within the state of West Virginia without obtaining a business franchise registration certificate when required by law, such person is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one thousand dollars nor more than ten thousand dollars.

§11-9-13. Release on probation; conditions of probation.

Any circuit court of this state shall have the authority as provided in article twelve, chapter sixty-two of this code, to place on probation any person convicted of a crime pursuant to this article. Release on probation shall be upon the conditions required by section nine, article twelve, chapter sixty-two of this code, and such conditions may include, but need not be limited to, a specified period of public or community service by the probationer.


The tax commissioner or any other public officer initiating proceedings against any person shall do so in the county of this state wherein such person resides, if any element of the offense occurred in the county of residence, or if no element of the offense occurs in the county of
6 residence, then the county where the offense was committed.

§11-9-15. Limitation on prosecution.

1 Every prosecution for any offense arising under this article shall be commenced within three years after the offense was committed, notwithstanding any provision of this code to the contrary.

§11-9-16. Effective date; former law preserved for certain purposes.

1 (a) The provisions of this article shall take effect on the first day of July, one thousand nine hundred eighty-four, and shall apply to criminal violations of this chapter committed on or after such date.

5 (b) Any criminal violation of this chapter occurring before the first day of July, one thousand nine hundred eighty-four, that would have been punishable under one of the sections of this chapter repealed by this act, shall nevertheless be punishable under those sections, as in effect on the first day of January, one thousand nine hundred eighty-four, and for such purpose the following sections of this chapter are fully and completely preserved: Section twelve of article twelve, section twenty-two of article twelve-a, section twenty-one of article thirteen, section nine of article fourteen, section ten of article fourteen-a, section twenty-nine of article fifteen, sections nineteen and twenty of article fifteen-a, section ninety-two of article twenty-one and section thirty-eight of article twenty-four.

§11-9-17. Severability.

1 If any provision of this article or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect, impair or invalidate other provisions or applications of the article, and to this end the provisions of this article are declared to be severable.

ARTICLE 15. CONSUMERS SALES TAX.

§11-15-4. Purchaser to pay; accounting by vendor.

1 The purchaser shall pay to the vendor the amount of tax
2 levied by this article which shall be added to and constitute
3 a part of the sales price, and shall be collectible as such by
4 the vendor who shall account to the state for all tax paid by
5 the purchaser. The vendor shall keep the amount of tax paid
6 separate from the proceeds of sale exclusive of the tax
7 unless authorized in writing by the tax commissioner to
8 keep such amount of tax in a different manner. Where such
9 authorization is given, the state’s claim shall be enforceable
10 against and shall take precedence over all other claims
11 against the moneys commingled.

CHAPTER 171
(S. B. 110—By Senator Boettner and Senator Holliday)

AN ACT to amend and reenact 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-f; to further amend said chapter by adding
thereto a new article, designated article thirteen-f; to amend
and reenact section eleven, article twenty-four of said chapter;
to amend and reenact sections one and two, article two-a,
chapter twenty-four of said code; and to further amend said
article by adding thereto two new sections, designated sections
three and four, all relating to reducing electric and natural gas
utility rates for low-income residential customers; business
and occupation tax and a credit thereto; corporate net income
tax and a credit thereto; providing for special reduced rates for
low-income residential customers of gas and electric utilities,
except municipal utilities, during certain months of the year;
establishing rules for persons qualifying for such special
reduced rates and for proving one’s eligibility therefor;
limiting municipalities as to the amounts relating to the special
reduced rates on which local business and occupation or
privilege taxes and local public utilities excise taxes can be
levied; and prohibiting municipalities from levying such taxes
on utilities’ recoveries of revenue deficiencies resulting from
the special reduced rates.
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-f; that said chapter be further amended by adding thereto a new article, designated article thirteen-f; that section eleven, article twenty-four of said chapter be amended and reenacted; that sections one and two, article two-a, chapter twenty-four of said code be amended and reenacted; and that said article be further amended by adding thereto two new sections, designated sections three and four, all to read as follows:

Chapter
11. Taxation.

CHAPTER 11. TAXATION.

Article

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-3f. Tax credit for reducing electric and natural gas utility rates for low-income residential customers; regulations.

1 (a) There shall be allowed as a credit against the tax imposed by this article, the cost of providing electric or natural gas utility service, or both, at reduced rates to qualified low-income residential customers which has not been reimbursed by any other means.

6 (b) The tax commissioner may prescribe such regulations as may be necessary to carry out the purposes of this section, of article thirteen-f of this chapter and of section eleven, article twenty-four of this chapter.

ARTICLE 13F. BUSINESS AND OCCUPATION TAX CREDIT FOR REDUCING ELECTRIC AND NATURAL GAS UTILITY RATES FOR LOW-INCOME RESIDENTIAL CUSTOMERS.
§11-13F-1. Legislative purpose.

In order to reimburse public utilities for the revenue deficiencies which they incur in providing special reduced electric and natural gas utility rates to low-income residential customers in accordance with the provisions of article two-a of chapter twenty-four, there is hereby provided a business and occupation tax credit for reducing electric and natural gas utility rates for low-income residential customers.


(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) "Eligible taxpayer" means a utility which has provided electric or natural gas service, or both, to qualified low-income residential customers at special reduced rates.

(2) "Cost of providing electric or natural gas utility service, or both, at special reduced rates" means the amount certified by the public service commission under the provisions of section three, article two-a, chapter twenty-four of this code as the revenue deficiency incurred by a public utility in providing special reduced rates for electric or natural gas utility service as required by section one, article two-a, chapter twenty-four of this code.

(3) "Special reduced rates" means the rates ordered by the public service commission under the authority of section one, article two-a, chapter twenty-four of this code.

(4) "Qualified low-income residential customers" means those utility customers eligible to receive electric or
natural gas utility service, or both, under special reduced rates.

§11-13F-3. Amount of credit.

There shall be allowed to any eligible taxpayer a credit against the business and occupation taxes imposed by article thirteen of this chapter, for reducing electric and natural gas utility rates. The amount of the credit available to any eligible taxpayer shall be equal to its cost of providing electric or natural gas service, or both, at special reduced rates to qualified residential customers, less any reimbursement of said cost which the taxpayer has received through any other means.

§11-13F-4. When credit may be taken.

An eligible taxpayer may claim a credit allowed under this article against its business and occupation tax liability for the year in which it receives certification of the amount of its revenue deficiency from the public service commission.

Notwithstanding the provisions of section four, article thirteen of this chapter to the contrary, in determining the amount of estimated business and occupation taxes reported on any monthly or quarterly estimate of business and occupation taxes that is due for any portion of the calendar year prior to the first day of July of such year, no estimated credit may be claimed or considered.

In estimating the amount of monthly or quarterly tax due for the months of July and succeeding months in any calendar year, the eligible taxpayer may divide the amount certified as its revenue deficiency by the public service commission, by the number of returns (estimated and annual) that will become due for the period July through December of each year. The resultant quotient shall be the maximum amount allowed to be taken as credit on each said return: Provided, That in no event may application of this credit reduce the tax liability below zero.

§11-13F-5. Application of credit.

(a) Any unused portion of a credit allowed under this
article may be taken as a credit against corporation net
income taxes due for the taxable year, as provided in section
eleven, article twenty-four of this chapter.

(b) If any portion of the amount certified as its revenue
deficiency by the public service commission is not
recovered under subsection (a), it may be carried over to the
subsequent year for business and occupation tax purposes
and shall be applied as a credit before any other credits for
that year are applied.

(c) In no event shall an eligible taxpayer be allowed to
recover more than one hundred percent of its certified
revenue deficiency.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-11. Credit for reducing electric and natural gas utility
rates for low-income residential customers.

(a) General.—A credit shall be allowed against the
primary tax liability of an eligible taxpayer under this
article for the cost of providing electric or natural gas utility
service, or both, at special reduced rates to qualified low-
income residential customers which has not been
reimbursed by any other means.

(b) Definitions.—For purposes of this section, the term:

(1) "Eligible taxpayer" means a utility which has
provided electric or natural gas service, or both, to qualified
low-income residential customers at special reduced rates.

(2) "Cost of providing electric or natural gas utility
service, or both, at special reduced rates" means the amount
certified by the public service commission under the
provisions of section three, article two-a, chapter twenty-
four of this code, as the revenue deficiency incurred by a
public utility in providing special reduced rates for electric
or natural gas utility service, or both, as required by section
one, article two-a, chapter twenty-four of this code.

(3) "Special reduced rates" means the rates ordered by
the public service commission under the authority of
section one, article two-a, chapter twenty-four of this code.
“Qualified low-income residential customers” means those utility customers eligible to receive electric or natural gas utility service, or both, under special reduced rates.

(c) **Amount of credit.**—The amount of the credit available to any eligible taxpayer shall be equal to its cost of providing electric or natural gas service, or both, at special reduced rates to qualified residential customers, less any reimbursement of said cost which the taxpayer has received through any other means.

(d) **When credit may be taken.**—An eligible taxpayer may claim a credit allowed under this section on its annual return for the taxable year in which it receives certification of the amount of its revenue deficiency from the public service commission. Notwithstanding the provisions of section sixteen of this article to the contrary, no credit may be claimed on any declaration of estimated tax filed for such taxable year prior to the first day of July of such taxable year. Such credit may be claimed on a declaration or amended declaration filed on or after that date but only if the amount certified will not be recovered by application of the business and occupation tax credit allowed by section three-f, article thirteen of this chapter. In such event, only the amount not recovered by that credit may be considered or taken as a credit when estimating the tax due under this article. In no event may the eligible taxpayer recover more than one hundred percent of its revenue deficiency as certified by the public service commission.

(e) **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. Notwithstanding the provisions of section four, article thirteen-f of this chapter, any unused credit may be carried over and applied against business and occupation taxes in the manner specified in section five, article thirteen-f of this chapter.

(f) **Copy of certification order.**—A copy of a certification order from the public service commission shall be attached
to any annual return under this article on which a credit
allowed by this section is taken.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

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-3. Limitation on and exemption from local business and occupation
or privilege taxes and local public utility excise taxes.

§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 each gas and electric utility
subject to its jurisdiction, except municipal or cooperative
gas or electric utilities, to offer special reduced rates
applicable to gas and electric service for the billing months
of December, January, February, March and April of each
year (beginning with the billing month of December, one
thousand nine hundred eighty-three), 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 special reduced rate offered by each gas and electric
utility to its eligible customers shall be twenty percent less
than the rate which would be applicable to such customers
if they were not receiving any of the four forms of assistance
which confer eligibility for the special reduced rates. A
customer of a utility offering special reduced rates shall be
eligible to receive such rates for each of the billing months
of December, January, February, March and April that
correlates to a calendar month during which that customer
is eligible to participate in one or more of the qualifying programs specified in this section, except as otherwise provided in this section. The correlation of billing months to calendar months of eligibility to participate in a qualifying program is as follows: A December billing month correlates to the calendar month of November; a January billing month correlates to the calendar month of December; a February billing month correlates to the calendar month of January; a March billing month correlates to the calendar month of February; and an April billing month correlates to the calendar month of March. After the billing month of April, one thousand nine hundred eighty-four, no customer shall be eligible to receive the special reduced rates until the billing month in which that customer applies for such rates. For the billing months of December, one thousand nine hundred eighty-three, and January, February, March and April, one thousand nine hundred eighty-four, a customer shall be eligible to receive a utility's special reduced rates for any of said billing months which correlates to a calendar month during which that customer is eligible to participate in one or more of the qualifying programs specified in this section, regardless of the date on which that customer applies for such rates: Provided, That the date of application falls on or prior to the fifteenth day of May, one thousand nine hundred eighty-four. No customer who applies for the special reduced rates after the fifteenth day of May, one thousand nine hundred eighty-four, shall be eligible to receive such rates for any of the billing months of December, one thousand nine hundred eighty-three, or January. February, March or April, one thousand nine hundred eighty-four. Before any individual may qualify to receive the special reduced rates, the following requirements must be met:

(a) The special reduced rates shall apply only to current customers or to those persons who subsequently become customers in their own right. If an SSI, AFDC, AFDC-U or food stamp recipient is living in a household which is served under the name of a person who is not an 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 service under the special reduced rates.

(b) The burden of proving eligibility for the special reduced rates shall be on the customer requesting such rates. The department of human services shall establish by rules and regulations procedures (1) to inform persons receiving any of the four forms of assistance which confer eligibility for the special reduced rates about the availability of the special reduced rates, (2) to assist applicants for the special reduced rates in proving their eligibility therefor, and (3) to assist gas and electric utilities offering the special reduced rates in determining on a continuing basis the eligibility therefor of persons receiving or applying for such rates. The commission shall establish by rules and regulations procedures for the application for and provision of service under the special reduced rates and for the determination and certification of revenue deficiencies resulting from the special reduced rates. Within ten days of the effective date of this article, the commission and the department of human services shall adopt temporary rules and regulations, as required by this section, which rules and regulations shall not be subject to the requirements of chapter twenty-nine-a and section seven, article one of chapter twenty-four except that they shall be filed with the secretary of state and published in the state register. These temporary rules and regulations shall remain in effect until supplanted by permanent rules and regulations, which shall be adopted by the commission and the department of human services within one hundred eighty days of the effective date of this article. No customer who is a recipient of more than one of the four forms of assistance which confer eligibility for the special reduced rates shall be eligible for more than one twenty percent discount for gas service and one twenty percent discount for electric service during each billing month that said customer is eligible to receive the special reduced rates.

(c) In order to provide each eligible residential utility customer the special reduced rates for the billing months of December, one thousand nine hundred eighty-three,
through April, one thousand nine hundred eighty-four, (hereinafter referred to as the first special-reduced-rate season), each utility providing the special reduced rates shall credit against the amount otherwise owed by each such customer an amount equal to the difference between the total amount that each such customer was actually billed during the first special-reduced-rate season and the total amount that each customer would have been entitled to be billed under the special reduced rates. Each such credit shall be fully reflected on the first bill issued to each such customer after approval of each such customer's application for the special reduced rates, except in cases where the interval between the approval and the issuance of the next bill is so short that it is administratively impracticable to do so, in which cases such credits shall be fully reflected on the second bill issued to each such customer after approval of that customer's application. If the interval between the approval and the issuance of the next bill is fifteen days or more, it shall not be deemed administratively impracticable to reflect such credit on the customer's first such bill.


In order to provide the special reduced rates mandated by section one of this article and still maintain the integrity of the earnings of the utilities offering service under these rates, the commission shall each year, beginning in the year one thousand nine hundred eighty-four, determine, upon application by any affected utility, that utility's revenue deficiency resulting from the special reduced rates. Upon determining any utility's revenue deficiency, the commission shall issue an order certifying the amount of that deficiency. Certified revenue deficiencies shall be recovered by the affected utilities as follows:

(1) A utility's certified revenue deficiency, if any, resulting from the special reduced rates shall be allowed as a tax credit against the liability of the utility pursuant to the provisions of article thirteen-f of chapter eleven.

(2) After allowance of a tax credit pursuant to the provisions of article thirteen-f of chapter eleven, a utility's
remaining revenue deficiency, if any, resulting from the special reduced rates, 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.

§24-2A-3. Limitation on and exemption from local business and occupation or privilege taxes and local public utility excise taxes.

(a) Any municipality which presently or hereafter imposes a business and occupation or privilege tax under section five, article thirteen of chapter eight or a public utilities excise tax under section five-a, article thirteen of chapter eight shall be restricted, in the case of utility services rendered to a customer under the special reduced rates, to levying such taxes on (1) in the case of a local business and occupation or privilege tax, the gross revenues derived under the special reduced rates for any period during which that customer receives service under the special reduced rates, and (2) in the case of a local public utilities excise tax, to the gross amount of that customer's utility bill as calculated under the special reduced rates.

(b) No recovery of revenue deficiencies provided in section three of this article shall be subject to tax under sections five or five-a, article thirteen of chapter eight.


As used in this article, the term:

(a) "Billing cycle" shall mean a period of time during the course of which a utility either bills for or measures, by meter-reading or any other means, the usage of its utility services by all of its customers a single time. A utility may elect whether it wishes to determine its billing cycles by date of measurement or by date of billing. A utility which employs twelve billing cycles per year shall be deemed to employ monthly billing cycles. A utility which employs more or fewer than twelve billing cycles per year shall be deemed to employ nonmonthly billing cycles. For a utility employing monthly billing cycles, a billing cycle identified by the name of a particular calendar month must include at least twelve days of that calendar month.
(b) "Billing month" shall have two meanings:

(1) As applied to a utility employing nonmonthly billing cycles and to its customers, a particular "billing month" shall mean the calendar month to which that billing month correlates under section one of this article.

(2) As applied to a utility employing monthly billing cycles and to its customers, a particular "billing month" shall mean the period of customer usage reflected on any bill which, in the case of a utility with billing-date billing cycles, is issued during that particular monthly billing cycle, or for which, in the case of a utility with measurement-date billing cycles, the measurement of usage is made during that particular monthly billing cycle.

CHAPTER 172

(Com. Sub. for H. B. 1686—By Delegate Schifano)

[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and seven, article fourteen-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the motor carrier road tax; eliminating requirement that registration card be carried in vehicle; requiring a cross-check to be made by state tax commissioner after issuance by him of identification marker to a motor carrier to aid in determination of any non-compliance by such carrier; and increasing the criminal penalty for failure to obtain or display identification marker issued by the tax commissioner.

Be it enacted by the Legislature of West Virginia:

That sections two and seven, article fourteen-a, 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 14A. MOTOR CARRIER ROAD TAX.


For purposes of this article:

(1) "Commissioner" or "tax commissioner" means the tax commissioner of the state of West Virginia or his duly authorized agent.

(2) "Gallon" means two hundred thirty-one cubic inches of liquid measurement, by volume: Provided, That the commissioner may by rule and regulation prescribe other measurement or definition of gallon.

(3) "Gasoline" means 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.

(4) "Highway" means every way or place of whatever nature open to the use of the public as a matter of right for the purpose of vehicular travel, which is maintained by this state or some taxing subdivision or unit thereof or the federal government or any of its agencies.

(5) "Identification marker" means the decal issued by the commissioner for display upon a particular motor carrier and authorizing a person to operate or cause to be operated a motor carrier upon any highway of the state.

(6) "Lease" means any oral or written contract for valuable consideration granting the use of a motor carrier.

(7) "Motor carrier" means any passenger vehicle which has seats for more than nine passengers in addition to the driver, or any road tractor, or any 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.

(8) "Operation" means any operation of any motor carrier, whether loaded or empty, whether for compensation or not, and whether owned by or leased to the person who operates or causes to be operated such motor carrier.

(9) "Person" means and includes any individual, firm, partnership, limited partnership, joint adventure, association, com-
company, corporation, organization, syndicate, receiver, trust or any
ter group or combination acting as a unit, in the plural as well
as the singular number, and means and includes the officers,
directors, trustees or members of any firm, partnership, limited
partnership, joint adventure, association, company, corpora-
tion, organization, syndicate, receiver, trust or any other group
or combination acting as a unit, in the plural as well as the
singular number, unless the intention to give a more limited
meaning is disclosed by the context.

(10) “Pool operation” means any operation whereby two or
more taxpayers combine to operate or cause to be operated a
motor carrier or motor carriers upon any highway in this state.

(11) “Purchase” means and includes any acquisition of
ownership of property or of a security interest for a con-
sideration.

(12) “Road tractor” means every motor carrier designed
and used for drawing other vehicles and not so constructed
as to carry any load thereon either independently or any part
of the weight of a vehicle or load so drawn.

(13) “Sale” means any transfer, exchange, gift, barter,
or other disposition of any property or security interest for
a consideration.

(14) “Special fuel” means any gas or liquid, other than
gasoline, used or suitable for use as fuel in an internal com-
bustion engine. The term “special fuel” shall include products
commonly known as natural or casinghead gasoline but
shall not include any petroleum product or chemical com-
pound 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.

(15) “Tax” includes, within its meaning, interest, addi-
tions to tax and penalties, unless the intention to give it a more
limited meaning is disclosed by the context.

(16) “Taxpayer” means any person liable for any tax,
interest, additions to tax or penalty under the provisions of
this article.
(17) "Tractor truck" means every motor carrier designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

(18) "Truck" means every motor carrier designed, used or maintained primarily for the transportation of property and having more than two axles.


