

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



Regular Session, 1974
First Extraordinary Session, 1974

BJW Printers, Beckley, W. Va.



FOREWORD

This volume contains the Acts of the West Virginia Legislature for the 1974 Regular Session and the First Extraordinary Session of 1974, and resolutions of general interest adopted during these sessions.

Regular Session, 1974

The second regular session of the 61st Legislature convened on January 9, 1974, and concluded the sixty-day constitutional session at midnight March 9. However, under proclamations of the Governor, extending the session for the purpose of passing the annual Budget Bill, final adjournment did not come until March 13, and then without passage of the Budget Bill.

Bills totaling 1,315 were introduced in the two houses during the session—765 House and 550 Senate. The Legislature passed 170 bills, 111 House and 59 Senate. The Governor approved 151 bills and vetoed 19. However, one bill vetoed (H. B. 1047, Wood County Common Pleas Court), was repassed notwithstanding the objections of the Governor. This resulted in a total of 152 bills becoming law.

There were 109 concurrent resolutions introduced during the session—66 House and 43 Senate, of which 16 House and 11 Senate were adopted. Twenty-one House Joint and 13 Senate Joint Resolutions were introduced proposing amendments to the State Constitution. Another Senate Joint Resolution provided for rescinding and annulling the action of the Legislature in ratifying the proposed amendment to the Constitution of the United States relating to equal rights for men and women.

The Legislature adopted two Joint Resolutions—HJR 12 and SJR 6—proposing a Modern Schools Amendment (providing for increasing levies for school purposes by a majority vote instead of three fifths of those voting for and against the levy) and the Judicial Reorganization Amendment, respectively. The House had 39 House Resolutions and the Senate had 29 Senate Resolutions, of which 29 House and 26 Senate were adopted.

The Senate failed to pass 64 House bills passed by the House and 60 Senate bills failed passage by the House. Two House bills (931 and 1313) and three Senate bills (85, 270 and 529) died in conference.

First Extraordinary Session, 1974

The first extraordinary session of 1974 convened on April 29, 1974, and adjourned *sine die* May 24, 1974.

There were 140 bills introduced in the two houses—69 House and 71 Senate—dealing with the 33 items of business for consideration of the Legislature set forth in the proclamation of the Governor convening the session. Six House bills were passed. The Governor approved three of the bills passed and disapproved three. The bills disapproved were H. B. 201 (authorizing issuance and sale of \$40 million of state bonds for payment of a bonus to veterans of the Vietnam War); H. B. 213 (continuation, development and extension of services for handicapped children); and H. B. 264 (providing for use of receipts from the sale of alcoholic liquors for retirement of the bonus bonds and payment of interest thereon).

During the session the House passed and sent to the Senate a total of 18 bills, 12 of which were not passed by the Senate. The Senate passed only one of its 71 bills—S. B. 27, relating to abandonment of service, operation of lines, etc., by railroads—which died in the House Committee on the Judiciary.

There were 16 concurrent resolutions introduced during the session, 10 House and 6 Senate, of which four House and two Senate, were adopted. Only one joint resolution was introduced, HJR 1. The House had seven House Resolutions and the Senate had 10 Senate Resolutions, of which six House and nine Senate were adopted.

Fifty-one House Bills (74%) were reported from House committees and one Senate Bill (1%) was reported from Senate committees. Thirty-three House Bills were left on the House Calendar upon adjournment. No bills were left on the Senate Calendar.

This volume may be purchased from the Division of Purchases, Department of Finance and Administration, State Capitol, Charleston, West Virginia 25305.

C. A. BLANKENSHIP, Clerk
House of Delegates

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MEMBERS OF THE SENATE

(MAY 24, 1974)

OFFICERS

President—W. T. Brotherton, Jr., Charleston

Clerk—Howard W. Carson, Fayetteville

Sergeant at Arms—John E. Howell, Charleston

Doorkeeper—Gerald L. Chafin, Delbarton

| District | Name | Address |
|-------------|----------------------------------------------------------|-----------------------------|
| First | • Chester R. Hubbard (R) Samuel N. Kusic (R) | Wheeling Weirton |
| Second | + William L. Gilligan (R) Roy A. Rogerson (R) | Sistersville Moundsville |
| Third | • Russell G. Beall (D) J. Frank Deem (R) | Parkersburg St. Marys |
| Fourth | + Robert F. Hatfield (D) Orton A. Jones (R) | Hurricane Spencer |
| Fifth | H. Darrel Darby (D) • Robert R. Nelson (D) | Huntington Huntington |
| Sixth | John Pat Fanning (D) • Lafe P. Ward (D) | Jaeger Williamson |
| Seventh | David E. Wallace (D) Todd C. Willis (D) | Madison Logan |
| Eighth | Marlo J. Palumbo (D) • John T. Poffenbarger (R) | Charleston Dunbar |
| Ninth | Warren R. McGraw (D) • Alan L. Susman (D) | Pineville Beckley |
| Tenth | • J. C. Dillon, Jr. (D) Odell H. Huffman (D) | Hinton Princeton |
| Eleventh | Patrick R. Hamilton (D) • Ralph D. Williams (D) | Oak Hill Rainelle |
| Twelfth | • Carl E. Gainer (D) Richard H. Benson (D) | Richwood Elkins |
| Thirteenth | • W. Walter Neeley (D) William R. Sharpe, Jr. (D) | Clarksburg Weston |
| Fourteenth | James L. Davis (D) • William A. Moreland (D) | Fairmont Morgantown |
| Fifteenth | • C. N. Harman (R) J. D. Hinkle, Jr. (R) | Grafton Buckhannon |
| Sixteenth | • Louise Leonard (R) William J. Oates, Jr. (D) | Harpers Ferry Romney |
| Seventeenth | William T. Brotherton, Jr. (D) • Si Galperin, Jr. (D) | Charleston Charleston |

1 Resigned January 11, 1974; vacancy has not been filled.

(+) Elected in 1972 for unexpired term.