No person shall operate or cause to be operated in this state any motor carrier subject to this article without first securing from the commissioner an identification marker for each such motor carrier. Each identification marker for a particular motor carrier shall bear a number. The identification marker shall be displayed on the motor carrier as required by the commissioner. The commissioner, after issuance of any identification marker to a motor carrier, shall cause an internal cross-check to be made in his office as to any state tax which he administers, to in aid in determination of any noncompliance in respect of failure to file returns or payment of tax liabilities. The identification markers herein provided for shall be valid for the period of one year, ending June thirtieth of each year. A fee of five dollars shall be paid to the commissioner for issuing each identification marker. All tax or reports due under this article shall be paid or reports filed before the issuance of a new identification marker. Failure by a taxpayer to file the returns or pay the taxes imposed by this article shall give cause to the commissioner to revoke or refuse to renew the identification marker previously issued.

In an emergency, the commissioner upon request may authorize, in writing, a motor carrier to be operated without an identification marker for not more than ten days.

Upon conviction for failure to obtain and display the identification marker on each motor carrier, the person which operates or causes to be operated said motor carrier shall be fined not less than fifty nor more than five hundred dollars per day; and each day of such failure shall constitute a separate offense.
AN ACT to amend and reenact sections nine and twelve, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section three, article twenty-four of said chapter, all relating to updating meaning of terms used in the West Virginia personal income tax act and the West Virginia corporation net income tax act; permitting a decreasing modification under the West Virginia personal income tax act to federal adjusted gross income for amounts included therein under section 86 of the Internal Revenue Code for social security benefits, substituted social security benefits and railroad retirement benefits; and making such changes retroactive to the first day of January, one thousand nine hundred eighty-three.

Be it enacted by the Legislature of West Virginia:

That sections nine and twelve, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section three, article twenty-four of said chapter be amended and reenacted, all to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-12. West Virginia adjusted gross income of resident individual.


1 Any term used in this article shall have the same meaning
2 as when used in a comparable context in the laws of the
3 United States relating to income taxes, unless a different
4 meaning is clearly required. Any reference in this article to
5 the laws of the United States shall mean the provisions of
the 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-four, 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-three, and thereafter, but no amendment to
the laws of the United States made on or after the first day
of January, one thousand nine hundred eighty-four, shall be
given effect.

§11-21-12. West Virginia adjusted gross income of resident
individual.

(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.

(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:

(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;

(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; and

(10) Gross income to the extent included in federal adjusted gross income under section 86 of the Internal Revenue Code for federal income tax purposes.

(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.

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 eight hundred eighty-four, 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-three, 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-four, 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 174

(S. B. 311—By Senator Spears and Senator Tonkovich)

(Passed March 10, 1984; in effect July 1, 1984. Approved by the Governor.)

AN ACT to amend article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-
Be it enacted by the Legislature of West Virginia:

That article twenty-one, 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 forty-two; that article twenty-four of said chapter be amended by adding thereto a new section, designated section twelve; and that chapter twenty-one-a of said code be amended by adding thereto a new article, designated article two-c, all to read as follows:

Chapter
   11. Taxation.
      21A. Unemployment Compensation.

CHAPTER 11. TAXATION.

Article

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-42. Veterans incentive tax credit.

1 Every employer entitled to receive a tax credit against
his West Virginia personal income tax liability as pro-
vided in article two-c, chapter twenty-one-a of this code
shall receive the credit for the period and in the amount
specified in said article two-c. The state tax commis-
sioner shall provide by appropriate rule or regulation for
the reporting, filing and application of claims of the tax
credit provided for in a manner in conformity with the
legislative purpose as declared in section two, article
two-c, chapter twenty-one-a of this code.

ARTICLE 24. CORPORATION NET INCOME TAX.
§11-24-12. Veterans incentive tax credit.

Every employer entitled to receive a tax credit against
its West Virginia corporate net income tax liability as
provided in article two-c, chapter twenty-one-a of this
code, shall receive the credit for the period and in the
amount specified in said article two-c of this chapter.
The state tax commissioner shall provide by appropriate
rule or regulation for the reporting, filing and application
of claims for the tax credit provided for in a manner in
conformity with the legislative purpose as declared in
section two, article two-c, chapter twenty-one-a of this
code.

CHAPTER 21A. UNEMPLOYMENT COMPENSATION.

ARTICLE 2C. VETERANS INCENTIVE PROGRAM.

§21A-2C-2. Declaration of legislative intent and purpose.
§21A-2C-4. Tax credit; eligibility; amount.
§21A-2C-5. Restrictions and limitations regarding tax credit.
§21A-2C-6. Program administration.


This article shall be known and may be cited as the
"Veterans Incentive Program Act of 1984."

§21A-2C-2. Declaration of legislative intent and purpose.

The Legislature of West Virginia hereby recognizes
that disabled veterans and economically disadvantaged
veterans of the Vietnam era and of the Korean conflict
have made sacrifices which merit preferential employment treatment in both the public and private sectors. Economically disadvantaged and disabled veterans traditionally suffer a disproportionately higher unemployment rate than that of nonveterans of similar age and skills. It is the intent and purpose of the Legislature to encourage the employment of these veterans in the private sector by providing tax credits for private sector employers who employ economically disadvantaged Vietnam era and Korean conflict veterans, and disabled veterans generally.


For the purposes of this article:

(a) "Active duty" means full-time duty in the armed forces, other than duty for training in the reserves or national guard. Any period of duty for training in the reserves or national guard, including authorized travel, during which an individual was disabled from a disease or injury incurred or aggravated in line of duty, is considered "active duty."

(b) "Economically disadvantaged" means a person who:

(1) Receives, or is a member of a family which receives, cash welfare payments under a federal, state or local welfare program;

(2) Has, or is a member of a family which has, received a total family income for the six months prior to application which, in relation to family size, was not in excess of the higher of

(i) The poverty level determined in accordance with criteria established by the federal office of management and budget; or

(ii) Seventy percent of the lower living standard income level;

(3) Is receiving food stamps pursuant to the food stamp act of one thousand nine hundred seventy-seven;
(4) Is a foster child on behalf of whom state or local
government payments are made; or

(5) Is an adult handicapped individual whose own
income meets the requirements of subdivisions (1) and
(2) of this section, but who is a member of a family
whose income does not meet such requirements.

(c) "Korean conflict veteran" means a person who
served in the armed services of the United States at
least one day during the period of time beginning the
twenty-seventh day of June, one thousand nine hundred
fifty, and extending through the thirty-first day of Jan-
uary, one thousand nine hundred fifty-five.

(d) "Veteran" means a member of the United States
armed forces who:

(1) Served on active duty for a period of more than
one hundred eighty days and was discharged or released
therefrom with other than a dishonorable discharge; or

(2) Was discharged or released from active duty be-
cause of a service-connected disability.

(e) "Vietnam era veteran" means a person who served
in the armed services of the United States at least one
day during the period of time beginning the fifth day of
August, one thousand nine hundred sixty-four, and ex-
tending through the seventh day of May, one thousand
nine hundred seventy-five.

§21A-2C-4. Tax credit; eligibility; amount.

(a) Each person, partnership or corporation which
employs an economically disadvantaged Vietnam era
or Korean conflict veteran or a disabled veteran for a
continuous period of one year, except as otherwise pro-
vided in this article, shall be entitled to an appropriate
tax credit for each such veteran so employed. In the case
of a person or partnership so employing a veteran, the
tax credit provided for in this section shall be applied
against the employer's personal income tax liability. In
the case of a corporation so employing a veteran, the tax
credit provided for in this section shall be applied against
the corporation's corporate net income tax liability. This
tax credit shall be nonassignable and may not exceed
an employer's total tax liability with respect to the specific
tax against which the tax credit is required to be applied.

(b) The amount of the tax credit allowed under sub-
section (a) of this section shall be an amount equal to
the following:

(1) For each economically disadvantaged Vietnam
era or Korean conflict veteran employed as described in
subsection (a), the amount of the tax credit allowed
shall be thirty percent of the employee's wage base. For
the purposes of this section, the employee's wage base
is the first two thousand dollars in wages or compensa-
tion actually paid to the employee by the employer; and

(2) For each disabled veteran employed as described
in subsection (a), the amount of the tax credit allowed
shall be a percentage equal to the percentage of dis-
ability suffered by the veteran multiplied by the em-
ployee's wage base. The employee's wage base is the
same as provided in subdivision (1) of this subsection.
The percentage of disability referred to in this subdivi-
sion means the percentage of compensation for service-
connected disability as determined by the veterans ad-
ministration of the United States.

§21A-2C-5. Restrictions and limitations regarding tax credit.

(a) An employer may not claim a tax credit provided
for in this article for any veteran employed for less than
a continuous period of one year, unless:

(1) The veteran voluntarily leaves employment with
the employer;

(2) The veteran becomes totally disabled and unable
to continue his employment; or

(3) The veteran is terminated for good cause shown.

In the event that the veteran is employed for less
than a one-continuous-year period due to circumstances
enumerated in subdivision (1), (2) or (3) above, the
employer shall be entitled to a partial tax credit in a proportional amount corresponding to the ratio of the time period during which the veteran was actually employed to the one-year period required for a full tax credit multiplied by the amount of the full tax which would have accrued to the employer had the veteran's employment continued for a full year.

(b) An employer may not claim tax credit provided for in this article for any veteran who is employed and displaces a person already employed. In addition, no tax credit may be claimed for the employment of any veteran for whom the employer is receiving job training payments from either the federal or state government. Nothing in this section prohibits an employer from receiving tax credits from both the federal and state governments under similar targeted jobs programs if the employer is otherwise qualified to receive both.

§21A-2C-6. Program administration.

The program established by this article shall be conducted primarily under the direction of the division of employment service of the department of employment security. Each veteran who qualifies under this article for participation in this program shall be given, upon request, a voucher from a local employment service office certifying that the veteran is eligible for participation in the program described in this article. The voucher shall be in a form prescribed by the commissioner of employment security and the commissioner may conduct such investigations and collect such data as he deems necessary to ensure that each veteran applying for the voucher is actually qualified for participation in the program.

When an employer employs a veteran who presents the voucher herein provided for, the employer shall submit the voucher along with basic information to the department of employment security as may be required for participation in this program. Each year, the commissioner of the department of employment security shall certify to the state tax commissioner a list of employers
who may be qualified to receive a tax credit under this program. In order to receive the appropriate tax credit, an employer must file for the tax credit provided for under this article as required by section forty-two, article twenty-one, chapter eleven of this code or by section twelve, article twenty-four, chapter eleven of this code.

CHAPTER 175
(H. B. 1446—By Delegate Hagedorn)

[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventy-one, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the withholding of personal income tax; exemptions; withholding of tax due on certain annuity benefits.

Be it enacted by the Legislature of West Virginia:

That section seventy-one, 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.

PART V. WITHHOLDING OF TAX.

§11-21-71. Requirement of withholding tax from wages.

1 (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 deter-
mining 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-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.

(d) **Federal annuities and benefits.**—The commissioner is hereby authorized to enter into any agreement or agreements with the federal office of personnel management or any other agency of the United States that are necessary to effectuate the withholding of tax due under the
provisions of this article upon taxable income received by
residents of this state under any *annuity* or benefit program
of the United States.

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**CHAPTER 176**

(Com. Sub. for S. B. 206—By Senator Heck, Senator Nelson,
Senator Chace and Senator Boettner)

[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-three; and to amend and reenact section nine, article three, chapter five-a of said code, all relating to the creation of a commission on mass transportation; legislative findings; creation of the commission; the method of appointment; terms of members and vacancies; expenses of commission members; office space; officers; meetings; oaths of office; powers and duties; reports to governor and joint committee on government and finance; intergovernmental cooperation; duties of urban mass transit authorities; construction and severability; commission termination; and making available to local governmental units and to transit authorities the services of the department of finance and administration.

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

That chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article twenty-three; and that section nine, article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

**Chapter 5. General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, Etc.**

5A. Department of Finance and Administration.
CHAPTER 5. GENERAL POWERS AND AUTHORITY OF
THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY
GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS
AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 23. COMMISSION ON MASS TRANSPORTATION.

§5-23-1. Legislative findings and purposes.
§5-23-2. Creation of commission; composition; appointment of members.
§5-23-3. Terms of citizen representative members; vacancies.
§5-23-4. Expenses of commission members.
§5-23-5. Office space; officers; meetings.
§5-23-6. Oaths of office.
§5-23-7. Commission powers.
§5-23-8. Reports to governor and joint committee on government and
finance.
§5-23-9. Intergovernmental cooperation.
§5-23-10. Duties of urban mass transit authorities.
§5-23-11. Construction; severability.

§5-23-1. Legislative findings and purposes.

The Legislature finds:

(a) That throughout the state, in both urban and rural
areas, there exists a need for a coordinated system of mass
transportation in order to enable many segments of the
population and particularly the aged, physically
handicapped and economically disadvantaged, to get to and
from work, medical and hospital facilities, shopping areas,
recreational facilities, churches and other institutions
which are essential to their health, safety and economic
well-being;

(b) That in certain urban and rural areas of the state,
mass transportation authorities have been created
pursuant to article twenty-seven, chapter eight of this code
which now operate publicly owned mass transportation
systems serving limited regions or communities;

(c) That in many urban and rural areas of the state, there
exist no systems of mass transportation, either public or
private, to meet the needs of the people;

(d) That while financial assistance is available to
certain areas of the state from the federal government, these
resources are uncertain and insufficient to adequately meet
the perceived needs of the people; and

(e) That given the limited financial resources of the
state, it is necessary and desirable to create an agency
within state government, the functions of which shall be to
actively study, investigate, consider, evaluate and
recommend to the governor and to the Legislature from
time to time ways and means whereby mass transportation
of all types can be supported, improved, created and
otherwise assisted, and to formulate plans and specific
proposals for future executive and legislative consideration
with respect to a state policy and program on mass
transportation which will involve the cooperation of
existing urban mass transportation authorities and other
providers, both public and private.

§5-23-2. Creation of commission; composition; appointment of
members.

The West Virginia commission on mass transportation is
hereby created. The commission shall consist of thirteen
members as follows: Three members, herein referred to as
government representatives, who shall be the commissioner
of finance and administration, the director of the
department of health and the executive director of the
commission on aging; and ten additional citizens of the
state, herein referred to as citizen representatives, no more
than five of whom shall belong to the same political party.
The governor shall appoint the ten citizen representative
members of the commission with the advice and consent of
the Senate, at least two of whom shall be selected from the
boards of members of urban mass transit authorities
formed pursuant to article twenty-seven, chapter eight of
this code, two of whom shall be from boards of members
from rural transportation authorities existing throughout
the state, two of whom shall be senior citizens, one disabled
person, one from organized labor and two from the public at
large. The director of the division of public transportation
within the department of finance and administration shall
be an ex officio member of the commission.

§5-23-3. Terms of citizen representative members; vacancies.

On or before the first day of July, one thousand nine
2 hundred eighty-four, the governor shall appoint the ten
citizen representatives of the commission for the following
durations: Four members for terms of two years, three
members for terms of four years and three members for
terms of six years. The successor of each such appointed
member shall be appointed for a term of six years in the
same manner as the original appointments were made,
except that any person appointed by the governor to fill a
vacancy occurring prior to the expiration of the term for
which his predecessor was appointed shall be appointed
only for the remainder of such term. Each commission
member shall serve until the appointment and qualification
of his successor.

§5-23-4. Expenses of commission members.

1 Each citizen representative of the commission shall be
2 reimbursed for all reasonable and necessary expenses
3 actually incurred in the performance of his duties as a
4 member of the commission. Requisition for such expenses
5 shall be accompanied by a sworn and itemized statement
6 which shall be filed with the auditor.

§5-23-5. Office space; officers; meetings.

1 The commission shall be supplied with necessary office
2 space at the seat of government. A majority of the members
3 of the commission shall constitute a quorum for the
4 transaction of its business. The governor shall appoint,
5 from among the citizen representatives, a chairman of the
6 commission. The commission shall then elect such other
7 officers as it deems appropriate for the conduct of its
8 business. The commission shall hold four regular meetings a
9 year as follows: On the first Monday in January, April, July
10 and October. Special meetings may be convened on the call
11 of the chairman, the governor or a majority of the members.
12 A majority of the commission members present at a meeting
13 shall be required to determine any issues brought before it.

§5-23-6. Oaths of office.

1 Citizen representatives of the commission shall take and
2 subscribe to the constitutional oath before entering upon
3 their duties. Their oaths shall be filed with the secretary of
4 state.
§5-23-7. Commission powers.

1 The commission is hereby authorized and empowered to:

2 (a) Study and consider the entire field of legislation and

3 administration concerning mass transportation throughout

4 the state;

5 (b) Identify the needs for mass transportation and

6 resources available throughout every area of the state;

7 (c) Develop plans for:

8 (1) Distributing state vehicles and state resources,

9 giving highest priority to those regions or areas of regions

10 which have inadequate existing mass transportation;

11 (2) Determining the appropriate eligibility criteria for

12 state assistance to persons over age sixty or physically

13 handicapped who are unable otherwise to secure adequate

14 transportation for the necessities of life; and

15 (3) Determining on what basis, if any, persons over age

16 sixty or physically handicapped shall be required to

17 contribute for the state services provided hereunder.

18 (d) Advise and make recommendations to the governor

19 and to the Legislature relative to the needs of mass

20 transportation throughout the state;

21 (e) Solicit and accept funds, services and materials from

22 any state entity or agency or from any private sources;

23 (f) Distribute, transfer or expend state funds for the

24 purchase, repair, maintenance and operation of

25 transportation vehicles;

26 (g) Cooperate and work with federal, state and local

27 governmental officers, units, transportation authorities,

28 activities and agencies in the promotion and attainment of

29 the goals of the commission; and

30 (h) Promulgate rules and regulations, according to the

31 provisions of chapter twenty-nine-a of this code, necessary

32 to effectuate the purposes and duties provided herein.
§5-23-8. Reports to governor and joint committee on government and finance.

1 The commission shall, annually, submit to the governor and to the joint committee on government and finance of the Legislature a report of its activities, projects and accomplishments to the date of such report and of its planned future activities and projects.

§5-23-9. Intergovernmental cooperation.

1 The commission is further authorized and directed to utilize the resources of the department of finance and administration and to seek assistance from other state and local government agencies including the commission on aging and urban mass transportation authorities formed pursuant to article twenty-seven, chapter eight of this code, to aid in carrying out its duties.

§5-23-10. Duties of urban mass transit authorities.

1 Each urban mass transit authority formed pursuant to article twenty-seven, chapter eight of this code, existing or hereafter created in the state, shall cooperate with the commission in developing the plans and studies required by this article.

§5-23-11. Construction; severability.

1 The provisions of this article shall be liberally construed to accomplish its objectives and purposes. If any section, subsection, subdivision, subparagraph, sentence or clause of this article is judged to be unconstitutional or invalid, such invalidity or unconstitutionality 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.


1 This commission shall be terminated on the first day of July, one thousand nine hundred eighty-six, 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 177

(Com. Sub. for H. B. 1123—By Delegate Hatcher)

[Passed March 8, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article eight, chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the disposition of unclaimed miscellaneous personal property; exceptions; prohibiting banking or financial organizations or institutions from charging or contracting to charge fees against inactive or dormant interest bearing or time deposits.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT.

§36-8-9. Miscellaneous personal property held for another person; exception; prohibiting the levying of charges on inactive savings accounts.

1 All personal property not otherwise covered by this article,
including any income or increment thereon and after deducting any lawful charges, that is held or owing in this state in the ordinary course of the holder’s business and has remained unclaimed by the owner for more than seven years after it became payable or distributable is presumed abandoned: *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 notwithstanding the provisions of section two of this article, no banking or other financial organization or institution shall, after the effective date of this section, demand, collect, charge or contract to receive any charge due to dormancy or inactivity on any interest bearing savings or time deposit for any period of time prior to the withdrawal of such funds by the depositor, his personal agent or representative, or the accrual under this article of the right of the state to deposit or sell as abandoned property any such deposit. For purposes of this proviso, any interest bearing savings or time deposit shall be deemed to be dormant or inactive if the depositor, his personal agent or representative has not within the immediately preceding two years increased or decreased the amount of the deposit.

CHAPTER 178

(Com. Sub. for H. B. 1719—By Delegate Wooton)

[Passed March 10, 1984; in effect July 1, 1984. Approved by the Governor.]

AN ACT to amend and reenact section three, article one, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections five and seven, article five of said chapter; and to amend and reenact sections three and fifteen, article six of said chapter twenty-one-a, all relating to unemployment compensation.

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

That section three, article one, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections five and seven, article
five, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections three 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, all to read as follows:

Article
5. Employer Coverage and Responsibility.
6. Employee Eligibility; Benefits.

ARTICLE 1. DEPARTMENT OF EMPLOYMENT SECURITY.


1. As used in this chapter, unless the context clearly requires otherwise:

2. "Administration fund" means the employment security admin-
3. ministration fund, from which the administrative expenses
4. under this chapter shall be paid.