(•) Elected in 1970. All others elected in 1972.

| | |
|-----------------|-----------|
| (D) Democrats | 24 |
| (R) Republicans | 10 |
| Total | 34 |

MEMBERS OF THE HOUSE OF DELEGATES

(MAY 24, 1974)

OFFICERS

Speaker—Lewis N. McManus, Beckley

Clerk—C. A. Blankenship, Pineville

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

Doorkeeper—Dannie Wingo, Yukon

| County or District | Name | Address |
|--------------------|----------------------------|---------------------|
| Barbour | Gary L. Everson (R) | Belington |
| Boone | Thomas G. Goodwin (D) | Seth |
| | Ivan White (D) | Madison |
| | Rodney B. Belknap (D) | Gassaway |
| Braxton | Charles Donley (D) | Wellsburg |
| Brooke | Pamela Sue Shuman (D) | Wellsburg |
| Cabell | Roy A. Edwards, Jr. (R) | Huntington |
| | Hugh A. Kincaid (D) | Huntington |
| | Charles M. Polan, Jr. (D) | Huntington |
| | G. Michele Prestera (D) | Huntington |
| | Charles E. Romine, Jr. (R) | Huntington |
| | Jody G. Smirl (R) | Huntington |
| Clay | Robert Reed (D) | Clay |
| Fayette | Carroll E. Bumgarner (D) | Oak Hill |
| | T. E. Myles (D) | Fayetteville |
| | Adam Toney (D) | Oak Hill |
| Hampshire | James B. Cookman (D) | Romney |
| Hancock | Gust G. Brenda, Jr. (D) | Weirton |
| | Kim Bryan Carey (D) | Weirton |
| Harrison | Gino R. Colombo (D) | Nutter Fort |
| | Michael D. Greer (R) | Salem |
| | Donald Lee Kopp (D) | Clarksburg |
| | John F. McCuskey (R) | Clarksburg |
| | William F. Carmichael (R) | Ripley |
| Jackson | James M. Moler (D) | Charles Town |
| Jefferson | James E. Copenhaver (R) | Elkview |
| Kanawha | W. C. Field (R) | Charleston |
| | Lucille E. Gillispie (R) | Cendenin |
| | Phyllis E. Given (D) | Charleston |
| | Jean S. Holt (R) | Charleston |
| | James C. Jeter (R) | Charleston |
| | Cleo S. Jones (R) | Charleston |
| | Leo G. Kopelman (R) | East Bank |
| | Louie A. Paterno, Jr. (R) | Charleston |
| | Thomas E. Potter (R) | Charleston |
| | Phyllis J. Rutledge (D) | Charleston |
| | Roland Savilla (D) | St. Albans |
| | Leonard I. Underwood (D) | St. Albans |
| | Paul Zakaib, Jr. (R) | Charleston |
| | Lewis | Fred L. Mulneix (R) |
| Lincoln | H. Leon Hager (D) | Hamlin |
| Logan | Charles Gilliam (D) | Logan |
| | Thomas W. Mathis (D) | Logan |
| | Ervin S. Queen (D) | Logan |
| Marion | William M. Hawkins (R) | Fairmont |
| | Paul E. Prunty (R) | Fairmont |
| | William E. Shingleton (D) | Fairmont |
| Marshall | Robert C. Polen (R) | Moundsville |
| | Dan R. Tonkovich (D) | Benwood |
| Mason | R. Michael Shaw (R) | Point Pleasant |
| McDowell | Ronnie McKenzie (D) | Roderfield |
| | Ernest C. Moore (D) | Thorpe |
| | Harry R. Pauley (D) | Jaeger |
| | T. J. Scott (D) | Welch |

¹ Appointed January 30, 1974, to fill the vacancy caused by the resignation of Mino R. D'Aurora.

HOUSE OF DELEGATES

XV

| County or District | Name | Address |
|--------------------------------------------------|--------------------------------------|------------------|
| Mercer..... | Clarence C. Christian, Jr. (D) | Princeton |
| | Charles E. Lohr (D) | Princeton |
| | William P. Stafford (R) | Princeton |
| | Tony E. Whitlow (D) | Princeton |
| Mineral..... | Robert D. Harman (R) | Keyser |
| Mingo..... | Joe W. Hatfield (D) | Gilbert |
| | R. Doyle Van Meter, II. (D) | Williamson |
| Monongalia..... | Robert W. Dinsmore (D) | Morgantown |
| | Terry T. Jones (R) | Morgantown |
| | Robert B. Stone (R) | Morgantown |
| Monroe..... | W. Marion Shifflet (D) | Union |
| Nicholas..... | Larry A. Tucker (D) | Summersville |
| Ohio..... | James E. Altmeyer (R) | Wheeling |
| | Judith A. Herndon (R) | Wheeling |
| | ³ Michael J. Moyle (R) | Wheeling |
| | George H. Seibert, Jr. (R) | Wheeling |
| Preston..... | James W. Teets (R) | Terra Alta |
| Putnam..... | Raymond Peak (D) | Hurricane |
| Raleigh..... | Lewis N. McManus (D) | Beckley |
| | Mary Martha Merritt (D) | Beckley |
| | Ted T. Stacy (D) | Beckley |
| | Mrs. W. W. Withrow (D) | Beckley |
| Randolph..... | Earl H. Stalnaker (D) | Elkins |
| Roane..... | Orton R. Karickhoff (R) | Spencer |
| Summers..... | ⁴ C. D. Hylton, III (R) | Hinton |
| Taylor..... | Samuel A. Morasco (D) | Grafton |
| Upshur..... | Charles R. Shaffer (R) | Buckhannon |
| Wayne..... | ⁵ Clayton C. Davidson (D) | Huntington |
| | Walter Rollins (D) | Kenova |
| Webster..... | A. L. Sommerville, Jr. (D) | Webster Springs |
| Wetzel..... | Joseph M. Ballouz (D) | New Martinsville |
| Wood..... | J. C. Butcher (R) | Parkersburg |
| | Calvin A. Calendine (R) | Parkersburg |
| | Gene A. Haynes (R) | Parkersburg |
| | James M. McCutcheon (R) | Parkersburg |
| | C. E. Allen (D) | Mullens |
| Wyoming..... | Charles R. Cline (D) | Pineville |
| 1st District Berkeley, Morgan..... | Wallace L. Files (R) | Martinsburg |
| | Luke E. Terry (R) | Martinsburg |
| 2nd District Grant, Tucker..... | Larkin B. Ours (R) | Dorcas |
| 3rd District Hardy, Pendleton..... | Thomas J. Hawse (D) | Moorefield |
| 4th District Greenbrier, Pocahontas..... | Frank E. Jolliffe (D) | Lewisburg |
| | Sarah Lee Neal (D) | Rainelle |
| 5th District Doddridge, Tyler..... | Larry D. Swann (R) | Salem |
| 6th District Pleasants, Ritchie..... | Harry E. Moats (R) | Harrisville |
| 7th District Calhoun, Gilmer, Wirt..... | Billy Brown Burke (D) | Glenville |