5. "Annual payroll" means the total amount of wages for em-
6. ployment paid by an employer during a twelve-month period
7. ending with June thirty of any calendar year.

8. "Average annual payroll" means the average of the last
9. three annual payrolls of an employer.

10. "Base period" means the first four out of the last five com-
11. pleted calendar quarters immediately preceding the first day
12. of the individual benefit year.

13. "Base period employer" means any employer who in the
14. base period for any benefit year paid wages to an individual
15. who filed claim for unemployment compensation within such
16. benefit year.

17. "Base period wages" means wages paid to an individual
18. during the base period by all his base period employers.

19. "Benefit year" with respect to an individual means the
20. fifty-two-week period beginning with the first day of the calen-
21. dar week in which a valid claim is effective, and thereafter the
22. fifty-two-week period beginning with the first day of the calen-
23. dar week in which such individual next files a valid claim for
benefits after the termination of his last preceding benefit year. An initial claim for benefits filed in accordance with the provision of this chapter shall be deemed to be a valid claim within the purposes of this definition if the individual has been paid wages in his base period sufficient to make him eligible for benefits under the provisions of this chapter.

"Benefits" means the money payable to an individual with respect to his unemployment.

"Board" means board of review.

"Calendar quarter" means the period of three consecutive calendar months ending on March thirty-one, June thirty, September thirty or December thirty-one, or the equivalent thereof as the commissioner may by regulation prescribe.

"Commissioner" means the employment security commissioner.

"Computation date" means June thirty of the year immediately preceding the January one on which an employer's contribution rate becomes effective.

"Employing unit" means an individual, or type of organization, including any partnership, association, trust estate, joint-stock company, insurance company, corporation (domestic or foreign), state or political subdivision thereof, or their instrumentalities, as provided in paragraph (b), subdivision (9) of the definition of "employment" in this section, institution of higher education, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has on January first, one thousand nine hundred thirty-five, or subsequent thereto, had in its employ one or more individuals performing service within this state.

"Employer" means:

(1) Until January one, one thousand nine hundred seventy-two, any employing unit which for some portion of a day, not necessarily simultaneously, in each of twenty different calendar weeks, which weeks need not be consecutive, within either the current calendar year, or the preceding calendar
(2) Any employing unit which is or becomes a liable employer under any federal unemployment tax act;

(3) Any employing unit which has acquired or acquires the organization, trade or business, or substantially all the assets thereof, of an employing unit which at the time of such acquisition was an employer subject to this chapter;

(4) Any employing unit which, after December thirty-one, one thousand nine hundred sixty-three, and until January one, one thousand nine hundred seventy-two, in any one calendar quarter, in any calendar year, has in employment four or more individuals and has paid wages for employment in the total sum of five thousand dollars or more, or which, after such date, has paid wages for employment in any calendar year in the sum total of twenty thousand dollars or more;

(5) Any employing unit which, after December thirty-one, one thousand nine hundred sixty-three, and until January one, one thousand nine hundred seventy-two, in any three-week period, in any calendar year, has in employment ten or more individuals;

(6) For the effective period of its election pursuant to section three, article five of this chapter, any employing unit which has elected to become subject to this chapter;

(7) Any employing unit which, after December thirty-one, one thousand nine hundred seventy-one, (i) in any calendar quarter in either the current or preceding calendar year paid for service in employment wages of one thousand five hundred dollars or more, or (ii) for some portion of a day in each of twenty different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year had in employment at least one individual (irrespective of whether the same individual was in employment in each such day) except as provided in subdivisions eleven and twelve hereof;

(8) Any employing unit for which service in employment, as
98 defined in subdivision (9) of the definition of "employment" in this section, is performed after December thirty-one, one thousand nine hundred seventy-one;

101 (9) Any employing unit for which service in employment, as defined in subdivision (10) of the definition of "employment" in this section, is performed after December thirty-one, one thousand nine hundred seventy-one;

105 (10) Any employing unit for which service in employment, as defined in paragraphs (b) and (c) of subdivision (9) of the definition of "employment" in this section, is performed after December thirty-one, one thousand nine hundred seventy-seven;

110 (11) Any employing unit for which agricultural labor, as defined in subdivision (12) of the definition of "employment" in this section, is performed after December thirty-one, one thousand nine hundred seventy-seven;

114 (12) Any employing unit for which domestic service in employment, as defined in subdivision (13) of the definition of "employment" in this section, is performed after December thirty-one, one thousand nine hundred seventy-seven.

118 "Employment," subject to the other provisions of this section, means:

120 (1) Service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied;

129 (2) Any service performed prior to January one, one thousand nine hundred seventy-two, which was employment as defined in this section prior to such date and, subject to the other provisions of this section, service performed after December thirty-one, one thousand nine hundred seventy-one, by an employee, as defined in section 3306(i) of the Federal Unemployment Tax Act, including service in interstate commerce;

139 (3) Any service performed prior to January one, one thousand nine hundred seventy-two, which was employment as defined in this section prior to such date and, subject to the other
provisions of this section, service performed after December
thirty-one, one thousand nine hundred seventy-one, including
service in interstate commerce, by any officer of a corporation;

(4) An individual's entire service, performed within or
both within and without this state if: (a) The service is localized
in this state or (b) the service is not localized in any state but
some of the service is performed in this state and (i) the base
of operations, or, if there is no base of operations, then the
place from which such service is directed or controlled, is in
this state or (ii) the base of operations or place from which
such service is directed or controlled is not in any state in
which some part of the service is performed but the individ-
ual's residence is in this state;

(5) Service not covered under paragraph four of this sub-
division and performed entirely without this state with respect
to no part of which contributions are required and paid under
an unemployment compensation law of any other state or of
the federal government, shall be deemed to be employment
subject to this chapter if the individual performing such services
is a resident of this state and the commissioner approves the
election of the employing unit for whom such services are per-
formed that the entire service of such individual shall be deem-
ed to be employment subject to this chapter;

(6) Service shall be deemed to be localized within a state,
if: (a) The service is performed entirely within such state; or
(b) the service is performed both within and without such state,
but the service performed without such state is incidental to
the individual's service within this state, as, for example, is
temporary or transitory in nature or consists of isolated trans-
actions;

(7) Services performed by an individual for wages shall
be deemed to be employment subject to this chapter unless and
until it is shown to the satisfaction of the commissioner that:
(a) Such individual has been and will continue to be free
from control or direction over the performance of such services,
both under his contract of service and in fact; and (b) such
service is either outside the usual course of the business for
which such service is performed or that such service is per-
formed outside of all the places of business of the enterprise
for which such service is performed; and (c) such individual is
customarily engaged in an independently established trade,
occupation, profession or business;

(8) All service performed by an officer or member of the
crew of an American vessel (as defined in section three hun-
dred five of an act of Congress entitled Social Security Act
Amendment of 1946, approved August tenth, one thousand
nine hundred forty-six) on or in connection with such vessel,
provided that the operating office, from which the operations of
such vessel operating on navigable waters within and without
the United States is ordinarily and regularly supervised, man-
aged, directed and controlled, is within this state.

(9) (a) Service performed after December thirty-one, one
thousand nine hundred seventy-one, by an individual in the
employ of this state or any of its instrumentalities (or in the
employ of this state and one or more other states or their in-
strumentalities) for a hospital or institution of higher education
located in this state: Provided, That such service is excluded
from “employment” as defined in the Federal Unemployment
Tax Act solely by reason of section 3306 (c) (7) of that act
and is not excluded from “employment” under subdivision (11)
of the exclusion from employment;

(b) Service performed after December thirty-one, one thou-
sand nine hundred seventy-seven, in the employ of this state or
any of its instrumentalities or political subdivisions thereof or
any of its instrumentalities or any instrumentality of more than
one of the foregoing or any instrumentality of any foregoing
and one or more other states or political subdivisions: Pro-
vided, That such service is excluded from “employment” as
defined in the Federal Unemployment Tax Act by section
3306 (c) (7) of that act and is not excluded from “employ-
ment” under subdivision (15) of the exclusion from em-
ployment in this section; and

(c) Service performed after December thirty-one, one thou-
sand nine hundred seventy-seven, in the employ of a non-
profit educational institution which is not an institution of
higher education;
(10) Service performed after December thirty-one, one thousand nine hundred seventy-one, by an individual in the employ of a religious, charitable, educational or other organization but only if the following conditions are met:

(a) The service is excluded from "employment" as defined in the Federal Unemployment Tax Act solely by reason of section 3306 (c) (8) of that act; and

(b) The organization had four or more individuals in employment for some portion of a day in each of twenty different weeks, whether or not such weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time;

(11) Service of an individual who is a citizen of the United States, performed outside the United States after December thirty-one, one thousand nine hundred seventy-one, (except in Canada and in the case of Virgin Islands after December thirty-one, one thousand nine hundred seventy-one, and before January one of the year following the year in which the secretary of labor approves for the first time an unemployment insurance law submitted to him by the Virgin Islands for approval) in the employ of an American employer (other than service which is deemed "employment" under the provisions of subdivision (4), (5) or (6) of this definition of "employment" or the parallel provisions of another state's law) if:

(a) The employer's principal place of business in the United States is located in this state; or

(b) The employer has no place of business in the United States, but (i) the employer is an individual who is a resident of this state; or (ii) the employer is a corporation which is organized under the laws of this state; or (iii) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one other state; or

(c) None of the criteria of subparagraphs (a) and (b) of this subdivision (11) is met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this state.
An "American employer," for purposes of this subdivision (11), means a person who is (i) an individual who is a resident of the United States; or (ii) a partnership if two thirds or more of the partners are residents of the United States; or (iii) a trust, if all of the trustees are residents of the United States; or (iv) a corporation organized under the laws of the United States or of any state;

(12) Service performed after December thirty-one, one thousand nine hundred seventy-seven, by an individual in agricultural labor as defined in subdivision (5) of the exclusions from employment in this section when:

(a) Such service is performed for a person who (i) during any calendar quarter in either the current or the preceding calendar year paid remuneration in cash of twenty thousand dollars or more to individuals employed in agricultural labor [not taking into account service in agricultural labor performed before January one, one thousand nine hundred eighty-six, by an alien referred to in paragraph (b) of this subdivision (12)] or (ii) for some portion of a day in each of twenty different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor (not taking into account service in agricultural labor performed before January one, one thousand nine hundred eighty-six, by an alien referred to in clause (ii) of this paragraph) ten or more individuals, regardless of whether they were employed at the same moment of time;

(b) Such service is not performed in agricultural labor if performed before January one, one thousand nine hundred eighty-six, by an individual who is an alien admitted to the United States to perform service in agricultural labor pursuant to sections 214 (c) and 101 (a) (15) (H) of the Immigration and Nationality Act;

(c) For the purposes of the definition of employment, any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of such crew leader (i) if such crew leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963; or
substantially all the members of such crew operate or maintain tractors, mechanized harvesting or crop-dusting equipment, or any other mechanized equipment, which is provided by such crew leader; and (ii) if such individual is not an employee of such other person within the meaning of subdivision (7) of the definition of employer;

(d) For the purposes of this subdivision (12), in the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of such crew leader under subparagraph (c) of this subdivision (12), (i) such other person and not the crew leader shall be treated as the employer of such individual; and (ii) such other person shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader (either on his own behalf or on behalf of such other person) for the service in agricultural labor performed for such other person;

(e) For the purposes of this subdivision (12), the term "crew leader" means an individual who (i) furnishes individuals to perform service in agricultural labor for any other person, (ii) pays (either on his own behalf or on behalf of such other person) the individuals so furnished by him for the service in agricultural labor performed by them, and (iii) has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person;

(13) The term "employment" shall include domestic service after December thirty-one, one thousand nine hundred seventy-seven, in a private home, local college club or local chapter of a college fraternity or sorority performed for a person who paid cash remuneration of one thousand dollars or more after December thirty-one, one thousand nine hundred seventy-seven, in any calendar quarter in the current calendar year or the preceding calendar year to individuals employed in such domestic service.

Notwithstanding the foregoing definition of "employment," if the services performed during one half or more of any pay period by an employee for the person employing him constitute
employment, all the services of such employee for such period shall be deemed to be employment; but if the services performed during more than one half of any such pay period by an employee for the person employing him do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment.

The term "employment" shall not include:

(1) Service performed in the employ of this state or any political subdivision thereof, or any instrumentality of this state or its subdivisions, except as otherwise provided herein until December thirty-one, one thousand nine hundred seventy-seven;

(2) Service performed directly in the employ of another state, or its political subdivisions, except as otherwise provided in paragraph (a), subdivision (9) of the definition of "employment," until December thirty-one, one thousand nine hundred seventy-seven;

(3) Service performed in the employ of the United States or any instrumentality of the United States exempt under the Constitution of the United States from the payments imposed by this law, except that to the extent that the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the provisions of this law shall be applicable to such instrumentalities and to service performed for such instrumentalities, in the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals and services: Provided, That if this state shall not be certified for any year by the secretary of labor under section 1603(c) of the federal Internal Revenue Code, the payments required of such instrumentalities with respect to such year shall be refunded by the commissioner from the fund in the same manner and within the same period as is provided in section nineteen, article five of this chapter, with respect to payments erroneously collected;
(4) Service performed after June thirty, one thousand nine hundred thirty-nine, with respect to which unemployment compensation is payable under the Railroad Unemployment Insurance Act and service with respect to which unemployment benefits are payable under an unemployment compensation system for maritime employees established by an act of Congress. The commissioner may enter into agreements with the proper agency established under such an act of Congress to provide reciprocal treatment to individuals who, after acquiring potential rights to unemployment compensation under an act of Congress, or who have, after acquiring potential rights to unemployment compensation under an act of Congress, acquired rights to benefit under this chapter. Such agreement shall become effective ten days after such publications which shall comply with the general rules of the department;

(5) Service performed by an individual in agricultural labor, except as provided in subdivision (12) of the definition of "employment" in this section. For purposes of this subdivision (5), the term "agricultural labor" includes all services performed:

(a) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry and fur-bearing animals and wildlife;

(b) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;

(c) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section fifteen (g) of the Agricultural Marketing Act, as amended, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs
or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(d) (i) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one half of the commodity with respect to which such service is performed; or (ii) in the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in the performance of service described in clause (i), but only if such operators produced more than one half of the commodity with respect to which such service is performed; but the provisions of clauses (i) and (ii) shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption;

(e) On a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer. As used in this subdivision (5), the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animals, and truck farms, plantations, ranches, greenhouses, ranges and nurseries, or other similar land areas or structures used primarily for the raising of any agricultural or horticultural commodities;

(6) Domestic service in a private home, except as provided in subdivision (13) of the definition of "employment" in this section;

(7) Service performed by an individual in the employ of his son, daughter or spouse;

(8) Service performed by a child under the age of eighteen years in the employ of his father or mother;

(9) Service as an officer or member of a crew of an American vessel, performed on or in connection with such vessel, if
the operating office, from which the operations of the vessel
operating on navigable waters within or without the United
States are ordinarily and regularly supervised, managed, direct-
ed and controlled, is without this state;

(10) Service performed by agents of mutual fund broker-
dealers or insurance companies, exclusive of industrial insur-
ance agents, or by agents of investment companies, who are
compensated wholly on a commission basis;

(11) Service performed (i) in the employ of a church or
convention or association of churches, or an organization which
is operated primarily for religious purposes and which is oper-
ated, supervised, controlled or principally supported by a
church or convention or association of churches; or (ii) by a
duly ordained, commissioned or licensed minister of a church
in the exercise of his ministry or by a member of a religious
order in the exercise of duties required by such order; or (iii)
prior to January one, one thousand nine hundred seventy-
eight, in the employ of a school which is not an institution of
higher education; or (iv) in a facility conducted for the purpose
of carrying out a program of rehabilitation for individuals
whose earning capacity is impaired by age or physical or
mental deficiency or injury or providing remunerative work
for individuals who because of their impaired physical or
mental capacity cannot be readily absorbed in the competi-
tive labor market by an individual receiving such rehabilita-
tion or remunerative work; or (v) as part of an unemployment
work-relief or work-training program assisted or financed in
whole or in part by any federal agency or an agency of a state
or political subdivision thereof, by an individual receiving such
work relief or work training; or (vi) prior to January one, one
thousand nine hundred seventy-eight, for a hospital in a state
prison or other state correctional institution by an inmate of
the prison or correctional institution, and after December
thirty-one, one thousand nine hundred seventy-seven, by an
inmate of a custodial or penal institution;

(12) Service performed in the employ of a school, college
or university, if such service is performed (i) by a student who
is enrolled and is regularly attending classes at such school,
college or university, or (ii) by the spouse of such a student, if such spouse is advised, at the time such spouse commences to perform such service, that (I) the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college or university, and (II) such employment will not be covered by any program of unemployment insurance;

(13) Service performed by an individual under the age of twenty-two who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subdivision shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

(14) Service performed in the employ of a hospital, if such service is performed by a patient of the hospital, as defined in this section;

(15) Service in the employ of a governmental entity referred to in subdivision (9) of the definition of “employment” in this section if such service is performed by an individual in the exercise of duties (i) as an elected official; (ii) as a member of a legislative body, or a member of the judiciary, of a state or political subdivision; (iii) as a member of the state national guard or air national guard; (iv) as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency; (v) in a position which, under or pursuant to the laws of this state, is designated as (I) a major nontenured policy-making or advisory position, or (II) a policy-making or advisory position the performance of the duties of which ordinarily does not require more than eight hours per week.

Notwithstanding the foregoing exclusions from the definition of “employment,” services, except agricultural labor and
domestic service in a private home, shall be deemed to be in employment if with respect to such services a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund, or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act are required to be covered under this chapter.

"Employment office" means a free employment office or branch thereof, operated by this state, or any free public employment office maintained as a part of a state controlled system of public employment offices in any other state.

"Fund" means the unemployment compensation fund established by this chapter.

"Hospital" means an institution which has been licensed, certified or approved by the state department of health as a hospital.

"Institution of higher education" means an educational institution which:

(1) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(2) Is legally authorized in this state to provide a program of education beyond high school;

(3) Provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, or provides a program of post-graduate or post-doctoral studies, or provides a program of training to prepare students for gainful employment in a recognized occupation; and

(4) Is a public or other nonprofit institution.

Notwithstanding any of the foregoing provisions of this definition all colleges and universities in this state are institutions of higher education for purposes of this section.

"Payments" means the money required to be paid or that
may be voluntarily paid into the state unemployment compensation fund as provided in article five of this chapter.

"Separated from employment" means, for the purposes of this chapter, the total severance, whether by quitting, discharge or otherwise, of the employer-employee relationship.

"State" includes, in addition to the states of the United States, Puerto Rico, District of Columbia and the Virgin Islands.

"Total and partial unemployment" means:

(1) An individual shall be deemed totally unemployed in any week in which such individual is separated from employment for an employing unit and during which he performs no services and with respect to which no wages are payable to him.

(2) An individual who has not been separated from employment shall be deemed to be partially unemployed in any week in which due to lack of full time work wages payable to him are less than his weekly benefit amount plus twenty-five dollars: Provided, That said individual must have earnings of at least twenty-six dollars.

"Wages" means all remuneration for personal service, including commissions and bonuses and the cash value of all remuneration in any medium other than cash except for agricultural labor and domestic service: Provided, That the term "wages" shall not include:

(1) That part of the remuneration which, after remuneration equal to three thousand dollars has been paid to an individual by an employer with respect to employment during any calendar year, is paid after December thirty-one, one thousand nine hundred thirty-nine, and prior to January one, one thousand nine hundred forty-seven, to such individual by such employer with respect to employment during such calendar year; or that part of the remuneration which, after remuneration equal to three thousand dollars with respect to employment after one thousand nine hundred thirty-eight, has been paid to an individual by an employer during any calendar year after
one thousand nine hundred forty-six, is paid to such indi-
vidual by such employer during such calendar year, except
that for the purposes of sections one, ten, eleven and thirteen,
article six of this chapter, all remuneration earned by an in-
dividual in employment shall be credited to the individual and
included in his computation of base period wages: Provided,
that notwithstanding the foregoing provisions, on and after
January one, one thousand nine hundred sixty-two, the term
"wages" shall not include:

That part of the remuneration which, after remuneration
equal to three thousand six hundred dollars has been paid to
an individual by an employer with respect to employment
during any calendar year, is paid during any calendar year after
one thousand nine hundred sixty-one; and shall not include that
part of remuneration which, after remuneration equal to four
thousand two hundred dollars is paid during a calendar year
after one thousand nine hundred seventy-one; and shall not
include that part of remuneration which, after remuneration
equal to six thousand dollars is paid during a calendar year
after one thousand nine hundred seventy-seven; and shall not
include that part of remuneration which, after remuneration
equal to eight thousand dollars is paid during a calendar year
after one thousand nine hundred eighty, to an individual by
an employer or his predecessor with respect to employment
during any calendar year, is paid to such individual by such
employer during such calendar year unless that part of the
remuneration is subject to a tax under a federal law imposing
a tax against which credit may be taken for contributions re-
quired to be paid into a state unemployment fund. For the
purposes of this subdivision (1), the term "employment" shall
include service constituting employment under any unemploy-
ment compensation law of another state; or which as a condi-
tion for full tax credit against the tax imposed by the Federal
Unemployment Tax Act is required to be covered under this
chapter; and, except, that for the purposes of sections one, ten,
十一 and thirteen, article six of this chapter, all remuneration
earned by an individual in employment shall be credited to
the individual and included in his computation of base
period wages: Provided, That the remuneration paid to an
individual by an employer with respect to employment in
another state or other states upon which contributions were
required of and paid by such employer under an unemploy-
ment compensation law of such other state or states shall be
included as a part of the remuneration equal to the amounts
of three thousand six hundred dollars or four thousand two
hundred dollars or six thousand dollars or eight thousand dol-
ars herein referred to. In applying such limitation on the
amount of remuneration that is taxable, an employer shall be
accorded the benefit of all or any portion of such amount which
may have been paid by its predecessor or predecessors: Pro-
vided however, That if the definition of the term “wages” as
contained in section 3306(b) of the Internal Revenue Code of
1954, as amended: (a) Effective prior to January one, one
thousand nine hundred sixty-two, to include remuneration in
excess of three thousand dollars or (b) effective on or after
January one, one thousand nine hundred sixty-two, to include
remuneration in excess of three thousand six hundred dollars,
or (c) effective on or after January one, one thousand nine
hundred seventy-two, to include remuneration in excess of
four thousand two hundred dollars or (d) effective on or after
January one, one thousand nine hundred seventy-eight, to in-
clude remuneration in excess of six thousand dollars or (e)
effective on or after January one, one thousand nine hundred
eighty, to include remuneration in excess of eight thousand
dollars, paid to an individual by an employer under the Fed-
eral Unemployment Tax Act during any calendar year, wages
for the purposes of this definition shall include remuneration
paid in a calendar year to an individual by an employer sub-
ject to this article or his predecessor with respect to employ-
ment during any calendar year up to an amount equal to the
amount of remuneration taxable under the Federal Unemploy-
ment Tax Act;

(2) The amount of any payment made after December
thirty-one, one thousand nine hundred fifty-two (including any
amount paid by an employer for insurance or annuities, or in-
to a fund, to provide for any such payment), to, or on behalf
of, an individual in its employ or any of his dependents, under
a plan or system established by an employer which makes pro-
vision for individuals in its employ generally (or for such indi-
viduals and their dependents), or for a class or classes of such
individuals (or for a class or classes of such individuals and their dependents), on account of (A) retirement, or (B) sickness or accident disability, or (C) medical or hospitalization expenses in connection with sickness or accident disability, or (D) death;

(3) Any payment made after December thirty-one, one thousand nine hundred fifty-two, by an employer to an individual in its employ (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) on account of retirement;

(4) Any payment made after December thirty-one, one thousand nine hundred fifty-two, by an employer on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, to, or on behalf of, an individual in its employ after the expiration of six calendar months following the last calendar month in which such individual worked for such employer;

(5) Any payment made after December thirty-one, one thousand nine hundred fifty-two, by an employer to, or on behalf of, an individual in its employ or his beneficiary (A) from or to a trust described in section 401(a) which is exempt from tax under section 501(a) of the Federal Internal Revenue Code at the time of such payments unless such payment is made to such individual as an employee of the trust as remuneration for services rendered by such individual and not as a beneficiary of the trust, or (B) under or to an annuity plan which, at the time of such payment, is a plan described in section 403(a) of the Federal Internal Revenue Code;

(6) The payment by an employer of the tax imposed upon an employer under section 3101 of the Federal Internal Revenue Code with respect to remuneration paid to an employee for domestic service in a private home of the employer or agricultural labor;

(7) Remuneration paid by an employer after December thirty-one, one thousand nine hundred fifty-two, in any medium other than cash to an individual in its employ for service not in the course of the employer’s trade or business;
699  (8) Any payment (other than vacation or sick pay) made by
700  an employer after December thirty-one, one thousand nine
701  hundred fifty-two, to an individual in its employ after the
702  month in which he attains the age of sixty-five, if he did not
703  work for the employer in the period for which such payment
704  is made;
705  
706  (9) Payments, not required under any contract of hire, made
707  to an individual with respect to his period of training or service
708  in the armed forces of the United States by an employer by
709  which such individual was formerly employed;
710  
711  (10) Vacation pay, severance pay or savings plans received
712  by an individual before or after becoming totally or partially
713  unemployed but earned prior to becoming totally or partially
714  unemployed: Provided, That the term totally or partially un-
715  employed shall not be interpreted to include (1) employees who
716  are on vacation by reason of the request of the employees or
717  their duly authorized agent, for a vacation at a specific time,
718  and which request by the employees or their agent is acceded
719  to by their employer, (2) employees who are on vacation by
720  reason of the employer's request provided they are so informed
721  at least ninety days prior to such vacation, or (3) employees
722  who are on vacation by reason of the employer's request
723  where such vacation is in addition to the regular vacation and
724  the employer compensates such employee at a rate equal to
725  or exceeding their regular daily rate of pay during the vaca-
726  tion period.
727  
728  Gratuities customarily received by an individual in the
729  course of his employment from persons other than his em-
730  ploying unit shall be treated as wages paid by his employing
731  unit, if accounted for and reported to such employing unit.
732  
733  The reasonable cash value of remuneration in any medium
734  other than cash shall be estimated and determined in accord-
735  ance with rules prescribed by the commissioner, except for
736  remuneration other than cash for services performed in agri-
737  cultural labor and domestic service.
738  
739  "Week" means a calendar week, ending at midnight Sat-
740  urday, or the equivalent thereof, as determined in accordance
741  with the regulations prescribed by the commissioner.
"Weekly benefit rate" means the maximum amount of benefit an eligible individual will receive for one week of total unemployment.

"Year" means a calendar year or the equivalent thereof, as determined by the commissioner.

ARTICLE 5. EMPLOYER COVERAGE AND RESPONSIBILITY.

§21A-5-5. Rate of contribution.

§21A-5-5. Rate of contribution.

On or after January first, one thousand nine hundred forty-one, an employer shall make payments to the unemployment compensation fund equal to two and seven-tenths percent of wages paid by him with respect to employment during each calendar year beginning with the calendar year one thousand nine hundred forty-one, subject, however, to other provisions of this article; except that on and after January first, one thousand nine hundred seventy-two, each employer subject to this chapter shall pay contributions at the rate of one and five-tenths percent of wages paid by him with respect to employment during each calendar year until he has been an employer for not less than thirty-six consecutive months ending on the computation date; thereafter, his contribution rate shall be determined in accordance with the provisions of section ten of this article.

On and after July one, one thousand nine hundred eighty-one, each employer subject to this chapter shall pay contributions at the rate of two and seven-tenths percent of wages paid by him with respect to employment during each calendar year until he has been an employer for not less than thirty-six consecutive months ending on the computation date; thereafter, his contribution rate shall be determined in accordance with the provisions of section ten of this article.

Notwithstanding any other provision of this chapter to the contrary, on or after the first day of July, one thousand nine hundred eighty-one, any foreign corporation or business entity engaged in the construction trades shall pay contributions at the rate of seven and five-tenths percent of wages paid...
by him with respect to employment during each calendar year until he has been an employer for not less than thirty-six consecutive months ending on the computation date; thereafter, his contribution rate shall be determined in accordance with the provisions of section ten of this article.


(1) The commissioner shall maintain a separate account for each employer, and shall credit his account with all contributions paid by him prior to July first, one thousand nine hundred sixty-one. On and after July first, one thousand nine hundred sixty-one, the commissioner shall maintain a separate account for each employer, and shall credit said employer's account with all contributions of such employer in excess of seven tenths of one percent of taxable wages; and on and after July first, one thousand nine hundred seventy-one, the commissioner shall maintain a separate account for each employer, and shall credit said employer's account with all contributions of such employer in excess of four tenths of one percent of taxable wages: Provided, That any adjustment made in any employer's account after the computation date shall not be used in the computation of the balance of an employer until the next following computation date: Provided, however, That nothing in this chapter shall be construed to grant an employer or individual in his service prior claims or rights to the amounts paid by him into the fund, either on his behalf or on behalf of such individuals. The account of any employer which had been inactive for a period of four consecutive calendar years shall be terminated for all purposes.

(2) Benefits paid to an eligible individual for regular and extended total or partial unemployment beginning after the effective date of this article shall be charged to the account of the last employer with whom he has been employed as much as thirty working days, whether or not such days are consecutive: Provided, That no employer's account shall be charged with benefits paid to any individual who has been separated from a noncovered employing unit in which he was employed as much as thirty days, whether or not such days are consecutive: Provided, however, That no employer's
account shall be charged with more than fifty percent of the benefits paid to an eligible individual as extended benefits under the provisions of article six-a of this chapter: Provided further, That state and local government employers shall be charged with one hundred percent of the benefits paid to an eligible individual as extended benefits. Beginning on July one, one thousand nine hundred eighty-four, benefits paid to an individual are to be charged to the accounts of his employers in the base period, the amount of such charges, chargeable to the account of each such employer, to be that portion of the total benefits paid such individual as the wages paid him by such employer in the base period are to the total wages paid him during his base period for insured work by all his employers in the base period. For the purposes of this section, no base period employer's account shall be charged for benefits paid under this chapter to a former employee, provided such base period employer furnishes separation information within fourteen days from the date the notice was mailed or delivered, which results in a disqualification under the provision set forth in subsection one, section three, article six or subsection two, section three, article six of this chapter or would have resulted in a disqualification under such subsection except for a subsequent period of covered employment by another employing unit. One half of extended benefits paid to an individual after July one, one thousand nine hundred eighty-four, and subsequent years are to be charged to the accounts of his employers, except state and local government employers, in the base period in the same manner provided for the charging of regular benefits.

(3) The commissioner shall, for each calendar year hereafter, classify employers in accordance with their actual experience in the payment of contributions on their own behalf and with respect to benefits charged against their accounts, with a view of fixing such contribution rates as will reflect such experiences. For the purpose of fixing such contribution rates for each calendar year, the books of the department shall be closed on July thirty-one of the preceding calendar year; and any contributions thereafter paid, as well as benefits thereafter paid with respect to compensable weeks ending on
or before June thirty of the preceding calendar year, shall not be taken into account until the next annual date for fixing contribution rates: Provided, That if an employer has failed to furnish to the commissioner on or before July thirty-one of such preceding calendar year the wage information for all past periods necessary for the computation of the contribution rate, such employer’s rate shall be, if it is immediately prior to such July thirty-one, less than three and three-tenths percent, increased to three and three-tenths percent: Provided, however, That any payment made or any information necessary for the computation of a reduced rate furnished on or before the termination of an extension of time for such payment or reporting of such information granted pursuant to a regulation of the commissioner authorizing such extension, shall be taken into account for the purposes of fixing contribution rates: Provided further, That when the time for filing any report or making any payment required hereunder falls on Saturday, Sunday or a legal holiday, the due date shall be deemed to be the next succeeding business day: And provided further, That whenever, through mistake or inadvertence, erroneous credits or charges are found to have been made to or against the reserved account of any employer, the rate shall be adjusted as of January one of the calendar year in which such mistake or inadvertence is discovered, but payments, made under any rate assigned prior to January one of such year shall not be deemed to be erroneously collected.

(4) The commissioner may prescribe regulations for the establishment, maintenance and dissolution of joint accounts by two or more employers, and shall, in accordance with such regulations and upon application by two or more employers to establish such an account, or to merge their several individual accounts in a joint account, maintain such joint account as if it constituted a single employer’s account.

(5) State and local government employers are hereby authorized to enter into joint accounts and to maintain such joint account or accounts as if it or they constituted a single employer’s account or accounts.

(6) Effective on and after July one, one thousand nine
hundred eighty-one, if an employer has failed to furnish to
the commissioner on or before August thirty-one of one
thousand nine hundred eighty, and each year thereafter, with
the exception of one thousand nine hundred eighty-one, which
due date shall be September thirty-one, one thousand nine hundred
eighty-one, the wage information for all past periods neces-
sary for the computation of the contribution rate, such em-
ployer's rate shall be, if it is immediately prior to July one,
one thousand nine hundred eighty-one, less than seven and
five-tenths percent, increased to seven and five-tenths percent.

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

§21A-6-3. Disqualification for benefits.

§21A-6-15. Benefit payments for service with nonprofit organizations, state
hospitals, institutions of higher education, educational institu-
tions and governmental entities.

§21A-6-3. Disqualification for benefits.

1 Upon the determination of the facts by the commissioner, an
2 individual shall be disqualified for benefits:

3 (1) For the week in which he left his most recent work
4 voluntarily without good cause involving fault on the part of
5 the employer and until the individual returns to covered
6 employment and has been employed in covered employment
7 at least thirty working days.

8 For the purpose of this subdivision (1), an individual shall
9 not be deemed to have left his most recent work voluntarily
10 without good cause involving fault on the part of the em-
11 ployer, if such individual leaves his most recent work with
12 an employer and if he in fact, within a fourteen-day calendar
13 period, does return to employment with the last preceding
14 employer with whom he was previously employed within the
15 past year prior to his return to work day, and which last
16 preceding employer, after having previously employed such
17 individual for thirty working days or more, laid off such
18 individual because of lack of work, which layoff occasioned
19 the payment of benefits under this chapter or could have
20 occasioned the payment of benefits under this chapter had
21 such individual applied for such benefits. It is the intent of
22 this paragraph to cause no disqualification for benefits for
such an individual who complies with the foregoing set of requirements and conditions.

(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 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 quest, 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 each week in which and for fifty-two weeks thereafter, 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.

§21A-6-15. Benefit payments for service with nonprofit organizations, state hospitals, institutions of higher education, educational institutions and governmental entities.

1. (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 chapter, 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 indi-

cidual 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 vaca-
tion periods, except that if compensation is denied to any in-
dividual under this subsection and such individual was not
offered an opportunity to perform such services for the edu-
cational institution for the second of such academic years or
terms, such individual shall be entitled to a retroactive pay-
ment of compensation for each week for which the individual
filed a timely claim for compensation and for which compen-
sation was denied solely by reason of this clause.

(c) With respect to any services performed after April one,
one thousand nine hundred eighty-four, described in subdi-
visions (a) and (b) of this section, benefits shall not be payable
on the basis of services in any such capacities as specified in
subdivisions (a) and (b) of this section, to any individual who
performed such services for or on behalf of an educational in-
stitution while in the employ of an educational service agency.
For purposes of this subdivision the term "educational service agency" means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing such services to one or more educational institutions.

CHAPTER 179
(S. B. 164—By Senator Harman and Senator Chafin)

[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three hundred one and three hundred twelve, article nine, chapter forty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to priority of certain security interests; the period for filing purchase money security interests to preserve priority over the rights of transferees in bulk or lien creditors; and the period for filing purchase money security interests in collateral other than inventory to preserve priority over other security interests in the same collateral.

Be it enacted by the Legislature of West Virginia:

That sections three hundred one and three hundred twelve, article nine, chapter forty-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. SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER.

PART 3. RIGHTS OF THIRD PARTIES: PERFECTED AND UNPERFECTED SECURITY INTERESTS: RULES OF PRIORITY.

§46-9-301. Persons who take priority over unperfected security interests; right of "lien creditor."

§46-9-312. Priorities among conflicting security interests in the same collateral.
§46-9-301. Persons who take priority over unperfected security interests; right of "lien creditor."

(1) Except as otherwise provided in subsection (2), an unperfected security interest is subordinate to the rights of

(a) Persons entitled to priority under section 9-312;

(b) A person who becomes a lien creditor before the security interest is perfected;

(c) In the case of goods, instruments, documents and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course of business; or is a buyer of farm products in ordinary course of business, to the extent that he gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected; and

(d) In the case of accounts and general intangibles, a person who is not a secured party and who is a transferee to the extent that he gives value without knowledge of the security interest and before it is perfected.

(2) If the secured party files with respect to a purchase money security interest before or within twenty days after the debtor receives possession of the collateral, he takes priority over the rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches and the time of filing.

(3) A "lien creditor" means a creditor who has acquired a lien on the property involved by attachment, levy or the like and includes an assignee for benefit of creditors from the time of assignment, and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment.

(4) A person who becomes a lien creditor while a security interest is perfected takes subject to the security
interest only to the extent that it secures advances made before he becomes a lien creditor or within forty-five days thereafter or made without knowledge of the lien or pursuant to a commitment entered into without knowledge of the lien.

§46-9-312. Priorities among conflicting security interests in the same collateral.

1. (1) The rules of priority stated in other sections of this part and in the following sections shall govern when applicable: Section 4-208 with respect to the security interests of collecting banks in items being collected, accompanying documents and proceeds; section 9-103 on security interests related to other jurisdictions; section 9-114 on consignments.

2. (2) A perfected security interest in crops for new value given to enable the debtor to produce the crops during the production season and given not more than three months before the crops become growing crops by planting or otherwise takes priority over an earlier perfected security interest to the extent that such earlier interest secures obligations due more than six months before the crops become growing crops by planting or otherwise, even though the person giving new value had knowledge of the earlier security interest.

3. (3) A perfected purchase money security interest in inventory has priority over a conflicting security interest in the same inventory and also has priority in identifiable cash proceeds received on or before the delivery of the inventory to a buyer if:

   (a) The purchase money security interest is perfected at the time the debtor receives possession of the inventory; and

   (b) The purchase money secured party gives notification in writing to the holder of the conflicting security interest if the holder had filed a financing statement covering the same types of inventory (i) before the date of the filing made by the purchase money secured party, or (ii) before the beginning of the twenty-one day period
where the purchase money security interest is temporarily perfected without filing or possession (subsection (5) of section 9-304); and

(c) The holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and

(d) The notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by item or type.

(4) A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral or its proceeds if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within twenty days thereafter.

(5) In all cases not governed by other rules stated in this section (including cases of purchase money security interest which do not qualify for the special priorities set forth in subsections (3) and (4) of this section), priority between conflicting security interests in the same collateral shall be determined according to the following rules:

(a) Conflicting security interests rank according to priority in time of filing or perfection. Priority dates from the time a filing is first made covering the collateral or the time the security interest is first perfected, whichever is earlier, provided that there is no period thereafter when there is neither filing nor perfection.

(b) So long as conflicting security interests are unperfected, the first to attach has priority.

(6) For the purposes of subsection (5) a date of filing or perfection as to collateral is also a date of filing or perfection as to proceeds.

(7) If future advances are made while a security interest is perfected by filing, the taking of possession, or under section 8-321 on securities, the security interest has the same priority for the purposes of subsection (5) with
respect to the future advances as it does with respect to
the first advance. If a commitment is made before or
while the security interest is so perfected, the security
interest has the same priority with respect to advances
made pursuant thereto. In other cases a perfected security
interest has priority from the date the advance is made.

CHAPTER 180
(S. B. 741—Originating in the Senate Committee on Confirmations.)

[Passed March 2, 1984; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three and eleven,
article one, chapter nine-a of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, relating
to expanding the membership of the veterans' council and requiring that at least one member be a veteran of World War II, at least one member be a veteran of the Korean Conflict and at least two members be veterans of the Vietnam era.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DEPARTMENT OF VETERANS' AFFAIRS.

§9A-1-2. Veterans' council; administration of department.
§9A-1-3. Appointment of veterans' council members; term of office; removal.

§9A-1-2. Veterans' council; administration of department.

1 There shall be a "veterans' council" which shall con-
2 sist of seven members who shall be citizens and residents
3 of this state, who have served in and been honorably dis-
4 charged or separated under honorable conditions from
5 the armed forces of the United States and whose service
was within a time of war as defined by the laws of the
United States, either Public Law No. 2—73rd Congress
or Public Law No. 346—78th Congress, and any and all
amendments thereto. At least one member of the council
shall be a veteran of World War II, at least one member
of the council shall be a veteran of the Korean Conflict
and at least two members of the council shall be veterans
of the Vietnam era. The members of the veterans' coun-
cil shall be selected with special reference to their ability
and fitness to effectuate the purposes of this article. The
West Virginia department of veterans' affairs shall be
administered by a director, and such deputy directors,
assistants and employees as may be deemed advisable.