²Appointed January 8, 1974, to fill the vacancy caused by the resignation of Fred A. Grewe, Jr.

³Appointed May 15, 1974, to fill the vacancy caused by the resignation of the Honorable George F. Beneke.

⁴Appointed April 27, 1974, to fill the vacancy caused by the death of the Honorable James E. Meadows.

⁵Resigned March 31, 1974.

| | |
|-----------------|------------|
| (D) Democrats | 57 |
| (R) Republicans | 43 |
| Total | 100 |

STANDING COMMITTEES OF THE SENATE

(May 24, 1974)

AGRICULTURE

Beall (*Chairman*), Susman (*Vice Chairman*), Dillon, Gainer, Hatfield, Neeley, Oates, Williams, Jones, Leonard and Rogerson.

CONFIRMATIONS

Benson (*Chairman*), Dillon (*Vice Chairman*), Darby, Davis, Galperin, Hamilton, Ward, Willis, Gilligan, Harman, Leonard and Rogerson.

EDUCATION

Nelson (*Chairman*), Willis (*Vice Chairman*), Beall, Benson, Dillon, Galperin, McGraw, Oates, Sharpe, Deem, Gilligan, Hubbard, Jones and Poffenbarger.

ELECTIONS

Williams (*Chairman*), McGraw (*Vice Chairman*), Galperin, Hamilton, Huffman, Moreland, Nelson, Palumbo, Deem, Jones and Leonard.

FINANCE

Fanning (*Chairman*), Susman (*Vice Chairman*), Beall, Darby, Dillon, Gainer, Galperin, Huffman, McGraw, Neeley, Sharpe, Williams, Willis, Gilligan, Harman, Hinkle, Leonard and Rogerson.

HEALTH

Darby (*Chairman*), Galperin, Hatfield, Moreland, Sharpe, Harman, Jones and Leonard.

INSURANCE AND CORPORATIONS

Neeley (*Chairman*), Williams (*Vice Chairman*), Benson, Hamilton, Huffman, Moreland, Oates, Susman, Ward, Deem, Kusic, Poffenbarger and Rogerson.

INTERSTATE COOPERATION

Gainer (*Chairman*), Moreland (*Vice Chairman*), Neeley, Nelson, Susman, Harman and Poffenbarger. (The President is a nonvoting member.)

JUDICIARY

Palumbo (*Chairman*), Oates (*Vice Chairman*), Benson, Davis, Gainer, Hamilton, Hatfield, Moreland, Neeley, Nelson, Ward, Willis, Deem, Hubbard, Jones, Kusic and Poffenbarger.

LABOR

Oates (*Chairman*), Sharpe (*Vice Chairman*), Darby, Dillon, Huffman, Ward, Harman, Kusic and Leonard.

LOCAL GOVERNMENT

Galperin (*Chairman*), Huffman (*Vice Chairman*), Benson, Dillon, Moreland, Willis, Hinkle, Kusic and Poffenbarger.

MILITARY

Moreland (*Chairman*), Neeley (*Vice Chairman*), Davis, Hatfield, McGraw, Williams, Harman, Hinkle and Poffenbarger.

MINES AND MINING

Susman (*Chairman*), Fanning (*Vice Chairman*), Benson, Gainer, Hamilton, Williams, Willis, Deem and Kusic.

NATURAL RESOURCES

Gainer (*Chairman*), Benson (*Vice Chairman*), Beall, Dillon, Fanning, Galperin, McGraw, Oates, Palumbo, Susman, Willis, Deem, Hubbard, Kusic and Rogerson.

PUBLIC INSTITUTIONS

Sharpe (*Chairman*), Hatfield (*Vice Chairman*), Darby, Davis, McGraw, Nelson, Gilligan, Harman, Hinkle and Leonard.

RULES

Brotherton (*ex officio Chairman*), Fanning, Gainer, Moreland, Palumbo, Susman, Ward, Deem, Hubbard and Poffenbarger.

TRANSPORTATION

Dillon (*Chairman*), Hamilton (*Vice Chairman*), Beall, Davis, Gainer, Huffman, Neeley, Nelson, Palumbo, Sharpe, Williams, Deem, Gilligan, Hinkle, Jones, Poffenbarger and Rogerson.

JOINT COMMITTEES**ENROLLED BILLS**

Darby (*Chairman*), Davis (*Vice Chairman*), Beall, Leonard and Rogerson.

GOVERNMENT AND FINANCE

Brotherton (*ex officio Chairman*), Fanning, Palumbo, Sharpe, Ward, Deem and Hubbard.

JOINT RULES

Brotherton (*ex officio Chairman*), Ward and Hubbard.

PURCHASING PRACTICES AND PROCEDURES COMMISSION

Brotherton (*Chairman*), McGraw, Nelson, Harman and Hubbard.

**STANDING COMMITTEES OF THE
HOUSE OF DELEGATES**

(May 24, 1974)

AGRICULTURE AND NATURAL RESOURCES

Hawse (*Chairman*), Ballouz (*Vice Chairman*), Belknap, Brenda, Bumgarner, Cline, Gilliam, Goodwin, Merritt, Neal, Shiflet, White, Whitlow, Withrow, Van Meter, Butcher, Everson, Files, McCuskey, McCutcheon, Mulneix, Ours, Polen, Prunty and Swann.

BANKING AND INSURANCE

Hager (*Chairman of Banking*), Cookman (*Chairman of Insurance*), Shingleton (*Vice Chairman*), Bumgarner, Burke, Cline, Hawse, Myles, Peak, Reed, Rutledge, Scott, Shiflet, Tucker, Van Meter, Calendine, Carmichael, Gillispie, Hawkins, Karickhoff, Paterno, Romine, Teets and Zakaib.

CONSTITUTIONAL REVISION

Tucker (*Chairman*), Jolliffe (*Vice Chairman*), Ballouz, Bumgarner, Carey, Colombo, Dinsmore, Donley, Hatfield, Morasco, Rollins, Savilla, Sommerville, Stalnaker, Underwood, Altmeyer, Field, Copenhaver, Holt, Jones (Kanawha), McCuskey, Mulneix, Potter, Smirl and Stone.

EDUCATION

Lohr (*Chairman*), Given (*Vice Chairman*), Allen, Ballouz, Carey, Donley, Goodwin, McKenzie, Neal, Peak, Polen, Shiflet, Stacy, Tonkovich, Van Meter, Calendine, Edwards, Everson, Greer, Harman, Holt, Jones (Monongalia), Karickhoff and Shaffer.

FINANCE

Pauley (*Chairman*), Colombo (*Vice Chairman*), Belknap, Brenda, Cookman, Hager, Kincaid, Mathis, Moler, Morasco, Reed, Savilla, Toney, Whitlow, Withrow, Butcher, Herndon, Kopelman, McCutcheon, Ours, Paterno, Romine, Stafford, Teets and Terry.

HEALTH AND WELFARE

Withrow (*Chairman*), Moore (*Vice Chairman*), Bumgarner, Burke, Cline, Lohr, Neal, Peak, Queen, Rutledge, Shuman, Stacy, Stalnaker, Tonkovich, White, Calendine, Edwards, Field, Gillispie, Greer, Jeter, McCuskey, Moats, Paterno and Shaffer.

INDUSTRY AND LABOR

Kopp (*Chairman*), Rutledge (*Vice Chairman*), Allen, Carey, Christian, Colombo, Gilliam, Given, Hatfield, McKenzie, Moore, Morasco, Polan, Prester, White, Carmichael, Copenhaver, Harman, Hawkins, Jeter, Kopelman, McCutcheon, Shaffer and Stafford.

INTERSTATE COOPERATION

Kopp (*Chairman*), Cookman, Hawse, Queen, Harman, Mulneix and Potter. (The Speaker is a nonvoting member.)

JUDICIARY

Sommerville (*Chairman*), Queen (*Vice Chairman*), Christian, Cline, Dinsmore, Jolliffe, Kopp, Merritt, Moore, Myles, Prester, Scott, Shingleton, Tucker, Underwood, Field, Jones (Kanawha), Moats, Mulneix, Polen, Potter, Shaw, Smirl, Stone and Zakaib.

POLITICAL SUBDIVISIONS

Dinsmore (*Chairman*), Merritt (*Vice Chairman*), Hatfield, Kincaid, Mathis, McKenzie, Moler, Polan, Shingleton, Shuman, Stacy, Stalnaker, Toney, Underwood, Altmeyer, Gillispie, Carmichael, Hawkins, Haynes, Herndon, Hylton, Stone, Teets and Terry.

ROADS AND TRANSPORTATION

Goodwin (*Chairman*), Donley (*Vice Chairman*), Allen, Christian, Gilliam, Hager, Hatfield, Hawse, Mathis, Prester, Rutledge, Savilla, Shuman, Stalnaker, Copenhaver, Files, Haynes, Herndon, Hylton, Karickhoff, Jones (Monongalia), Moats, Prunty and Swann.

RULES

McManus (*Chairman*), Burke, Kopp, Lohr, Myles, Shiflet, Sommerville, Jones (Kanawha), Ours, Polen, Potter and Seibert.

STATE AND FEDERAL AFFAIRS

Scott (*Chairman*), Whitlow (*Vice Chairman*), Belknap, Colombo, Dinsmore, Gilliam, Jolliffe, Kincaid, McKenzie, Moler, Polan, Reed, Rollins, Sommerville, Tonkovich, Files, Haynes, Holt, Hylton, Jeter, Prunty, Shaw, Smirl, Swann and Zakaib.

HOUSE COMMITTEES

JOINT COMMITTEES

ENROLLED BILLS

Christian (*Chairman*), McKenzie, Neal, Smirl and Swann.

GOVERNMENT AND FINANCE

McManus (*ex officio Chairman*), Lohr, Myles, Pauley, Somerville, Ours and Seibert.

JOINT RULES

McManus (*ex officio Chairman*), Myles and Seibert.

SELECT COMMITTEE ON REDISTRICTING

Cline (*Chairman*), Kincaid (*Vice Chairman*), Belknap, Brenda, Burke, Cookman, Given, Kopp, Lohr, Merritt, Pauley, Queen, Rollins, Toney, Tucker, Altmeyer, Butcher, Harman, Jones (Kanawha), Jones (Monongalia), Ours, Polen, Potter, Romine and Terry.

PURCHASING PRACTICES AND PROCEDURES COMMISSION

McManus (*Cochairman*), Cline, Myles, Butcher and Seibert.

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LEGISLATURE OF WEST VIRGINIA

ACTS

REGULAR SESSION, 1974

CHAPTER 1

(H. B. 849—By Mr. Hawse and Mr. Ours)

[Passed March 9, 1974; in effect July 1, 1974. Approved by the Governor.]