§9A-l-3. Appointment of veterans' council members; term of
office; removal.

The term of office of the members of the veterans'
council shall be six years, and they shall be appointed by
the governor by and with the advice and consent of the
Senate: Provided, That upon the adoption of this article,
the governor as aforesaid shall appoint two members
for a term of two years, two members for a term of four
years and one member for a term of six years, and there-
after the successors of each member shall be appointed
for the term of six years: Provided, however, That upon
the expansion of the council from five to seven members,
the governor shall initially appoint one new member
for a term of four years and shall initially appoint the
other new member for a term of six years. Thereafter the
successors of these members shall be appointed for the
term of six years. In case of a vacancy in the veterans'
council, the appointment shall be for the remainder of the
unexpired term. A member of the veterans' council shall
be subject to removal by the governor for cause, but
shall have upon his own request an open hearing before
the governor on the complaints or charges lodged against
him. The action of the governor shall be final.


There is hereby established an advisory council to the
West Virginia department of veterans' affairs, which
shall meet on the call of the chairman of the veterans' council with the veterans' council at any of its regular or special meetings, in connection with the establishment of policies and rules and regulations of the department to effectuate the purposes of this article and promote the efficient operation of the department, but the advisory council shall have no vote. The director, in carrying out his powers and duties, shall have the right to call on the individual members of the advisory council, and through them or their department, agency or organization, and also to call on such other departments or agencies of the state, as may be necessary, for advice, aid and assistance. The members of the advisory council shall be the state superintendent of free schools, commissioner of agriculture, adjutant general, state banking commissioner, state director of health, president of the board of regents, commissioner of corrections, commissioner of the department of highways and the commissioner of the department of human services, or their duly authorized and accredited representatives.

CHAPTER 181
(H. B. 1842—By Delegate Ballouz)
[Passed March 10, 1984; 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 water pollution control act; permits required; transfer of permits; prior 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 judgment 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 address 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 reissuance, 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 applicable 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 delivered or mailed, or a copy of any order of the chief denying 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 permit 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 certified 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) A permit shall be transferable to another person upon proper notification to the division and in accordance with applicable regulations. Such transfer shall not become effective until it is reflected 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 heretofore issued under the provisions of this article, and which have not been heretofore revoked, are subject to review, revocation, suspension, modification and reissuance in accordance with the terms and conditions of this article and the rules and regulations promulgated thereunder. Any order of revocation, suspension or modification 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.

CHAPTER 182
(S. B. 184—By Senator Williams)

[Passed February 15, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-three-a, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to extending the completion date for the investigation and study of commercial whitewater rafting, outfitting and activities related thereto to July one, one thousand nine hundred eighty-five.

Be it enacted by the Legislature of West Virginia:

That section twenty-three-a, 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.

§20-2-23a. Special studies of whitewater rafting zones to be conducted; creation of advisory commission to promulgate rules and regulations; special fees imposed; time limitation.

(a) The Legislature finds that the recent increase in the number of persons engaging in the sport of whitewater rafting has resulted in overcrowding, safety and ecological problems along areas and portions of rivers and waters in this state necessitating the study, investigation and regulation of whitewater rafting to promote the safe and equitable enjoyment of this sport by all persons seeking to engage in it as recreational activity. The Legislature further finds it desirable to require the director of the department of natural resources, pending such study and investigation and the promulgation of necessary rules and regulations applicable to such areas and portions of rivers and waters, to restrict, deny or postpone the issuance of licenses to additional commercial whitewater outfitters seeking to operate in such areas and portions of rivers and waters in this state until the promulgation of such rules and regulations applicable thereto and to provide for the creation of an advisory board to promulgate such rules and regulations.

(b) The director shall investigate and study commercial whitewater rafting, outfitting and activities related thereto, which rafting, outfitting or activities take place along the rivers or waters of this state. The director shall designate any such rivers or waters or any portions thereof, which herein are referred to as "whitewater zones" for which commercial whitewater rafting, outfitting and activities are to be investigated and studied, and shall determine the order and periods of time within which such investigations and studies are to be conducted. The director shall first investigate and study those whitewater zones which the director finds to present serious problems requiring immediate regulation, including without
limitation, safety hazards and problems of overcrowding or environmental misuse.

(c) Upon the filing of a written notice to be entered upon the records of the department containing the designation and reasonable description of the whitewater zone to be investigated and studied pursuant to subsection (b) above, the director may not issue licenses to additional commercial whitewater outfitters seeking to operate in or for the whitewater zone described in the notice. This limitation on additional licenses shall continue until the director has completed investigation and study of the whitewater zone designated in the notice and the rules and regulations applicable to such zone are promulgated in accordance with this section: Provided, That the director may issue additional licenses for such whitewater zones during the study period and prior to the promulgation of the rules and regulations applicable to a zone, if the director finds that such license would not interfere with the conduct of the pending investigation and study, and the issuance of such additional license is in the best interests of persons seeking to enjoy whitewater rafting and the interests of the state in promotion of tourism and the recreational and ecological use of the state's natural resources.

(d) The annual license fees set forth in section twenty-six of this article for commercial whitewater outfitters and such annual fee shall be two hundred fifty dollars for each commercial whitewater outfitter. In addition to such annual license fee, each commercial whitewater outfitter, operating within a whitewater zone under investigation and study as provided in subsection (c) of this section, shall pay to the director the sum of two hundred fifty dollars as a special study fee which shall be paid within three months after the date of the notice and designation of the whitewater zone to be studied. The annual license fee and the special study fee may be used to offset and pay for the expenses and costs of such investigations and studies and the promulgation of rules and regulations pursuant to this section.

(e) Upon official designation by the director of the first
whitewater zone to be studied as provided in subsection (b) of this section, the director shall appoint a commercial whitewater advisory board. Such board shall consist of two staff employees of the department, three persons representing three different licensed commercial whitewater outfitters currently operating within the state, and three residents of the state who represent the consumers of commercial whitewater rafting in the state:

Provided, That, for purposes of the appointment of the commercial whitewater outfitters and consumer members of the board, there shall be designated three regions within the state as follows: region one, the counties of Jackson, Roane, Calhoun, Gilmer, Lewis, Upshur, Randolph, Tucker, Barbour, Preston, Taylor, Monongalia, Marion, Harrison, Doddridge, Ritchie, Wirt, Wood, Pleasants, Tyler, Wetzel, Marshall, Ohio, Brooke and Hancock; region two, the counties of Greenbrier, Pocahontas, Pendleton, Hardy, Grant, Mineral, Hampshire, Morgan, Berkeley and Jefferson; region three, the counties of Mason, Putnam, Kanawha, Clay, Braxton, Webster, Nicholas, Fayette, Summers, Monroe, Mercer, Raleigh, Wyoming, McDowell, Mingo, Logan, Boone, Wayne, Cabell and Lincoln. The director shall appoint one member representing commercial whitewater outfitters operating in each of the three regions. The director shall likewise appoint a citizen consumer member from each of the three regions. The director shall serve as an ex officio member of the board and shall serve as chairperson at meetings.

(f) The commercial whitewater advisory board shall participate in the investigations and studies conducted by the director. The board shall meet upon the call of the chairperson or a majority of the members of the board and shall meet within a reasonable time after completion of the director's investigation and study relative to each designated whitewater zone. At such meetings the board shall review all data, materials and relevant findings compiled by the director relating to the investigation and study then under consideration and, as soon as practicable thereafter, the board shall promulgate rules and regulations to govern and apply to that designated whitewater zone. Such rules and regulations shall include,
but not be limited to, the following: (1) Minimum safety requirements for equipment; (2) criteria for increasing or limiting the number of commercial whitewater outfitters operating in whitewater zones; (3) standards for the size and number of rafts and numbers of persons transported in rafts; and (4) qualifications of guides. Board members shall be paid all reasonable and necessary expenses incurred in the exercise of their duties.

(g) Upon promulgation of such rules and regulations, the director shall immediately commence enforcement of the rules and regulations promulgated by the board relative to the designated whitewater zone. The promulgation of such rules and regulations and any revision thereof shall be subject to the provisions of chapter twenty-nine-a of this code.

(h) The director shall commence the first investigation and study no later than the first day of July, one thousand nine hundred eighty-one. All activities pursuant to all investigations and studies, or as may be required for the promulgation of rules and regulations hereunder, shall be completed no later than the first day of July, one thousand nine hundred eighty-five.

(i) The commercial whitewater advisory board shall terminate and cease to exist as an entity one year following a finding made by the director that all studies and investigations and the promulgation of rules and regulations applicable to the last designated whitewater zone have been completed.

CHAPTER 183

(H. B. 1217—By Delegate Knight and Delegate Faircloth)

[Passed March 6, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article twenty, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing and reestablishing the West Virginia women's commission.
Be it enacted by the Legislature of West Virginia:

That section one, article twenty, 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 20. WOMEN'S COMMISSION.

§29-20-1. Creation; membership; appointment and terms of members; organization; reimbursement for expenses.

The West Virginia commission on the status of women is hereby abolished, and there is hereby created within the office of the governor the West Virginia women's commission, to consist of seventeen members, six of whom shall be ex officio members, not entitled to vote: The attorney general, the state superintendent of schools, the commissioner of labor, the commissioner of human services, the director of the human rights commission and the director of personnel of the civil service system. Each ex officio member may designate one representative employed by his department to meet with the commission in his absence. The governor shall appoint the additional eleven members, by and with the advice and consent of the Senate, from among the citizens of the state. The governor shall designate the chairman and vice chairman of the commission and the commission may elect such other officers as it deems necessary. The members shall serve a term beginning the first day of July, one thousand nine hundred seventy-seven, three to serve for a term of one year, four to serve for a term of two years, and the remaining four to serve for a term of three years. The successors of the members initially appointed as provided herein, shall be appointed for a term of three years each in the same manner as the members initially appointed under this article, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term. Each member shall serve until the appointment and qualification of his successor.

No member may receive any salary for his services, but each may be reimbursed for actual and necessary expenses incurred by him in the performance of his duties out of
funds received by the commission under section four of this article, except that in the event the expenses are paid, or are to be paid, by a third party, the members shall not be reimbursed by the commission.

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 West Virginia women's commission should be continued and reestablished. Accordingly, notwithstanding the provisions of section four, article ten, chapter four of this code, the West Virginia women's commission shall continue to exist until the first day of July, one thousand nine hundred ninety.

CHAPTER 184

(H. B. 1215—By Delegate Knight and Delegate Faircloth)

[Passed March 6, 1984; in effect ninety days from passage. Approved by the Governor.]

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 continuing and reestablishing the office of workers' compensation commissioner.

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.

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. An appoint-
ment 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 ap-
pointed shall give bond in the penalty of twenty-five thou-
sand dollars conditioned for the faithful performance of the
duties of this office, which bond shall be approved by the
attorney general as to form, and by the governor as to
sufficiency. The surety of such bond may be a bonding or
surety company, in which case the premiums shall be paid
out of the appropriation made for the administration of this
chapter. The commissioner shall hold no position of trust
or profit, or engage in any occupation or business, interfering
or inconsistent with the duties as such commissioner. Not-
withstanding the provisions of section two-a, article seven,
chapter six of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, the commissioner shall receive
an annual salary of twenty thousand dollars, payable out of
the workers' compensation fund. The commissioner shall have
an official seal for the authentication of orders and proceedings,
upon which seal shall be engraved the words "West Virginia
Compensation Commissioner" and such other design as the
commissioner may prescribe. The courts in this state shall
take judicial notice of the seal of the commissioner and in
all cases copies of orders, proceedings or records in the
office of the West Virginia compensation commissioner shall
be equal to the original in evidence.

The attorney general shall perform all legal services re-
quired 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
41 workers' compensation appeal board to the supreme court of
42 appeals, as provided by section four, article five of this
43 chapter, or in any court proceeding before the workers'
44 compensation appeal board, in which such representation
45 shall appear to the commissioner to be desirable, the com-
46 missioner may designate a regular employee of this of-
47 fice, qualified to practice before such court to represent
48 the commissioner upon such appeal or proceeding, and in no
49 case shall the person so appearing for the commissioner
50 before the court receive remuneration therefor other than
51 such person's regular salary.

52 Whenever in this chapter or elsewhere in law reference is
53 made to "state director of workmen's compensation" or
54 "compensation commissioner" such reference shall henceforth
55 be construed and understood to mean "state workers' com-
56 pensation commissioner."

57 Whenever in this chapter or elsewhere in law reference
58 is made to the term "workmen's compensation" or reference is
59 made to the "workmen's compensation advisory board,"
60 "workmen's compensation fund," "disabled workmen's relief
61 fund" and "workmen's compensation appeal board," such
62 references to and the titles of each such board or fund
63 shall henceforth be construed to mean, and shall be defined
64 to mean, respectively "workers' compensation," "workers'
65 compensation advisory board," "workers' compensation fund,"
66 "disabled workers' relief fund" and "workers' compensation
67 appeal board."

68 After having conducted a performance and fiscal audit
69 through its joint committee on government operations, pur-
70 suant to section nine, article ten, chapter four of this code,
71 the Legislature hereby finds and declares that the office of
72 workers' compensation commissioner should be continued
73 and reestablished. Accordingly, notwithstanding the pro-
74 visions of section four, article ten, chapter four of this code,
75 the office of workers' compensation commissioner shall con-
76 tinue to exist until the first day of July, one thousand nine
77 hundred ninety.
CHAPTER 185
(Com. Sub. for H. B. 1962—By Mr. Speaker, Mr. See)

[Passed March 10, 1984; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, one-b, five, five-a, nine and thirteen, article two; and section one, article three, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to workers' compensation; employers and employees subject to the provisions of workers' compensation statutes in this code; special premium rates for employee officers of associations or corporations, members of partnerships and owners of sole proprietorships electing coverage under the workers' compensation statutes; applications to be filed by subscribing employers; premium rates and premium deposits; premium payments and payroll reports to be submitted; delinquent accounts; notice of delinquency by commissioner; failure to resolve delinquency and resulting default; reinstatement of defaulting employer; applications for reinstatement; administrative hearings on such applications; cause of actions accruing during periods of delinquency; withdrawal or termination of coverage; notice to employees of employer's delinquency, default, withdrawal or termination; criminal penalties for removal of posted notice to employees; posting of such notices by officials authorized to serve civil process; collection of premiums from defaulting employers by civil suits, liens and injunctions; the withholding of certificates of dissolution or withdrawal in cases of defaulting employers; self insured employers; dates such self insurers must file statements of earnings and make payments; rates of interest to be charged on unpaid payments; maximum rate of interest to be charged against unpaid payments of certain employers; workers' compensation fund; surplus fund; rates of contribution to the surplus funds; and definitions of certain terms relating to the surplus fund.

Be it enacted by the Legislature of West Virginia:

That sections one, one-b, five, five-a, nine and thirteen, article two, and section one, article three, 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
2. Employers and Employees Subject to Chapter; Extraterritorial Coverage.
3. Workers' Compensation Fund.

ARTICLE 2. EMPLOYERS AND EMPLOYEES SUBJECT TO CHAPTER; EXTRATERRITORIAL COVERAGE.

§23-2-1. Employers subject to chapter.
§23-2-1b. Special provisions as to premiums.
§23-2-5. Application; payment of premiums; payroll reports; premium deposits; delinquency; default; reinstatement; payment of benefits; notice to employees.
§23-2-5a. Collection of premiums from defaulting employers; civil remedies; injunctive relief; secretary of state to withhold certificates of dissolution.
§23-2-9. Election of employer to provide own system of compensation.

§23-2-1. Employers subject to chapter.

1 The state of West Virginia and all governmental agencies or departments created by it, including county boards of education, political subdivisions of the state, any volunteer fire department or company and other emergency service organizations as defined by article five, chapter fifteen of this code, and all persons, firms, associations and corporations regularly employing another person or persons for the purpose of carrying on any form of industry, service or business in this state, are employers within the meaning of this chapter and are hereby required to subscribe to and pay premiums into the workers' compensation fund for the protection of their employees and shall be subject to all requirements of this chapter and all rules and regulations prescribed by the commissioner with reference to rate, classification and premium payment, provided that such rates will be adjusted by the commissioner to reflect the demand on the compensation fund by the covered employer.

18 The following employers are not required to subscribe to the fund, but may elect to do so:

20 (1) Employers of employees in domestic services; or
(2) Employers of five or fewer full-time employees in agricultural service; or

(3) Employers of employees while said employees are employed without the state except in cases of temporary employment without the state; or

(4) Casual employers. An employer is deemed to be a casual employer when the number of his employees does not exceed three and the period of employment is temporary, intermittent and sporadic in nature and does not exceed ten calendar days in any calendar quarter;

(5) Churches;

(6) Employers engaged in organized professional sports activities, including employers of trainers and jockeys engaged in thoroughbred horse racing; or

(7) Employers of employees who are officers of and stockholders in a corporation qualifying for special tax treatment under subchapter S of the Internal Revenue Code of the United States.

If an employer is a partnership, or sole proprietorship, such employer may elect to include as an “employee” within this chapter, any member of such partnership, or the owner of the sole proprietorship. In the event of such election, the employer shall serve upon the commissioner written notice naming the persons to be covered and shall include such “employee’s” remuneration for premium purposes in all future payroll reports, and no such partner, or proprietor shall be deemed an employee within the meaning of this chapter until such notice has been served.

Notwithstanding any other provision of this chapter to the contrary, whenever there are churches in a circuit which employ one individual clergyman and the payments to such clergyman from such churches constitute his full salary, such circuit or group of churches may elect to be considered a single employer for the purposes of premium payment into the workers’ compensation fund.

Employers who are not required to subscribe to the workers’
compensation fund may voluntarily choose to subscribe to and
pay premiums into the fund for the protection of their em­
ployees and in such case shall be subject to all requirements
of this chapter and all rules and regulations prescribed by the
commissioner with reference to rates, classifications and pre­
mium payments and shall afford to them the protection of this
chapter, including section six of this article, but the failure of
such employers to choose to subscribe to and to pay premiums
into the fund shall not impose any liability upon them other
than such liability as would exist notwithstanding the provi­
sions of this chapter.

Any foreign corporation employer whose employment in
this state is to be for a definite or limited period which could
not be considered "regularly employing" within the meaning of
this section may choose to pay into the workers' compensation
fund the premiums herein provided for, and at the time of mak­
ing application to the commissioner, such employer shall fur­
nish a statement under oath showing the probable length of
time the employment will continue in this state, the character
of the work, an estimate of the monthly payroll and any other
information which may be required by the commissioner. At
the time of making application such employer shall deposit
with the state compensation commissioner to the credit of the
workers' compensation fund the amount required by section
five of this article, which amount shall be returned to the em­
ployer if his application be rejected by the commissioner. Up­
on notice to such employer of the acceptance of his application
by the commissioner, he shall be an employer within the mean­
ing of this chapter and subject to all of its provisions.

Any foreign corporation employer choosing to comply with
the provisions of this chapter and to receive the benefits here­
der shall, at the time of making application to the commis­sioner, in addition to other requirements of this chapter, fur­
nish such commissioner with a certificate from the secretary of
state, where such certificate is necessary, showing that it has
complied with all the requirements necessary to enable it
legally to do business in this state and no application of such
foreign corporation employer shall be accepted by the com­
missioner until such certificate is filed.
§23-2-1b. Special provisions as to premiums.

Every executive officer of an association or of a corporation defined as an employee elsewhere in this chapter, and any member of a partnership or owner of a sole proprietorship which has elected coverage under this chapter for such member or owner shall pay premiums based upon the actual salary paid to such employee up to an amount sufficient to qualify such employee to receive the maximum level of benefits, but in no event shall the basis for premium be less than the salary necessary to provide such employee with the minimum level of benefits.

The premium and actual expenses in connection with governmental agencies and departments of the state of West Virginia shall be paid out of the state treasury from appropriations made for such agencies and departments, in the same manner as other disbursements are made by such agencies and departments.

County commissions, municipalities, other political subdivisions of the state, county boards of education, emergency service organizations organized as aforesaid and volunteer fire departments or companies shall provide for the funds to pay their prescribed premiums into the fund and such premiums and premiums of state agencies and departments, including county boards of education, shall be paid into the fund in the same manner as herein provided for other employers subject to this chapter.

County commissions and municipalities are hereby authorized to pay all or any part of the premiums prescribed for such emergency service organizations organized as aforesaid and such duly incorporated volunteer fire departments or companies as may provide services within the county or municipality.

§23-2-5. Application; payment of premiums; payroll reports; premium deposits; delinquency; default; reinstatement; payment of benefits; notice to employees.