AN ACT to repeal article fifteen, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to enact in lieu thereof a new article fifteen of said chapter, relating to commercial fertilizer; definitions; requiring fertilizer to be registered; requiring labels and inspections; fees therefor; requiring tonnage reports; requiring inspection, sampling and analysis; plant food deficiency; prohibiting misbranding and adulteration; requiring certain publications; rules and regulations; short weight; cancellations of registrations and hearings thereon; "stop sale" orders; seizure, condemnation and sale; exchanges between manufacturers; disposition of registration; inspection; penalty fees; powers of courts of competent jurisdiction; duty of prosecuting attorneys; and penalties for violation.

Be it enacted by the Legislature of West Virginia:

That article fifteen, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed, and that a new article fifteen of said chapter be enacted in lieu thereof, to read as follows:

ARTICLE 15. WEST VIRGINIA FERTILIZER LAW.

- §19-15-1. Definitions of words and terms.
- §19-15-2. Registration.
- §19-15-3. Labels.

- §19-15-4. Inspection fees.
- §19-15-5. Tonnage reports.
- §19-15-6. Inspection, sampling and analysis.
- §19-15-7. Plant food deficiency.
- §19-15-8. Commercial value.
- §19-15-9. Misbranding.
- §19-15-10. Adulteration.
- §19-15-11. Publications.
- §19-15-12. Rules and regulations.
- §19-15-13. Short weight.
- §19-15-14. Cancellation of registrations.
- §19-15-15. "Stop sale" orders.
- §19-15-16. Seizure, condemnation and sale.
- §19-15-17. Violations.
- §19-15-18. Exchanges between manufacturers.
- §19-15-19. Expenditure of registration, inspection and penalty fees.
- §19-15-20. Constitutionality.
- §19-15-21. Repeal.

§19-15-1. Definitions of words and terms.

- 1 (a) "Brand" means a term, design or trademark used in
2 connection with one or several grades of commercial fertilizer.
- 3 (b) "Bulk fertilizer" means a commercial fertilizer dis-
4 tributed in a nonpackaged form.
- 5 (c) "Commercial fertilizer" means any substance contain-
6 ing one or more recognized plant nutrients which is used
7 for its plant nutrient content and which is designed for use
8 or claimed to have value in promoting plant growth, except
9 unmanipulated animal and vegetable manures, marl, lime,
10 limestone, wood ashes and gypsum, and other products ex-
11 empted by regulation of the commissioner.
- 12 (d) "Commissioner" means the commissioner of agricul-
13 ture of the state of West Virginia or his duty authorized
14 agent.
- 15 (e) "Department" means the department of agriculture of
16 the state of West Virginia.
- 17 (f) "Distributor" means any person who imports, con-
18 signs, manufactures, produces, compounds, mixes or blends
19 commercial fertilizer, or who offers for sale, sells, barter or
20 otherwise supplies commercial fertilizer in this state.

21 (g) "Fertilizer material" means a commercial fertilizer
22 which either:

23 (1) Contains important quantities of no more than one
24 of the primary plant nutrients (nitrogen, phosphoric acid
25 and potash), or

26 (2) Has approximately eighty-five percent of its plant
27 nutrient content present in the form of a single chemical
28 compound, or

29 (3) Is derived from a plant or animal residue or by-
30 product or a natural material deposit which has been processed
31 in such a way that its content of primary plant nutrients
32 has not been materially changed except by purification and
33 concentration.

34 (h) "Grade" means the percentage of total nitrogen, avail-
35 able phosphorus or phosphoric acid, and soluble potassium
36 or soluble potash stated in whole numbers in the same terms,
37 order and percentages as in the guaranteed analysis: *Provided,*
38 That fertilizer materials, bone meal, manures and similar raw
39 materials may be guaranteed in fractional units.

40 (i) "Guaranteed analysis" means the minimum percentage
41 of plant nutrients claimed in the following order and form:

| | | | | |
|----|-----|-----------------------------------------------------------------|-------|---------|
| 42 | (1) | Total nitrogen (N) | _____ | percent |
| 43 | | Available phosphoric acid (P ₂ O ₅)..... | _____ | percent |
| 44 | | Soluble potash (K ₂ O) | _____ | percent |

45 (2) For unacidulated mineral phosphatic materials and
46 basic slag, bone, tankage and other organic phosphate
47 materials, the total phosphoric acid or degree of fineness may
48 also be guaranteed.

49 (3) Guarantees for plant nutrients other than nitrogen,
50 phosphorus and potassium may be permitted or required by
51 regulation of the commissioner. The guarantees for such
52 other nutrients shall be expressed in the form of the element.
53 The sources of such other nutrients (oxides, salt, chelates, etc.)
54 may be required to be stated on the application for registra-
55 tion and may be included as a parenthetical statement on the
56 label. Other beneficial substances or compounds, determinable
57 by laboratory methods, also may be guaranteed by permission

58 of the commissioner. When any plant nutrients or other sub-
 59 stances or compounds are guaranteed, they shall be subject
 60 to inspection and analysis in accord with the methods and
 61 regulations prescribed by the commissioner.

62 (4) Potential basicity and acidity expressed in terms of
 63 calcium carbonate equivalent in multiples of one hundred
 64 pounds per ton, when required by regulation, or

65 (5) When the commissioner finds that the requirements
 66 for expressing the guaranteed analysis of phosphorus and
 67 potassium in elemental form would not impose an economic
 68 hardship on distributors and users of fertilizer by reason of
 69 conflicting labeling requirements among the states, he may
 70 require by regulation thereafter that the "guaranteed analysis"
 71 shall be in the following form:

| | | |
|----|--------------------------------|---------------|
| 72 | Total nitrogen (N) | _____ percent |
| 73 | Available phosphorus (P) | _____ percent |
| 74 | Soluble potassium (K) | _____ percent |

75 *Provided*, That the effective date of said regulation shall not
 76 be less than six months following the issuance thereof:
 77 *Provided, however*, That for a period of two years following
 78 the effective date of said regulation the equivalent of phos-
 79 phorus and potassium may also be shown in the form of
 80 phosphoric acid and potash: *Provided further*, That after the
 81 effective date of a regulation issued under the provisions of
 82 this section, requiring that phosphorus and potassium be
 83 shown in the elemental form, the guaranteed analysis for
 84 nitrogen, phosphorus and potassium shall constitute the grade.

85 (j) "Investigational allowance" means an allowance for
 86 variations inherent in taking, preparation and analysis of an
 87 official sample of commercial fertilizer.

88 (k) "Label" means the display of all written, printed or
 89 graphic matter upon the immediate container or statement
 90 accompanying a commercial fertilizer.

91 (l) "Labeling" means all written, printed or graphic matter,
 92 upon or accompanying any commercial fertilizer, or adver-
 93 tisements, brochures, posters, television and radio announce-
 94 ments used in promoting the sale of such commercial
 95 fertilizers.

- 96 (m) "Mixed fertilizer" means a commercial fertilizer con-
97 taining any combination or mixture of fertilizer materials.
- 98 (n) "Official sample" means any sample of commercial
99 fertilizer taken by the commissioner or his agent and desig-
100 nated as "official" by the commissioner.
- 101 (o) "Percent" means the percentage by weight.
- 102 (p) "Person" means an individual, partnership, associa-
103 tion, firm or corporation.
- 104 (q) "Registrant" means the person who registers com-
105 mercial fertilizer under the provisions of this article.
- 106 (r) "Specialty fertilizer" means a commercial fertilizer
107 distributed primarily for nonfarm use, such as home gardens,
108 lawns, shrubbery, flowers, golf courses, municipal parks,
109 cemeteries, greenhouses and nurseries.
- 110 (s) "Ton" means a net weight of two thousand pounds
111 avoirdupois.

§19-15-2. Registration.

1 (a) Each brand and grade of commercial fertilizer shall be
2 registered before being distributed in this state. The application
3 for registration shall be submitted to the commissioner on
4 forms furnished or approved by the commissioner, and shall
5 be accompanied by a fee of one dollar per brand and grade,
6 except that those fertilizers sold in packages of ten pounds
7 or less shall be registered at a fee of ten dollars each.
8 Upon approval by the commissioner a copy of the registration
9 shall be furnished to the applicant.

10 All registrations expire on the thirtieth day of June of the
11 following year.

12 The application shall include the following information:

- 13 (1) The net weight;
14 (2) The brand and grade;
15 (3) The guaranteed analysis; and
16 (4) The name and address of the registrant.
- 17 (b) A distributor shall not be required to register any

18 commercial fertilizer which is already registered under this
19 article by another person, providing the label does not differ
20 in any respect.

21 (c) A distributor shall not be required to register each
22 grade of commercial fertilizer formulated according to speci-
23 fications which are furnished by a consumer prior to mixing,
24 but shall be required to register his firm in a manner and at a
25 fee as prescribed in the regulations by the commissioner and
26 to label such fertilizer as provided in subsection (b), section
27 three of this article.

§19-15-3. Labels.

1 (a) Any commercial fertilizer distributed in this state in
2 containers shall have placed on or affixed to the container a
3 label setting forth in clearly legible and conspicuous form the
4 information required by subdivisions (1), (2), (3) and (4),
5 subsection (a), section two of this article. In case of bulk ship-
6 ments, this information in written or printed form shall ac-
7 company delivery and be supplied to the purchaser at time of
8 delivery.

9 (b) A commercial fertilizer formulated according to speci-
10 fications which are furnished by a consumer prior to mixing
11 shall be labeled to show the net weight, guaranteed analysis,
12 and the name and address of the distributor.

§19-15-4. Inspection fees.

1 (a) There shall be paid to the commissioner for all commer-
2 cial fertilizers distributed in this state an inspection fee at the
3 rate of twenty cents per ton: *Provided*, That sales to manufac-
4 turers or exchanges between them are hereby exempted. Fees
5 so collected shall be used for the payment of the costs of in-
6 spection, sampling and analysis, and other expenses necessary
7 for the administration of this article.

8 On individual packages of commercial fertilizer containing
9 ten pounds or less, there shall be paid in lieu of the twenty cents
10 per ton inspection fee, an inspection fee of ten dollars
11 for each brand and grade sold or distributed. Where a person
12 sells commercial fertilizer in packages over ten pounds the in-
13 spection fee of ten dollars shall apply only to that por-

14 tion sold in packages of ten pounds or less, and that por-
15 tion sold in packages over ten pounds shall be subject to the
16 same inspection fee of twenty cents per ton as provided in this
17 article.

18 (b) Every person who distributes a commercial fertilizer in
19 this state shall:

20 File with the commissioner on forms furnished or approved
21 by the commissioner a quarterly statement for the periods end-
22 ing on the thirtieth day of September, the thirty-first day
23 of December, the thirty-first day of March and the thirtieth
24 day of June, setting forth the number of net tons of each
25 commercial fertilizer distributed in this state during such
26 quarter. The report shall be due on or before the thirtieth
27 day of the month following the close of each quarter and upon
28 such statement shall pay the inspection fee at the rate stated
29 in subsection (a) of this section.

30 If the tonnage report is not filed and the payment of in-
31 spection fee is not made within thirty days after the end of the
32 quarter, a collection fee amounting to ten percent of the
33 amount shall be assessed against the registrant, and the
34 amount of fees due shall constitute a debt and become the
35 basis of a judgment against the registrant.

36 (c) When more than one person is involved in the distribu-
37 tion of a commercial fertilizer, the last person who has the
38 fertilizer registered and who distributes to a nonregistrant
39 (dealer or consumer) is responsible for reporting the tonnage
40 and paying the inspection fee, unless the report and payment
41 is made by a prior distributor of a fertilizer.

§19-15-5. Tonnage reports.