(a) For the purpose of creating a workers' compensation fund each employer who is required to subscribe to the fund
or who elects to subscribe to the fund, shall pay premiums calculated as a percentage of the employer's payroll at the rate determined by the commissioner and then in effect. At the time each employer subscribes to the fund, the application required by the commissioner shall be filed and a premium deposit equal to the first quarter's estimated premium payment shall be remitted. The minimum quarterly premium to be paid by any employer shall be ten dollars.

Thereafter, premiums shall be paid quarterly on or before the last day of the month following the end of the quarter, and shall be the prescribed percentage of the total earnings of all employees during the preceding quarter.

At the time each premium is paid, every subscribing employer shall make a payroll report to the commissioner for the preceding quarter. The report shall be on the form or forms prescribed by the commissioner, and shall contain all information required by the commissioner.

After subscribing to the fund, each employer shall remit with each payroll report and premium payment, an amount calculated to be sufficient to maintain a premium deposit equal to the previous quarter's premium payment: Provided, That the commissioner may reduce the amount of the premium deposit required from seasonal employers for those quarters during which employment is significantly reduced. The premium deposit shall be credited to the employer's account on the books of the commissioner and used to pay premiums and any other sums due the fund when an employer becomes delinquent.

All premiums and premium deposits required to be paid by this chapter shall be paid by the employers to the workers' compensation commissioner, who shall maintain record of all sums so received. All sums received by the commissioner shall be deposited in the state treasury to the credit of the workers' compensation fund in the manner now prescribed by law.

(b) Failure of an employer to timely pay premium, to timely file a payroll report, or to maintain an adequate premium deposit, shall cause the employer's account to become
delinquent. The commissioner shall, in writing, within sixty days of the end of each quarter notify all delinquent employers of their failure to timely pay premiums, to timely file a payroll report, or to maintain an adequate premium deposit. The notification shall demand the filing of the delinquent payroll report and payment of delinquent premium, and/or payment of an amount sufficient to maintain the premium deposit, before the end of the third month following the end of the preceding quarter. The notification shall also require payment of interest on the delinquent premium payment and/or premium deposit pursuant to section thirteen of this article.

(c) Whenever the commissioner notifies an employer of the delinquent status of his account, the notification shall explain the legal consequence of subsequent default by employers required to subscribe to the fund, and the effects of termination of any electing employer's account.

(d) Failure by the employer, who is required to subscribe to the fund and who fails to resolve his delinquency within the prescribed period, shall place the account in default and shall deprive such defaulting employer of the benefits and protection afforded by this chapter including section six of this article, and he shall be liable as provided in section eight of this article. The defaulting employer's liability under section eight of this article shall be retroactive to twelve o'clock, p.m., of the last day of the month following the end of the quarter for which the delinquency occurs. The commissioner shall notify the defaulting employer of the method by which the employer may be reinstated with the fund. The commissioner shall also notify the employees of such employer by written notice as hereinafter provided for in this section.

(e) Failure by any employer, who voluntarily elects to subscribe, to resolve his delinquency within the prescribed period, shall automatically terminate the election of such employer to pay into the workers' compensation fund and shall deprive such delinquent employer of the benefits and protection afforded by this chapter including section six of this article, and he shall be liable as provided in section eight of this article. The defaulting employer's liability under
section eight of this article shall be retroactive to twelve o'clock p.m., of the last day of the month following the end of the quarter for which the delinquency occurs.

(f) Any employer, who is required to subscribe to the fund and subsequently defaults, or who elects to subscribe and subsequently his account is terminated, shall be restored immediately to the benefits and protection of this chapter only upon the filing of all delinquent payroll and other reports required by the commissioner and payment into the fund of all unpaid premiums, an adequate premium deposit, accrued interest and claims losses paid during the period of delinquency and default: Provided, That the commissioner shall, upon written application for reinstatement filed by an employer, order that an administrative hearing be held prior to reinstatement to determine the terms of repayment of all delinquent premiums, premium deposits and accrued interest, and the extent to which claims losses may be waived, equitably considering, (1) the exact nature of the default, (2) the amount of the claims losses, (3) the solvency of the fund, (4) the financial condition of the employer, (5) the degree of willfullness exhibited by the employer's conduct resulting in the default, and (6) the potential economic impact upon the state and the specific geographic area in which the employer is located, if the employer should cease operations. Any such administrative hearing shall be conducted pursuant to article five, chapter twenty-nine-a of this code: Provided, That the authority of the commissioner to waive claims losses or to restore any employer in default to the benefits of this chapter prior to payment in full of all delinquent premiums, premium deposits and accrued interest shall expire on the first day of July, one thousand nine hundred eighty-six, and the commissioner shall report to the Legislature, on or before the first day of January, one thousand nine hundred eighty-five and one thousand nine hundred eighty-six, on the terms of reinstatement of defaulting employers and any costs to the fund.

Applications for reinstatement shall: (1) Be made upon forms prescribed by the commissioner; (2) include a report of 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 reported during the period of default, or one hundred dollars, whichever amount shall be greater. An employer who applies for reinstatement shall be entitled to the benefits and protection of this chapter on the day the application is received by the commissioner: Provided, That if the commissioner reinstates an employer subject to the terms of a repayment agreement, the subsequent failure of the employer to make scheduled payments in accordance with the repayment agreement, to timely file current premiums or to restore the premium deposit to the required amount by the end of the repayment period shall cause the repayment agreement to be null, void and of no effect, and the employer shall be denied the benefits and protection of this chapter effective from the date that such employer's account originally became delinquent.

(g) No employee of an employer required by this chapter to subscribe to the workers' compensation fund shall be denied benefits provided by this chapter because the employer failed to subscribe or because the employer's account is either delinquent or in default.

(h) The provisions of this section shall not deprive any individual of any cause of action which has accrued as a result of an injury or death which occurred during any period of delinquency not resolved in accordance with the provisions of this article, or subsequent failure to comply with the terms of the repayment agreement.

Upon withdrawal from the fund or termination of election of any employer, he shall be refunded the balance due him of his deposit, after deducting all amounts owed by him to the workers' compensation fund, and the commissioner shall notify the employees of such employer of said termination in such manner as he may deem best and sufficient.

Notice to employees in this section provided for shall be given by posting written notice that the employer is delinquent under the compensation law of West Virginia, and in the case of employers required by this chapter to subscribe and pay
premiums to the fund, that the delinquent employer is liable
to his employees for injury or death, both in workers' com-
penation benefits and in damages at common law or by
 statute; and, in the case of employers not required by this
chapter to subscribe and pay premiums to the fund, but
voluntarily electing to do so as herein provided, that neither
the employer nor the employees of such employer are pro-
tected by said laws as to any injury or death sustained after
the date specified in said notice. Such notice shall be in the
form prescribed by the commissioner and shall be posted
in a conspicuous place at the chief works of the employer,
as the same appear in records of the commissioner. If the
said chief works of the employer cannot be found or identi-
fied, then said notices shall be posted at the front door of the
courthouse of the county in which said chief works are located,
according to the records in the commissioner's office. Any
person who shall, prior to the reinstatement of the said em-
ployer, as hereinbefore provided for, or prior to sixty days
after the posting of said notice, whichever shall first occur,
remove, deface or render illegible the said notice, shall be
guilty of a misdemeanor, and, upon conviction thereof, shall
be fined not to exceed five hundred dollars, and the said
notice shall state this provision upon its face. The commis-
sioner may require any sheriff, deputy sheriff, constable or
other official of the state of West Virginia, who may be autho-
rized to serve civil process, to post such notice and to make
return thereof of the fact of such posting to the commissioner,
and any failure of such officer to post any notice within ten
days after he shall have received the same from the com-
missioner, without just cause or excuse, shall constitute a
willful failure or refusal to perform a duty required of him by
law within the meaning of section twenty-eight, article five,
chapter sixty-one of this code. Any person actually injured
by reason of such failure shall have an action against said
official, and upon any official bond he may have given, for
such damages as such person may actually have incurred, but
not to exceed, in the case of any surety upon said bond, the
amount of the penalty of said bond. Any official posting
said notice as herein required shall be entitled to the same
fee as is now or may hereafter be provided for the service of
process in suits instituted in courts of record in the state of West Virginia, which fee shall be paid by the commissioner out of any funds at his disposal, but shall be charged by him against the account of the employer to whose delinquency such notice relates.

§23-2-5a. Collection of premiums from defaulting employers; civil remedies; injunctive relief; secretary of state to withhold certificates of dissolution.

The commissioner in the name of the state may commence a civil action against an employer who, after due notice, defaults in any payment required by this chapter. If judgment is against the employer he shall pay the costs of the action. Civil action under this section shall be given preference on the calendar of the court over all other civil actions.

Any payment and interest thereon due and unpaid under this chapter shall be a personal obligation of the employer and shall, in addition thereto, be a lien enforceable against all the property of the employer: Provided, That no such lien shall be enforceable as against a purchaser (including a lien creditor) of real estate or personal property for a valuable consideration without notice, unless docketed as provided in chapter ninety-nine, acts of the Legislature, regular session, one thousand nine hundred forty-three.

In addition to all other civil remedies prescribed herein the commissioner may in the name of the state distrain upon any personal property, including intangible property, of any employer delinquent for any payment and interest thereon. If the commissioner has good reason to believe that such property or a substantial portion thereof is about to be removed from the county in which it is situated, he may likewise distrain in the name of the state before such delinquency occurs. For such purpose, the commissioner may require the services of a sheriff of any county in the state in levying such distress in the county in which the sheriff is an officer and in which such personal property is situated. A sheriff so collecting any payments and interest thereon shall be entitled to such compensation as is provided by law for his services in the levy and enforcement of executions.
In case a business subject to the payments and interest thereon imposed under this chapter shall be operated in connection with a receivership or insolvency proceeding in any state court in this state, the court under whose direction such business is operated shall, by the entry of a proper order or decree in the cause, make provisions, so far as the assets in administration will permit, for the regular payment of such payments as the same become due.

The secretary of state of this state shall withhold the issuance of any certificate of dissolution or withdrawal in the case of any corporation organized under the laws of this state or organized under the laws of any other state and admitted to do business in this state, until notified by the commissioner that all payments and interest thereon against any such corporation which is an employer under this chapter have been paid or that provision satisfactory to the commissioner has been made for payment.

In any case when an employer required to subscribe to the fund defaults in payments of premium, premium deposit, or interest thereon, for as many as two calendar quarters, which quarters need not be consecutive, and remains in default after due notice, and the commissioner has been unable to collect such payments by any of the other civil remedies prescribed herein, the commissioner may bring action in the circuit court of Kanawha County to enjoin such employer from continuing to carry on the business in which such liability was incurred: Provided, That the commissioner may as an alternative to this action require such delinquent employer to file a bond in the form prescribed by the commissioner with satisfactory surety in an amount not less than fifty percent more than the payments and interest due.

§23-2-9. Election of employer to provide own system of compensation.

Notwithstanding anything contained in this chapter, employers subject to this chapter who are of sufficient financial responsibility to ensure the payment of compensation to injured employees and the dependents of fatally injured employees, whether in the form of pecuniary compensation or medical
attention, funeral expenses or otherwise as herein provided, of
the value at least equal to the compensation provided in this
chapter, or employers of such financial responsibility who
maintain their own benefit funds, or system of compensation
to which their employees are not required or permitted to
contribute, or such employers as shall furnish bond or other
security to ensure such payments, may, upon a finding of such
facts by the compensation commissioner, elect to pay individ-
ually and directly, or from such benefit funds, department or
association, such compensation and expenses to injured em-
ployees or fatally injured employees' dependents. The compen-
sation commissioner shall require security or bond from such
employer, to be approved by him, and of such amount as
is by him considered adequate and sufficient to compel or
secure to such employees, or their dependents, payment of the
compensation and expenses herein provided for, which shall
in no event be less than the compensation paid or furnished
out of the state workers' compensation fund in similar cases
to injured employees or the dependents of fatally injured em-
ployees whose employers contribute to such fund. Any em-
ployer electing under this section shall on or before the last
day of the first month of each quarter, for the preceding quar-
ter, file with the commissioner a sworn statement of the total
earnings of all of his employees subject to this chapter for
such preceding quarter, and shall pay into the workers' com-
pensation fund a sum sufficient to pay his proper proportion of
the expenses of the administration of this chapter, and a sum
sufficient to pay his proper portion of the expenses for claims
for those employers who are delinquent in the payment of
premiums, and a sum sufficient to pay his fair portion of the
expenses of the disabled workers' relief fund, as may be
determined by the commissioner. The commissioner shall make
and publish rules and regulations governing the mode and
manner of making application, and the nature and extent of
the proof required to justify the finding of facts by the com-
missioner, to consider and pass upon such election by employ-
ers subject to this chapter, which rules and regulations shall be
general in their application. Any employer subject to this
chapter who shall elect to carry his own risk and who has
complied with the requirements of this section and the rules
of the compensation commissioner shall not be liable to re-
respond in damages at common law or by statute for the injury
or death of any employee, however occurring, after such elec-
tion and during the period that he is allowed by the commis-
sioner to carry his own risk.

Any employer whose record upon the books of the compen-
sation commissioner shows a liability against the workers'
compensation fund incurred on account of injury to or death
of any of his employees, in excess of premiums paid by such
employer, shall not be granted the right, individually and di-
rectly or from such benefit funds, department or association,
to compensate his injured employees and the dependents of his
fatally injured employees until he has paid into the workers'
compensation fund the amount of such excess of liability over
premiums paid, including his proper proportion of the liability
incurred on account of explosions, catastrophes or second in-
juries as defined in section one, article three of this chapter,
occurring within the state and charged against such fund.

All employers who have heretofore elected, or shall here-
after elect, to pay compensation and expenses directly as pro-
vided in this section, shall unless they give the catastrophe
and second injury security or bond hereinafter provided for,
pay into the surplus fund referred to in section one, article
three of this chapter, upon the same basis and in the same
percentages, subject to the limitations herein set forth, as funds
are set aside for the maintenance of the surplus fund out of
payments made by premium-paying subscribers, such payments
to be made at the same time as hereinbefore provided with re-
spect to payment of proportion of expenses of administration.
In case there be a catastrophe or second injury, as defined in
section one, article three of this chapter, to the employees of
any employer making such payments, the employer shall not
be liable to pay compensation or expenses arising from or
necessitated by the catastrophe or second injury, and such
compensation and expenses shall not be charged against such
employer, but such compensation and expenses shall be paid
from the surplus fund in the same manner and to the same
extent as in the case of premium-paying subscribers.
If an employer elect to make payments into the surplus fund as aforesaid, then the bond or other security required by this section shall be of such amount as the commissioner considers adequate and sufficient to compel or secure to the employees or their dependents payments of compensation and expenses, except any compensation and expenses that may arise from, or be necessitated by, any catastrophe or second injury, as defined in section one, article three of this chapter, which last are secured by and shall be paid from the surplus fund as hereinbefore provided.

If any employer elect not to make payments into the surplus fund, as hereinbefore provided, then, in addition to bond or security in the amount hereinbefore set forth, such employer shall furnish catastrophe and second injury security or bond, approved by the commissioner, in such additional amount as the commissioner shall consider adequate and sufficient to compel or secure payment of all compensation and expenses arising from, or necessitated by, any catastrophe or second injury that might thereafter ensue.

All employers hereafter making application to carry their own risk under the provisions of this section, shall with such application, make a written statement as to whether such employer elects to make payments as aforesaid into the surplus fund or not to make such payments and to give catastrophe and second injury security or bond hereinbefore in such case provided for.

All employers who have heretofore elected to carry their own risk under the provisions of this section shall be deemed to have elected to make payments into the surplus fund unless, within thirty days after the effective date of this act, they notify the commissioner in writing to the contrary: Provided, That such employers, as have heretofore elected, under the rules heretofore promulgated by the commissioner, not to make payments into the surplus fund, shall be deemed to have elected to give the catastrophe and second injury security or bond hereinbefore provided for and not to make payments into the surplus fund. Any catastrophe and second injury security or bond heretofore given under rules and regulations pro-
mulgated by the commissioner and approved by him shall be valid under this section, and any election heretofore made under rules and regulations of the commissioner to make payments into the surplus fund shall be valid and protective to the person so electing from and after the date of such election.

In any case under the provisions of this section that shall require the payment of compensation or benefits by an employer in periodical payments, and the nature of the case makes it possible to compute the present value of all future payments, the commissioner may, in his discretion, at any time compute and permit or require to be paid into the workers' compensation fund an amount equal to the present value of all unpaid compensation for which liability exists, in trust; and thereupon such employer shall be discharged from any further liability upon such award, and payment of the same shall be assumed by the workers' compensation fund.


Payments unpaid on the date on which due and payable, as prescribed by the commissioner, shall immediately begin bearing interest at the rate of two percentage points above the prime rate as listed in the guide to general levels of money rates in the first New York edition of the Wall Street Journal published in the month during which such payments were due. Interest shall be compounded quarterly until payment plus accrued interest is received by the commissioner. This interest rate shall be in effect for the remainder of the quarter during which the premium payment is due. The interest rate shall be redetermined quarterly in accordance with this section. Interest collected pursuant to this section shall be paid into the workers' compensation fund: Provided, That in no event shall the rate of interest charged a political subdivision of the state or a volunteer fire department pursuant to this section exceed ten percent per annum.

ARTICLE 3. WORKERS' COMPENSATION FUND.

§23-3-1. Compensation fund; surplus fund; catastrophe and catastrophe payment defined; second injury and second injury reserve; compensation by employers.

The commissioner shall establish a workers' compensation
fund from the premiums and other funds paid thereto by
employers, as herein provided, for the benefit of employees of
employers who have paid the premiums applicable to such
employers and have otherwise complied fully with the pro-
visions of section five, article two of this chapter, and for
the benefit, to the extent elsewhere in this chapter set out,
of employees of employers who have elected, under section
nine, article two of this chapter, to make payments into the
surplus fund hereinafter provided for, and for the benefit of
the dependents of all such employees, and for the payment of
the administration expenses of this chapter and shall adopt
rules and regulations with respect to the collection, mainten-
ance and disbursement of such fund not in conflict with the
provisions of this chapter.

A portion of all premiums that shall be paid into the work-
ners' compensation fund by subscribers not electing to carry
their own risk under section nine, article two of this chapter,
shall be set aside to create and maintain a surplus fund
to cover the catastrophe hazard, the second injury hazard,
and all losses not otherwise specifically provided for in this
chapter. The percentage to be set aside shall be determined
by the commissioner as necessary to maintain a solvent sur-
plus fund. All interest earned on investments by the workers'
compensation fund, which is attributable to the surplus fund,
shall be credited to the surplus fund.

A catastrophe is hereby defined as an accident in which
three or more employees are killed or receive injuries, which,
in the case of each individual, consist of: Loss of both eyes
or the sight thereof; or loss of both hands or the use thereof;
or loss of both feet or the use thereof; or loss of one hand
and one foot or the use thereof. The aggregate of all medical
and hospital bills and other costs, and all benefits payable
on account of a catastrophe is hereby defined as "catastrophe
payment." In case of a catastrophe to the employees of an
employer who is an ordinary premium-paying subscriber
to the fund, or to the employees of an employer who, having
elected to carry his own risk under section nine, article two
of this chapter, has heretofore elected, or may hereafter elect,
to pay into the surplus fund under the provisions of that section, then the catastrophe payment arising from such catastrophe shall not be charged against, or paid by, such employer but shall be paid from the surplus fund.

If an employee who has a definitely ascertainable physical impairment, caused by a previous injury, irrespective of its compensability, becomes permanently and totally disabled through the combined effect of such previous injury and a second injury received in the course of and as a result of his employment, the employer shall be chargeable only for the compensation payable for such second injury: Provided, That in addition to such compensation, and after the completion of the payments therefor, the employee shall be paid the remainder of the compensation that would be due for permanent total disability out of a special reserve of the surplus fund known as the second injury reserve, created in the manner hereinbefore set forth.

If an employee of an employer, who having elected to carry his own risk under section nine, article two of this chapter, and who has not elected to pay into the surplus fund under the provisions of that section, who has a definitely ascertainable physical impairment caused by a previous injury, irrespective of its compensability, and becomes permanently and totally disabled from the combined effect of such previous injury and a second injury received in the course of and as a result of his employment, the employee shall be granted an award of total permanent disability and his employer shall, upon order of the commissioner, compensate the said employee in the same manner as if the total permanent disability of the employee had resulted from a single injury while in the employ of such employer.

Employers electing, as herein provided, to compensate individually and directly their injured employees and their fatally injured employees' dependents shall do so in the manner prescribed by the commissioner, and shall make all reports and execute all blanks, forms and papers as directed by the commissioner, and as provided in this chapter.
AN ACT to amend and reenact section two, chapter one hundred seventy-eight, acts of the Legislature, regular session, one thousand nine hundred forty-seven, relating to the composition of the board of directors of the Morgan County war memorial hospital.

Be it enacted by the Legislature of West Virginia:

That section two, chapter one hundred seventy-eight, acts of the Legislature, regular session, one thousand nine hundred forty-seven, as amended, be amended and reenacted to read as follows:

WAR MEMORIAL HOSPITAL TO THE VETERANS OF THE WORLD WARS FROM MORGAN COUNTY.

§2. Board of directors.

1 The board of directors of the Morgan County war memorial hospital shall be appointed by the Morgan County commission and shall be comprised of not more than four members appointed from each of the magisterial districts of the county, the president of the hospital medical staff, who shall be a voting member, and the hospital administrator or superintendent, who shall be an ex officio member without voting authority. The citizen members appointed from the magisterial districts of the county shall be residents of the magisterial districts from which they are appointed and shall serve for terms of three years from the first day of July following their appointment, except that effective the first day of July, one thousand nine hundred eighty-four, one member from each magisterial district shall be appointed for one year, one member for two years and one member for three years. Thereafter, such members shall be appointed for regular three year terms.

2 The terms of the president of the hospital medical staff and the hospital administrator shall be concurrent with their appointment. No person shall be ineligible to appointment by reason of sex, political or religious affiliations. Vacancies in
the board shall be reported to the county commission and filled
by appointment in like manner as original appointments for
the unexpired term. The county commission may remove any
director for misconduct or neglect of duty. No compensation
shall be paid or allowed any director.

CHAPTER 187
(H. B. 1967—By Delegate Wooton and Delegate Hutchinson)
[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal chapter two hundred eleven, acts of the Legislature,
regular session, one thousand nine hundred sixty-three, relating
to the establishment of the Lake Stephens Tourist Develop­
ment Authority; and to amend and reenact sections one, two
and four, chapter one hundred thirty-six, acts of the Legislature,
regular session, one thousand nine hundred eighty-two, relating
to combining the Lake Stephens Tourist Development Authority
with the Raleigh County Recreation Authority; and increasing
the members on the board from five to seven.

Be it enacted by the Legislature of West Virginia:

That chapter two hundred eleven, acts of the Legislature, regular
session, one thousand nine hundred sixty-three, is hereby repealed;
and that sections one, two and four, chapter one hundred thirty­
six, acts of the Legislature, regular session, one thousand nine
hundred eighty-two, be amended and reenacted to read as follows:

RALEIGH COUNTY RECREATION AUTHORITY.

§1. Lake Stephens Tourist Development Authority abolished;
Raleigh County Recreation Authority created; functions.

1 The Lake Stephens tourist development authority is here­
by abolished, and its powers and authority are transferred to
the Raleigh County recreation authority heretofore created
by this chapter. The function of the Raleigh County recrea­
tion authority shall be to establish, operate and manage
recreational facilities for the benefit of the citizens of Raleigh
County.
§2. Members; appointment; powers and duties generally; officers; bylaws; rules and regulations; compensation.

The authority shall consist of five or seven members at the discretion of the Raleigh County commission to be appointed by the Raleigh County commission. Such members shall be appointed and such authority shall commence operation on or before the first day of July, one thousand nine hundred eighty-four. If the authority consists of seven members, no more than four shall be from the same political party, and if the authority consists of five members then no more than three members shall be from the same political party. One member shall be appointed for a term of five years, one member for a term of four years, one member for a term of three years, one member for a term of two years and one member for a term of one year. The initial terms of office for new appointees shall commence on the first day of July, one thousand nine hundred eighty-four. Each successor member shall be appointed for a term of five years, except that any person appointed to fill a vacancy occurring before the expiration of the term shall serve only for the unexpired portion thereof. Any member of the authority shall be eligible for reappointment and the county commission may remove any member for cause. There shall be an annual meeting of the authority on the second Monday in July in each year and a monthly meeting on the day in each month which the authority may designate in its bylaws. A special meeting may be called by the president, the secretary or any two members of the authority and shall be held only after all of the members are given notice thereof in writing. At all meetings more than fifty percent of the members shall constitute a quorum and at each annual meeting of the authority it shall elect a president, a vice president, a secretary and a treasurer. The authority shall adopt such bylaws, rules and regulations as are necessary for its own guidance. The authority shall have all the powers necessary, convenient and advisable to effectuate the purposes of this act.

Each member of the authority shall be compensated monthly by the county in an amount to be fixed by the county commission.
38 Each member presently holding a position on the board of
39 the Raleigh County recreational authority shall keep the
40 same until his term shall normally expire.

§4. Lake Stephens included.

1 The recreation authority hereby created shall be responsible
2 for recreational facilities located or situate on or near Lake
3 Stephens or under the control or jurisdiction of the Lake
4 Stephens recreation commission.
RESOLUTIONS
(Only resolutions of general interest are included herein.)

HOUSE CONCURRENT RESOLUTION 30
(By Delegate Davis, et al.)
[Adopted March 10, 1984.]

Requiring the Board of Regents to direct Marshall University to conduct a study of salary inequities among faculty members.

WHEREAS, There presently existing salary inequities among faculty members at Marshall University from college-to-college within the institution, between disciplines and across departments; and

WHEREAS, To effectuate the purpose of this study an ad hoc committee need be formed; and

WHEREAS, These inequities should necessarily be corrected in and among the faculty members of Marshall University for a more consistent salary range schedule; therefore, be it

Resolved by the Legislature of West Virginia:

That the Board of Regents is hereby requested to direct Marshall University to conduct a study of salary inequities among its faculty members between disciplines, across departments, within each college and from college to college within the institution; and, be it

Further Resolved, That the criteria for consideration in studying such inequities should be: (1) Rank in a department and at the institution; (2) years in rank; (3) degree of each faculty member; and (4) the number of years in higher education of each faculty member at Marshall University or any other institution of higher education; and, be it

Further Resolved, That such study be completed as soon as possible but in no event later than the first day of January, one thousand nine hundred eighty-five, and that copies of the report including findings and recommendations be forwarded to the Board
of Regents and the Joint Committee on Government and Finance; and, be it

Further Resolved, That copies of this resolution be sent to the chancellor of the Board of Regents and to the president of Marshall University.

COMMITTEE SUBSTITUTE FOR
HOUSE JOINT RESOLUTION 21
(By Mr. Speaker, Mr. See, and Delegate Polan)

[Adopted March 10, 1984.]

Proposing an amendment to the Constitution of the State of West Virginia, amending section one-a, article ten thereof, relating to taxation and finance generally; exempting certain property from ad valorem property taxation and when such exemption becomes effective; authorizing the Legislature to provide by general law for the taxation of certain species of property; qualifying or limiting such authority with respect to certain species; providing for the limitation of the rate of taxation upon such property; requiring that increases in the taxation upon certain property be allocated or phased in over a certain period of time; 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-four, which proposed amendment is that section one-a, article ten thereof be amended to read as follows:

ARTICLE X. TAXATION AND FINANCE.

§1a. Exemptions from and additional adjustments to ad valorem property taxation.

1 Notwithstanding the provisions of sections one and one-b of this article, household goods and personal effects, if such
household goods or personal effects are not held or used for profit, and all intangible personal property shall be exempt from ad valorem property taxation: Provided, That intangible personal property may be made subject to such taxation only to the extent provided by the Legislature by general law not inconsistent with this section.

The Legislature shall not impose ad valorem property taxation upon money, bank deposits and other investments determined by such law to be in the nature of deposits in a bank or other financial institution, or upon pensions, monies or investments determined by the Legislature in such law to be in lieu of or otherwise in the nature of pensions.

The Legislature by general law may exempt from such taxation any amount of the value of all or certain intangible personal property and any type, group or class of such intangibles but such exemptions shall be uniform throughout the state. No tax imposed upon such intangibles shall be at a rate or rates in excess of the maximum rate permitted to be imposed upon personal property employed exclusively in agriculture as provided in sections one, one-b or ten of this article, as the case may be, in the county wherein the intangible personal property has situs, as such situs is determined by the Legislature in such general law.

The valuations with respect to property acquired or created subsequent to any statewide reappraisal and the valuations with respect to any intangible personal property subjected to ad valorem property taxation pursuant to this section shall be allocated and phased-in over a period of years and be valued with respect to the same base year as other property subject to ad valorem property taxation in order to provide for equitable and similar treatment of such property subsequently acquired or created or such intangible personal property as compared to similarly situated previously existing property of similar value whose owner is receiving the benefit of any allocation and phase-in allowed pursuant to section one-b of this article.

Any intangible personal property which would be subject to ad valorem property taxation under prior provisions of this Constitution shall continue to be subjected to such taxation as
provided by and in accordance with current statutory law
for the assessment of such taxes upon such property, which
laws are hereby validated for such purpose or purposes, until
the first day of July in the year one thousand nine hundred
eighty-five, or until the first statewide reappraisal of property
pursuant to section one-b of this article shall be first imple-
mented and employed to fix values for ad valorem property
taxation, whichever shall last occur, and thereafter no intangi-
ble personal property shall be subject to such taxation save
for and except as provided by the Legislature by general law
enacted after the ratification of the amendment of this section
in the year one thousand nine hundred eighty-four.

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. 5” and designated as the “Equit­
able Taxation of Property and Exemption of Intangible Property
Amendment” and the purpose of the proposed amendment is sum­
marized as follows: “To provide for equitable treatment of valuations
of property by requiring the phase-in of such valuations through
enactment of general law by the Legislature and to provide for the
exemption of intangible personal property from ad valorem property
tax, while authorizing the Legislature to subject certain of such
intangible property or its value to ad valorem taxation, by enactment
of general law; providing certain mandatory exemptions from such
taxation; and requiring that intangible property be subsequently
taxed as class one property.”

HOUSE JOINT RESOLUTION 32
(By Mr. Speaker, Mr. See)
[Adopted March 9, 1984.]

Proposing an amendment to the Constitution of the State of West
Virginia, authorizing the issuance and sale of general obligation
bonds of the State, the proceeds of which are to be used and
appropriated to provide financing for owner-occupied residences
for qualified veterans; providing a limitation on the amount of
such bonds and interest thereon; establishing a separate fund of
the State for such purposes and for the levy of taxes sufficient for the payment of such bonds to the extent that amounts available in such fund are insufficient therefor; 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 of West Virginia at the next general election to be held in the year one thousand nine hundred eighty-four, which proposed amendment is as follows:

QUALIFIED VETERANS HOUSING BONDS AMENDMENT

I. The Legislature shall have the power to authorize the issuing and selling of general obligation bonds of the State which shall be in addition to all other state bonds heretofore authorized. The aggregate annual amount payable on all such bonds, including both principal and interest, shall be limited such that the debt service accruing on such bonds in any fiscal year shall not exceed $35,000,000, exclusive of any amounts payable on such bonds for which moneys or securities have been irrevocably set aside and dedicated solely for the purpose of such payment. The proceeds of the bonds hereby authorized to be issued and sold shall be used and appropriated to provide financing for owner-occupied residences for persons determined by the Legislature to be qualified veterans, except that (i) part of the proceeds from each separate issuance of bonds may be set aside as a reserve for the purposes of the Veterans' Mortgage Fund herein authorized and (ii) proceeds may be dedicated for the payment of principal, redemption price or interest on any such bonds to be refunded. Such bonds may be issued and sold at such time or times and in such amount or amounts as the Legislature shall authorize. All proceeds of such bonds, and all revenues derived from the use and investment of such proceeds, shall be deposited in a separate fund of the State, designated as the Veterans' Mortgage Fund. Amounts in such fund shall be used solely for the purposes of making loans for qualified veterans, providing for the payment or redemption of such bonds and the interest thereon, and providing for the payment of necessary expenses in connection therewith. When a bond issue as
aforesaid is authorized, the Legislature shall at the same time pro-
vide for the collection of an annual state tax sufficient to pay as it
may accrue the interest on such bonds and the principal thereof with-
in and not exceeding forty years, and all such taxes so levied shall
be irrevocably dedicated for the payment of principal of and interest
on such bonds until the obligation of the State with respect to the
payment of such principal and interest has been discharged, and any
of the covenants, agreements or provisions in the acts of the Legis-
lature levying such taxes shall be enforceable in any court of com-
petent jurisdiction by any of the holders of such bonds. Such tax
shall be levied in any year only to the extent that the moneys on
deposit in the Veteran's Mortgage Fund are insufficient to pay all
amounts accruing on such bonds in such year.

II. The Legislature shall have the power to enact legislation to
implement the provisions of this amendment.

Resolved further, That in accordance with the provisions of
article eleven, chapter three of the code of West Virginia, one thou-
sand nine hundred thirty-one, as amended, such proposed amendment
is hereby numbered "Amendment No. 2" and designated as the
"Qualified Veterans Housing Bonds Amendment," and the purpose
of the proposed amendment is summarized as follows: "To authorize
the Legislature to issue and sell general obligation bonds of the State
for the funding of a program to provide financing for owner occupied
residences for qualified veterans, which bonds shall not be sold or
issued so as to obligate the State for the payments of aggregate annual
debt service on such bonds, other than debt service which has been
refunded, which exceeds thirty-five million dollars, and to establish
a separate fund for such purposes and providing for the levy of
taxes sufficient to pay such bonds to the extent that amounts in such
fund are insufficient therefor."

SENATE CONCURRENT RESOLUTION 1
(By Senator Tonkovich)

[Adopted March 10, 1984.]

Creating a special joint interim commission to conduct a compre-
hensive study of the financial integrity of the Unemployment
Compensation Trust Fund administered by the West Virginia Department of Employment Security.

WHEREAS, The State has undertaken the obligation of providing unemployment benefits to unemployed West Virginians and their families who, through no fault of their own, are without gainful employment by which to provide the essential means of existence; and

WHEREAS, The recent economic recession has displaced tens of thousands of West Virginians from their jobs and necessitated payment of unemployment benefits in excess of the financial resources of the said Trust Fund and will require the borrowing of nearly $275,000,000 from the federal government to fund such benefits by the end of fiscal year 1984; and

WHEREAS, Concern has developed for the State's ability to both fund future unemployment benefits and repay the indebtedness to the federal government; therefore, be it

Resolved by the Legislature of West Virginia:

That a special interim commission be created to be known as the "Special Interim Commission on the Unemployment Compensation Trust Fund" to consist of the following members:

Three members of the Senate to be appointed by the President, one to be designated by the President as cochairman;

Three members of the House of Delegates appointed by the Speaker, one to be designated by the Speaker as cochairman;

The Director of the Governor's Office of Economic and Community Development or his designee;

A representative from the Department of Employment Security to serve as an ex officio nonvoting advisory member to the commission; and

Six members of the public and residents of the State, three of whom shall represent the interest of industry and three of whom shall represent the interest of labor, to wit: Three members to be appointed by the President of the Senate, and three members to be appointed by the Speaker of the House; and, be it

Further Resolved, That the said Special Commission is hereby
directed to review, examine and study the financial integrity of the fund, the indebtedness of the fund to the federal government, the impact on the General Revenue Fund of paying interest therefrom on the indebtedness, the effects of the loss by West Virginia employers of the 0.9% credit against federal unemployment compensation taxes, and the aggregate impact of the preceding upon the Unemployment Compensation Trust Fund, General Revenue Fund and the State's employers and employees; and, be it

Further Resolved, That the commission is authorized to meet at such times and in such places as the cochairmen of the commission shall direct and that the committee is authorized to conduct meetings and hearings with such government officials and other parties as the commission shall deem necessary; and, be it

Further Resolved, That the commission report its findings and recommendations periodically to the Joint Committee on Government and Finance and that the committee shall complete its work and submit a complete report to the West Virginia Legislature on or before the first day of the 1985 regular session; and, be it

Further Resolved, That the expenses necessary to conduct the commission's study and to prepare appropriate reports, recommendations and proposed legislation be paid from the legislative appropriations to the Joint Committee on Government and Finance.

SENATE CONCURRENT RESOLUTION 9
(By Senator Lucht, et al.)

[Adopted February 9, 1984.]

Expressing the sentiment of the Legislature relating to the compensation of state employees on the basis of comparability of value of work and creating a Pay Equity Task Force.

WHEREAS, Statistics of the United States Department of Labor of December 1980, show that 60 percent of all women 18-64 are in the workforce; that two thirds of all those women are either the heads of households, or had husbands whose earnings were less than $10,000.00; that most women are in the workforce because of economic need; that the average working woman has historically earned less than the average working man; and
WHEREAS, This disparity in earnings appears to arise because of the lack in the past of equal educational employment and career opportunities for women and because of the segregation of women into historically undervalued occupations where wages have been depressed; and

WHEREAS, A failure to reassess the basis on which salaries of those employed by the state and its political subdivisions may serve to perpetuate injustices which appear to have had particularly discriminatory impact on minority and older women; and

WHEREAS, The State has heretofore established a policy that persons should not be discriminated against solely on account of sex; and a policy of this State to achieve an equitable relationship between the comparability of the value of work performed by persons employed by the State and by its political subdivisions and the compensation and classification plans adopted by the State and its political subdivisions, is consistent with the antidiscrimination policy of the State; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature should fully ascertain the extent, if any, to which employees of the State and its political subdivisions are paid less than other of its employees performing work of comparable value, particularly because of the apparent lack of equal educational, employment and career opportunities for women and the segregation of women into historically undervalued occupations and the extent to which these undervaluations are expressed and perpetuated by compensation and classification plans within the state government and its political subdivisions; and, be it

Resolved Further, That to achieve this purpose, there is hereby created a Task Force on Public Employee Pay Equity, as a subcommittee of the Joint Committee on Government and Finance, which shall develop a single, bias-free, sex-neutral point factor job evaluation system to be applied to all jobs with the State or its political subdivisions, except the position of an elected officer, to rank jobs according to such job evaluation system, to identify the variations in pay for jobs of like rank, to identify variations in access to promotions for jobs of like rank and the extent to which such variations impede career advancement for women to a greater or lesser extent than for men, and to report upon the methods for,
cost of, and other means of removing any discrimination found to exist.

The Task Force on Public Employee Pay Equity shall consist of nine members, three members appointed by the Governor, one of whom shall be the director of personnel of the Civil Service System of the State, one of whom shall be a state employee and one an employee of a political subdivision. The President of the Senate and the Speaker of the House shall each appoint three persons, two of whom shall be members of the House whose presiding officer appoints the member and one of whom shall be a representative of the general public experienced in personnel relations. Persons appointed members of the Task Force shall be citizens of the State of West Virginia.

The members shall not be compensated, except that the political subdivision employing the member designated because employment by a political subdivision may, at the option of the Committee on Government and Finance, be reimbursed at the rate of such member's base salary or pay for each day or part of a day spent by such member on Task Force work and away from his regular place of employment and all members shall be reimbursed for actual and necessary expenses incident to the performance of their duties, subject to such limitations as the Joint Committee on Government and Finance shall establish.

The Task Force on Public Employee Pay Equity shall:

(a) Be convened no later than April 1, 1984;

(b) Evaluate the compensation and classification plans for persons in state and political subdivision classified and management services and those in unclassified and exempt but comparable positions (except elected positions), on the basis of objective, job-related criteria in order to determine explicit worth or value of those services and positions, and to identify existing specific career ladders, and impediments thereto. Such evaluation shall include the use of the point factor job evaluation system hereinbefore required;

(c) Apply the point value evaluation system to determine where
compensation and classification inequities exist in light of the comparability of the value of work;

(d) Report to the Joint Committee on Government and Finance prior to the commencement of the regular session of the Legislature, 1985, all findings of the Task Force, including the methods for cost of, and other means required or recommended for implementation of the principles of equitable compensation and classification based on comparability of value of work as applied to state and political subdivision compensation and classification plans and any applicable provisions of law or regulations. The report shall include, but not be limited to, factor values used in the point factor job evaluation system, comparative job ratings, gender makeup of all job classifications, present salary structures, policy recommendations, cost estimates and proposed legislation for the implementation of equitable compensation principles;

(e) Contract for such experts and technical or professional services as may be required to effectuate the directives of this resolution, under such terms and conditions as the Joint Committee on Government and Finance shall prescribe.

As used in this resolution:

(1) “Comparability of value of work” means the value of the work measured by the needs of the employer and the knowledge, composit skill, effort, responsibility and working conditions required in the performance of the work.

(2) “Compensation and classification plan” means the full range of work-related benefits including, but not limited to, salary, fringe benefits, continuing education and career advancement opportunities for classified and management services and those in unclassified and exempt but comparable positions.