1 The person transacting, distributing or selling commercial
2 fertilizer to a nonregistrant shall mail the commissioner a
3 report showing the county of the consignee, the amounts
4 (tons) of each grade of commercial fertilizer, and the form
5 in which the fertilizer was distributed (bags, bulk, liquid,
6 etc.). This information shall be reported by one of the fol-
7 lowing methods: (a) Submitting a summary report approved
8 by the commissioner on or before the fifteenth day of each
9 month covering shipments made during the preceding month;

10 or (b) submitting a copy of the invoice within five business
11 days after shipment. No information furnished the commis-
12 sioner under this section shall be disclosed in such a way
13 as to divulge the operation of any person.

§19-15-6. Inspection, sampling and analysis.

1 (a) It shall be the duty of the commissioner, who may act
2 through his authorized agent, to sample, inspect, make analyses
3 of, and test commercial fertilizers distributed within this state at
4 any time and place and to such an extent as he may deem
5 necessary to determine whether such commercial fertilizers are
6 in compliance with the provisions of this article. The com-
7 missioner individually or through his agent is authorized to
8 enter upon any public or private premises or carriers during
9 regular business hours in order to have access to commercial
10 fertilizers subject to the provisions of this article and the
11 rules and regulations pertaining thereto, and to the records
12 relating to their distribution.

13 (b) The methods of analysis and sampling to determine
14 plant food deficiencies in fertilizer shall use the tolerances estab-
15 lished by the Association of American Plant Food Control Of-
16 ficials and the Association of Analytical Chemists.

17 (c) The commissioner, in determining for administrative
18 purposes whether any commercial fertilizer is deficient in plant
19 food, shall be guided solely by the official sample as defined in
20 subsection (n), section one of this article, and obtained and
21 analyzed as provided for in subsection (b) of this section.

22 (d) The results of official analysis of commercial fertilizers
23 and portions of official samples, shall be distributed by the
24 commissioner as provided in the regulations.

§19-15-7. Plant food deficiency.

1 (a) *Penalty for nitrogen, available phosphoric acid or phos-*
2 *phorus and potash or potassium.*—If the analysis shall show
3 that a commercial fertilizer is deficient in one or more of its
4 guaranteed primary plant foods (NPK) beyond the “investiga-
5 tional allowances” as established by regulation, or if the over-
6 all index value of the fertilizer is below the level established
7 by regulation, a penalty of three times the commercial value
8 of such deficiency shall be assessed.

9 (b) *Penalty for other deficiencies.*—Deficiencies beyond
10 the investigational allowances as established by regulation in
11 any other constituent, which the registrant is required to or
12 may guarantee, shall be evaluated and penalties prescribed
13 therefor by the commissioner.

14 (c) Nothing contained in this section shall prevent any
15 person from appealing to a court of competent jurisdiction
16 praying for judgment as to the justification of such penalties.

17 (d) All penalties assessed under this section shall be paid
18 to the consumer of the lot of commercial fertilizer represented
19 by the sample analyzed within three months after the date of
20 notice from the commissioner to the registrant, receipts taken
21 therefor and promptly forwarded to the commissioner. If said
22 consumers cannot be found, the amount of penalty shall be
23 paid to the commissioner who shall deposit the same in the
24 department of agriculture's fees account.

§19-15-8. Commercial value.

1 For the purpose of determining the commercial values to be
2 applied under the provisions of section seven of this article,
3 the commissioner shall determine and publish annually the
4 values per unit of nitrogen, available phosphoric acid and
5 soluble potash in commercial fertilizers in this state.

§19-15-9. Misbranding.

1 No person shall distribute misbranded fertilizer. A commer-
2 cial fertilizer shall be deemed to be misbranded:

3 (a) If its label is false or misleading in any particular;

4 (b) If it is distributed under the name of another fertilizer
5 product;

6 (c) If it is not labeled as required in section three of this
7 article and in accordance with regulations prescribed under
8 this article; or

9 (d) If it purports to be or is represented as a commercial
10 fertilizer, or is represented as containing a plant nutrient or
11 commercial fertilizer unless such plant nutrient or commercial
12 fertilizer conforms to the definition of identity, if any, pre-
13 scribed by regulation of the commissioner; in the adopting of

14 such regulations the commissioner shall give regard to com-
15 monly accepted definitions and official fertilizer terms such as
16 those issued by the association of american plant food control
17 officials.

§19-15-10. Adulteration.

1 No person shall distribute an adulterated fertilizer product.
2 A commercial fertilizer shall be deemed to be adulterated:

3 (a) If it contains any deleterious or harmful ingredient in
4 sufficient amount to render it injurious to beneficial plant life
5 when applied in accordance with directions for use on the
6 label, or if adequate warning statements or directions for use,
7 which may be necessary to protect plant life are not shown up-
8 on the label;

9 (b) If its composition falls below or differs from that which
10 it is purported to possess by its labeling; or

11 (c) If it contains unwanted crop seed or weed seed.

§19-15-11. Publications.

1 The commissioner shall publish at least annually and in
2 such forms as he may deem proper: (a) Information concern-
3 ing the distribution of commercial fertilizers; and (b) results
4 of analyses based on official samples of commercial fertilizers
5 distributed within the state as compared with the analyses
6 guaranteed under sections two and three of this article.

§19-15-12. Rules and regulations.

1 The commissioner is authorized to prescribe and, after a
2 public hearing following due public notice, to enforce such
3 rules and regulations relating to investigational allowances,
4 definitions, records, and the distribution of commercial ferti-
5 lizers as may be necessary to carry into effect the full intent
6 and meaning of this article.

§19-15-13. Short weight.

1 If any commercial fertilizer in the possession of the con-
2 sumer is found by the commissioner to be short in weight, the
3 registrant of said commercial fertilizer shall within thirty days

4 after official notice from the commissioner pay to the con-
5 sumer a penalty equal to four times the value of the actual
6 shortage.

§19-15-14. Cancellation of registrations.

1 The commissioner is authorized and empowered to cancel
2 the registration of any brand of commercial fertilizer or to
3 refuse to register any brand of commercial fertilizer as
4 herein provided, upon satisfactory evidence that the registrant
5 has used fraudulent or deceptive practices in the evasions or
6 attempted evasions of the provisions of this article or any
7 rules and regulations promulated thereunder: *Provided*, That
8 no registration shall be revoked or refused until the registrant
9 shall have been given the opportunity to appear for a hearing
10 conducted by the commissioner.