(3) “Skill” means the skill required in the performance of the work, including any type of intellectual or physical skill acquired by the employee through experience, training, education or natural ability.

(4) “Effort” means the effort required in the performance of the work, including any intellectual or physical effort.
COMMITTEE SUBSTITUTE FOR
SENATE JOINT RESOLUTION 1
(By Senator Stacy and Senator Davis)
[Adopted March 10, 1914.]

Proposing an amendment to the Constitution of the State of West Virginia, amending article three thereof by adding thereto a new section, designated section fifteen-a, relating to the voluntary contemplation, meditation or prayer in schools; 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 all 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 article three thereof be amended by adding thereto a new section, designated section fifteen-a, to read as follows:

ARTICLE III. BILL OF RIGHTS.
§15a. Voluntary contemplation, meditation or prayer in schools.

1 Public schools shall provide a designated brief time at
2 the beginning of each school day for any student desiring
3 to exercise their right to personal and private contempla-
4 tion, meditation or prayer. No student of a public school
5 may be denied the right to personal and private contempla-
6 tion, meditation or prayer nor shall any student be
7 required or encouraged to engage in any given contem-
8 plation, meditation or prayer as a part of the school cur-
9 riculum.

10 Resolved further, That in accordance with the provi-
11 sions of article eleven, chapter three of the code of West
12 Virginia, one thousand nine hundred thirty-one, as
13 amended, such proposed amendment is hereby numbered
14 "Amendment Number 3 or as to be determined by the
Secretary of State” and designated as the “Voluntary Contemplation, Meditation or Prayer in School Amendment” and the purpose of the proposed amendment is summarized as follows: “To require public schools to set aside a time for students who wish to use their voluntary contemplation, meditation or prayer rights.”

COMMITTEE SUBSTITUTE FOR SENATE JOINT RESOLUTION 4 (By Mr. McGraw, Mr. President, et al.) [Adopted March 10, 1984]

Proposing an amendment to the Constitution of the State of West Virginia, by adding thereto a new article, designated article ten-a, relating to educational, economic and infrastructure development generally, providing for a statewide excess levy of ad valorem taxes, the proceeds of which are to be used in support of the free school system throughout the State; providing for the rate of such excess levy; providing that such excess levy is to replace all local excess levies for schools in the several districts of the State; providing for the manner of distribution of such proceeds; enabling the Legislature to enact legislation for such levy; directing the Legislature to adopt a plan for the improvement of the infrastructure of the state, the imposition of an additional one cent in the general consumers sales and service tax and use tax for such purpose; requiring the proceeds of such tax to be placed in a separate fund; requiring the Legislature to annually appropriate at least forty million dollars for a period of at least fifteen years from such fund for the construction and renovation of schools; directing the Legislature to authorize a total of two hundred million dollars of general obligation bonds for highway and bridge construction and restructuring, no more than fifty million dollars of which may be authorized in any single year; which bonds may be reissued in like amounts to the extent the initial bonds are retired; providing that the debt service attributable to such bonds be paid from such separate fund; providing for the terms and conditions of such bonds; authorizing the Legislature to appropriate sums from said separate fund for the construction and renovation of water
and sewer treatment facilities; establishing priorities for the foregoing appropriations and authorizations; and the allocation of the proceeds of such fund and bond proceeds among the several counties; enabling the Legislature to enact legislation for the implementation of certain of the provisions thereof; numbering and designating such proposed amendment; and providing for the 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-four, which proposed amendment is that said Constitution be amended by adding thereto a new article, designated article ten-a, which proposed amendment is as follows:

ARTICLE X(A). EDUCATIONAL, ECONOMIC AND INFRASTRUCTURE DEVELOPMENT.

§1. Statewide excess levy for quality education.

Any other provision of this Constitution to the contrary notwithstanding, in addition to the aggregate of taxes authorized by section one of this article, and in lieu of levies for free schools authorized by sections one-b and ten of article X, of this Constitution, there is hereby imposed a state levy on the several classes of property for the support of public schools beginning on the first day of July, one thousand nine hundred eighty-five, in order to assist the state in meeting its obligation to provide a thorough and efficient system of free schools and equality of substantive educational opportunity for all its citizens. Notwithstanding the aggregate of taxes assessed in any one year by the different levying bodies, the rate of the state tax assessed each year upon the classes of property as defined by general law shall equal twenty-two and ninety-five one-hundredths cents on each one hundred dollars of assessed value upon personal property employed exclusively in agriculture, including horticulture and grazing, products of agriculture as defined in section one, article ten of this Constitution, including livestock, while owned by the producer and such intangible
personal property as may be taxable under the provisions of said article ten or by general law, as the case may be, forty-five and ninety one-hundredths cents upon all property owned, used and occupied by the owner thereof exclusively for residential purposes and upon farms occupied and cultivated by their owners or bona fide tenants, and ninety-one and eighty-one-hundredths cents upon all other property situated outside or within municipalities: Provided, That the Legislature, by general law agreed to by two-thirds of the members elected to each House thereof, may establish a different rate of taxes under this section, not to exceed one hundred per centum thereof, which rate shall be proportionately uniform as to all property as described herein and shall be uniform throughout the state.

Such state levy shall replace any local excess levy for schools in effect on the first day of March, one thousand nine hundred eighty-four, and any local excess levy approved prior to such date by a county and is in lieu of the exercise of the power to lay such levies by the local school districts as heretofore provided.

The revenue from such state levy shall first be expended by the state to provide funds to each local school district for which a levy has been replaced by this amendment, until such local levy would have expired, so that such local school district will continue to have the same funds available for the same purposes as provided under such local levy until such local levy would have expired; then to provide funds to each local school district for which a levy has been replaced by this amendment, so that each such local school district will continue to receive the same amount in dollars as it received in the final year in which such local levy would have expired, and this amount may be used by such local school district for purposes approved by the West Virginia board of education; and then for such purposes as the Legislature may prescribe in accordance with general law to effectuate a thorough and efficient system of free schools and equality of substantive educational opportunity for all state citizens, including but not limited to implementing standards of quality educational programs and services; providing textbooks and instructional materials; achieving salary equity among employees of the several local school districts; providing regional services to local school districts; and funding any expense associated with the operation of the public schools of the state on the basis of need among the several local school districts.
The Legislature shall have the power to enact legislation to implement the provisions of this section.

§2. Schools, roads and public works construction.

a. Infrastructure improvement plan. The Legislature shall by general law provide for the improvement of the infrastructure of the state, including use and allocation of resources marshalled pursuant to this amendment for school construction, water and sewer construction and road development.

b. Dedicated tax imposed. The Legislature shall by general law impose a general consumers sales and service tax and use tax of the nature heretofore imposed by general law, at a rate of one percent, which tax shall be subject to such conditions, exceptions and terms as shall be provided by law and shall be in addition to any like tax now or hereafter imposed. Such tax shall first be enacted no later than the regular session of the Legislature, held in the year one thousand nine hundred eighty-five, and shall be made effective not later than the first day of May nor sooner than its date of passage by the Legislature in said year nor may said tax be enacted prior to said regular session. The proceeds of the tax required by this amendment, without deduction for the costs of collection and enforcement thereof, shall be deposited as and when received by the treasurer in a separate fund of the state to be used for the purposes of this amendment as and when appropriated. Such additional tax shall remain in effect for a period of not less than fifteen years and may thereafter be terminated by the Legislature at any time after all bonds issued or reissued pursuant to this section have been retired or redeemed and are no longer outstanding.

c. School construction. From the separate fund hereinabove created, the Legislature shall annually appropriate the sum of not less than forty million dollars solely for the construction, renovation or remodeling of elementary or secondary public school buildings or facilities, the equipping of the same in connection with any such construction, renovation or remodeling and the acquisition and preparation of sites for elementary or secondary public school buildings or facilities. The first of such annual appropriations shall be made for the fiscal year commencing the first day of July, one thousand nine hundred eighty-five, and shall continue to appropriate the sum
of not less than forty million dollars each succeeding year until and including the fiscal year commencing the first day of July, one thousand nine hundred ninety-nine. Thereafter, subject to the terms and conditions hereof the Legislature may continue to appropriate sums for like purposes from the separate fund hereinabove created until the expiration of such separate fund as the Legislature may deem proper.

d. *Highway construction bonds.* The Legislature is hereby given authority to authorize the issuing and selling of bonds, upon the full faith and credit of the state, for the purpose or purposes of new highway construction, total replacement of existing highways, the reconstruction of highways utilizing existing road beds, the restructuring of existing bridges or the construction of replacement bridges and for use in matching or maximizing reimbursement for such purposes from the United States or any department, bureau, commission or agency thereof, in an aggregate sum of two hundred million dollars. No more than fifty million dollars shall be authorized in the first fiscal year following the ratification of this amendment nor in any fiscal year thereafter and none shall be authorized for any such year unless the Legislature shall appropriate for the same fiscal year at least forty million dollars as required by this section to be expended for school construction or renovation. All such bonds issued under authority hereof shall provide the authority for the redemption of such bonds prior to their maturity. To the extent that bonds initially authorized under this section for roads or bridges shall have been retired, the Legislature shall have the power to authorize the issuing and selling of bonds solely to replace those bonds initially retired, for the same purposes and uses herein provided, subject nevertheless to the annual and aggregate limitations on amount set forth herein so that the total aggregate amount of such bonds authorized by this section shall not exceed four hundred million dollars.

In any fiscal year that all or any portion of the Legislature's power to authorize bonds is not exercised, such authority, to the extent not so exercised, shall be transferred to the next fiscal year in which no such authority is expressly granted by this section and be exercised only when appropriations for schools under this section in such year shall have been made to the extent required.
The Legislature shall have the power to authorize the issuing and selling of state bonds to refund any bonds issued and sold as aforesaid if the actuarially determined present value of the debt service on the refunding bonds is less than that of the bonds being refunded.

e. Water and sewer construction. The Legislature is hereby given power and authority to appropriate from the separate fund created pursuant to this section such sums annually as the Legislature may deem proper and expedient for the purpose of the engineering, construction, renovation and remodeling of water and sewage treatment facilities, the equipping of the same in connection with any such construction, renovation or remodeling and the acquisition and preparation of sites for such facilities, and for use in matching or maximizing grants-in-aid for such purposes from the United States or any department, bureau, commission or agency thereof or other grants-in-aid from this state or any department, bureau, commission or agency thereof or from any other source: Provided, That no such appropriation shall be made in any fiscal year until and unless the Legislature shall have appropriated at least forty million dollars for schools as hereinbefore required and shall have provided for that fiscal year's annual debt service upon bonds authorized and issued for roads and bridges pursuant to this section.

The Legislature, either by general law or in the acts by which such sums are annually appropriated, may provide that such sums are to grants-in-aid or may provide the extent to which such sums are to be repaid in whole or in part by the entities for which such sums are so appropriated and to this end may require the imposition of reasonable and sufficient user fees for the purposes of such repayment. To the extent the Legislature does not provide that such sums are to be repaid, such sums so appropriated shall be deemed to be grants-in-aid.

f. Bond terms and enforcement. Bonds permitted by this section may be authorized, issued and sold at such time or times after the first day of January, one thousand nine hundred eighty-five, and shall bear such date or dates, shall mature at such time or times, not exceeding twenty-five years, from their respective dates and shall be in such amount or amounts, within the limits hereinbefore provided, as the Legislature shall authorize. When
any bonds permitted by this section are authorized, such bonds shall be issued upon the full faith and credit of the State and the Legislature shall at the time of such authorization provide for the payment thereof from the taxes required to be imposed by this section and for the collection of any other annual state taxes in sums sufficient to pay the principal and interest on such bonds as the same may accrue within and not exceeding twenty-five years. Such sums shall be irrevocably dedicated for the payment of principal of and interest on such bonds until such principal of and interest on such bonds are finally paid and discharged, and any of the covenants, agreements or provisions in the acts of the Legislature levying such taxes shall be enforceable in any court of competent jurisdiction by any of the holders of the bonds.

'g. Allocation. (1) Except as otherwise provided in subdivision (2) of this subsection, the Legislature shall provide by general law for the allocation of funds appropriated pursuant to this section and the proceeds of bonds authorized thereby for construction in the several counties of the state upon bases determined by the Legislature to be fair and reasonable, including factors such as education needs, population to be served, areas of high unemployment and economic development needs.

(2) With respect to the funds annually appropriated for the construction, renovation or remodeling of public school buildings, pursuant to subsection (c) of this section, distribution of the forty million dollars required to be annually appropriated shall be made by the Legislature to all counties first on a per pupil basis so that each district board of education shall receive annually in each year at least twenty dollars per pupil calculated on the basis of net enrollment. The sums so allocated to each such district shall be expended only for projects approved by the state board of education. Any sums remaining after such annual per pupil distribution shall be distributed in the manner provided by the Legislature, in accordance with subdivision (1) of this subsection.

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 number "Amendment No. 4" and designated as the "Better Schools, Roads and Public Works
Construction Amendment" and the purpose of the proposed amendment is summarized as follows: "To impose a statewide levy for schools beginning on the first day of July, one thousand nine hundred eighty-five, first to provide funds equal to local excess levies for schools replaced, and then to effectuate a thorough and efficient system of free schools and equality of substantive educational opportunity for all state citizens and to direct the legislature to implement a plan of infrastructure improvements through the imposition of an additional one cent in the general consumers sales and service tax and use tax for at least fifteen years which is to be kept in a separate fund; that forty million dollars be first appropriated annually for school construction and/or renovation; that two hundred million dollars in general obligation bonds to be authorized, no more than fifty million dollars of which may be issued in any given year, for highway and bridge construction or replacement, which bonds may be reissued in like amounts to the extent the initial bonds are retired, the debt service of which shall be paid from said separate fund; and that appropriations may be made from said fund for the construction and renovation of water and sewer treatment facilities.
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-four, to the Governor's Office—Civil Contingent Fund, Account No. 1240, supplementing chapter twenty-nine, acts of 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 19, 1984, which contained revisions of the revenue estimates and financial statements for the general revenue fund; and

WHEREAS. It appears from such executive message, that there now remains unappropriated a balance in the state fund, general revenue, available for further appropriation during the fiscal year 1983-84, a part of which balance is hereby appropriated by the terms of this supplemental appropriation; therefore

Be it enacted by the Legislature of West Virginia:

That Account No. 1240, 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 item and language of appropriation:
1 TITLE 2. APPROPRIATIONS.

2 Section 1. Appropriations from General Revenue.

3 EXECUTIVE

4 8—Governor's Office—Civil Contingent Fund

5 Acct. No. 1240

State
General
Revenue
Fiscal Year
1983-84

6 1a Southern West Virginia Flood Relief.... $ $3,500,000

7 The purpose of this supplementary appropriation is to
8 provide funds for relief from the May, 1984 flood disaster in
9 southern West Virginia for areas of the state specified as
10 disaster areas in the declaration of the President of the
11 United States and the proclamations of the Governor, by
12 providing appropriations to match or maximize grants-in-
13 aid from the federal government and to provide for state
14 funding to repair state roads and public facilities, which
15 roads and facilities are not eligible for federal disaster
16 assistance.

17 Any part of this appropriation may be transferred to any
18 account in the governor's office or to any other department
19 of state government for such purposes and for disbursement
20 therefrom.

21 This appropriation shall be available for expenditure
22 immediately upon the effective date of this bill, with any
23 unexpended balance remaining in the appropriation at the
24 close of fiscal year 1983-84 being hereby reappropriated for
25 expenditure during the subsequent fiscal year 1984-85.

26 Following the effective date of this bill, a monthly report
27 shall be submitted by the Governor to the Legislative
28 Auditor, detailed and itemized, in nature, of all transfers
29 and expenditures made hereunder and for such purposes
30 during the preceding month, and further, on or before
31 January one, one thousand nine hundred eighty-five, a
32 special report shall be submitted by the Governor to the
33 Legislature and to the Congress setting forth
recommendations and proposals to prevent future flooding in the areas specified as disaster areas, and other affected areas, including a review of the recommendations and initiatives of the Flood Cause and Prevention Commission following the 1977 flood.

CHAPTER 2
(S. B. 3—By Mr. McGraw, Mr. President)

[Passed May 19, 1984; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of all federal funds remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-four, to the Geological and Economic Survey, Account No. 5200, supplementing chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-three, known as the budget bill, and as supplemented and amended by acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-three.

WHEREAS. The chief executive has informed the Legislature that federal funds have been received for new programs and are available for the Geological and Economic Survey, for expenditure in fiscal year 1983-84; the same are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That Account No. 5200, chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-three, known as the budget bill, as supplemented and amended by acts of the Legislature, First Extraordinary Session, one thousand nine hundred eighty-three, be supplemented by adding the following amounts to the designated line items:

1 TITLE 2. APPROPRIATIONS.
2 Section 2. Appropriations of federal funds.
3 68—Geological and Economic Survey
Federal Funds Fiscal Year 1983-84

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<thead>
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<th>Account</th>
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<td>1</td>
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The purpose of this supplementary appropriation bill is to supplement the aforesaid account by adding the newly received above amounts of federal funds to the specified items for expenditure in the current fiscal year of 1983-84. Such amounts shall be available for expenditure immediately upon the effective date of this bill.

CHAPTER 3

(S. B. 4—By Mr. McGraw, Mr. President)

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of all federal funds remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-four, to the Public Service Commission, Motor Carrier Division, Account No. 8290, supplementing chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-three, known as the budget bill and as supplemented and amended by acts of the Legislature, First Extraordinary Session, one thousand nine hundred eighty-three.

WHEREAS, The chief executive has informed the Legislature that federal funds have been received for new programs and are available for the Public Service Commission, Motor Carrier Division, for expenditure in fiscal year 1983-84; the same are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:
That Account No. 8290, chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-three, known as the budget bill, as supplemented and amended by acts of the Legislature, First Extraordinary Session, one thousand nine hundred eighty-three, be supplemented by adding the following amounts to the designated line items:

1. TITLE 2. APPROPRIATIONS.

2. Section 4. Appropriations of federal funds.

3. 98—Public Service Commission — Motor Carrier Division

4. Acct. No. 8290

5. To Be Paid From Special Revenue Fund

<table>
<thead>
<tr>
<th>Federal Funds</th>
<th>Fiscal Year 1983-84</th>
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<tr>
<td>6 1 Personal Services</td>
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<td>7 2 Current Expenses</td>
<td>44,700</td>
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<td>8 3 Equipment</td>
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6. The purpose of this supplementary appropriation bill is
7. to supplement the aforesaid account by adding the newly
8. received above amounts of federal funds to the specified
9. items for expenditure in the current fiscal year of 1983-84.
10. Such amounts shall be available for expenditure
11. immediately upon the effective date of this bill.

CHAPTER 4
(S. B. 2—By Mr. McGraw, Mr. President)

[Passed May 19, 1984; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of the State Commission on Aging, Account No. 4060, State Board of Education—Rehabilitation Division, Account No. 4400, and the State Health Department—Maternal and Child Health, Account No. 8502, for the fiscal year ending June thirtieth, one thousand nine hundred eighty-four, as appropriated by
chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-three, known as the budget bill, and as supplemented by chapter two, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-three.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriations of Account No. 4060, Account No. 4400 and Account No. 8502, as appropriated by chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-three, known as the budget bill, and as supplemented by chapter two, acts of the Legislature, First Extraordinary Session, one thousand nine hundred eighty-three, and being prior appropriated federal funds, be supplemented, amended and transferred and with such effected items to thereafter read as follows:

1 TITLE 2. APPROPRIATIONS.

2 Section 2. Appropriations of federal funds.

3 47—State Commission on Aging

4 Acct. No. 4060

Federal Funds
Fiscal Year 1983-84

5 2 Current Expenses ......................... $ 165,622
6 7 To Local Entities ......................... 6,853,208

7 51—State Board of Education—Rehabilitation Division

8 Acct. No. 4400

9 1 Personal Services ......................... $9,585,896
10 2 Current Expenses ......................... 4,270,322
11 4 Equipment .............................. 269,077

12 Section 8. Appropriations from federal block grants.

13 139—State Health Department—
14 Maternal and Child Health

15 Acct. No. 8502

16 TO BE PAID FROM FEDERAL FUNDS
17 3 Repairs and Alterations $ 0
18 3a Equipment 25,000

19 The purpose of this supplementary appropriation bill is to supplement, amend and transfer certain moneys from one item of the existing appropriation of federal funds for current fiscal year, one thousand nine hundred eighty-four, to another newly created item or items of such appropriation for the designated spending unit, with no new moneys being appropriated hereby. The amounts as newly itemized for expenditure during such fiscal year shall be available for expenditure upon the effective date of this bill.
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, 1984

HOUSE BILLS

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