§19-15-15. "Stop sale" orders.

1 The commissioner may issue and enforce a written or
2 printed "stop sale, use or removal" order to the owner or
3 custodian of any lot of commercial fertilizer and to hold at
4 a designated place when the commissioner finds said com-
5 mercial fertilizer is being offered or exposed for sale in
6 violation of any of the provisions of this article until the
7 law has been complied with and said commercial fertilizer is
8 released in writing by the commissioner, or said violation has
9 been otherwise legally disposed of by written authority. The
10 commissioner shall release the commercial fertilizer so with-
11 drawn when the requirements of the provisions of this article
12 have been complied with and all costs and expenses incurred
13 in connection with the withdrawal have been paid.

§19-15-16. Seizure, condemnation and sale.

1 Any lot of commercial fertilizer not in compliance with the
2 provisions of this article shall be subject to seizure on com-
3 plaint of the commissioner to a court of competent jurisdiction
4 in the area in which said commercial fertilizer is located. In the
5 event the court finds the said commercial fertilizer to be in
6 violation of this article and orders the condemnation of said
7 commercial fertilizer it shall be disposed of in any manner
8 consistent with the quality of the commercial fertilizer and

9 the laws of the state: *Provided*, That in no instance shall the
10 disposition of said commercial fertilizer be ordered by the court
11 without first giving the claimant an opportunity to apply to
12 the court for release of said commercial fertilizer or for
13 permission to process or relabel said commercial fertilizer
14 to bring it into compliance with this article.

§19-15-17. Violations.

1 (a) If it shall appear from the examination of any com-
2 mercial fertilizer that any of the provisions of this article or
3 the rules and regulations issued thereunder have been violated,
4 the commissioner shall cause notice of the violation to be given
5 to the registrant, distributor or possessor from whom said
6 sample was taken; any person so notified shall be given an
7 opportunity to be heard under such rules and regulations as
8 may be prescribed by the commissioner. If it appears after
9 such hearing, either in the presence or absence of the person
10 so notified, that any of the provisions of this article or rules
11 and regulations issued thereunder have been violated, the
12 commissioner is hereby authorized to prosecute in any court
13 of competent jurisdiction any person violating the provisions
14 of this article.

15 (b) Any person convicted of violating any provisions of this
16 article or the rules and regulations issued thereunder shall be
17 guilty of a misdemeanor, and, upon conviction thereof, shall be
18 fined not less than one hundred dollars nor more than two
19 hundred dollars for the first offense and not less than two
20 hundred dollars nor more than five hundred dollars for each
21 subsequent offense.

22 (c) Nothing in this article shall be construed as requiring
23 the commissioner or his agent to report for prosecution or for
24 the institution of seizure proceedings as a result of minor vio-
25 lations of the article when he believes that the public interest
26 will be best served by a suitable notice of warning in writing.

27 (d) It shall be the duty of each prosecuting attorney to
28 whom any violation is reported to cause appropriate proceed-
29 ings to be instituted and prosecuted in a court of competent
30 jurisdiction without delay.

31 (e) The commissioner is hereby authorized to apply for and
32 the court to grant a temporary or permanent injunction re-
33 straining any person from violating or continuing to violate
34 any of the provisions of this article or any rule or regulation
35 promulgated under the article notwithstanding the existence of
36 other remedies at law. Said injunction to be issued without
37 bond.

§19-15-18. Exchanges between manufacturers.

1 Nothing in this article shall be construed to restrict or avoid
2 sales or exchanges of commercial fertilizers to each other by
3 importers, manufacturers or manipulators who mix fertilizer
4 materials for sale or as preventing the free and unrestricted
5 shipments of commercial fertilizer to manufacturers or manipu-
6 lators who have registered their brands as required by the pro-
7 visions of this article.

§19-15-19. Expenditure of registration, inspection and penalty fees.

1 All registration, inspection and such penalty fees not paid
2 to the consumer shall be deposited in a special account with
3 the state treasurer and shall be expended on order of the
4 commissioner.

§19-15-20. Constitutionality.

1 If any clause, sentence, paragraph or part of this article
2 shall for any reason be judged invalid by any court of com-
3 petent jurisdiction, such judgment shall not affect, impair or
4 invalidate the remainder thereof but shall be confined in its
5 operation to the clause, sentence, paragraph or part thereof
6 directly involved in the controversy in which such judgment
7 shall have been rendered.

§19-15-21. Repeal.

1 All laws and parts of laws in conflict with or inconsistent
2 with the provisions of this article are hereby repealed.

CHAPTER 2

(H. B. 797—By Mr. Calandine)

[Passed January 31, 1974; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article twenty-nine-a, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to county airport authorities; their powers and authority generally; their authority to issue evidences of indebtedness and give security therefor.

Be it enacted by the Legislature of West Virginia:

That section nine, article twenty-nine-a, 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 29A. COUNTY AIRPORT AUTHORITIES.

§8-29A-9. Powers of authorities generally.

1 A county airport authority is hereby given power and
2 authority as follows:

3 (1) To make and adopt all necessary bylaws, rules and
4 regulations for its organization and operations not incon-
5 sistent with law;

6 (2) To elect its own officers, to appoint committees and
7 to employ and fix the compensation for personnel including
8 attorneys necessary for its operation;

9 (3) To enter into contracts with any person, governmental
10 department, firm or corporation, and generally to do any and
11 all things necessary or convenient for the purpose of acquiring,
12 equipping, constructing, maintaining, improving, extending,
13 financing and operating a public airport, including the develop-
14 ment of an industrial park in the same general area;

15 (4) To delegate any authority given to it by law to any
16 of its officers, committees, agents or employees;

17 (5) To apply for, receive and use grants-in-aid, donations
18 and contributions from any source or sources, including but

19 not limited to the federal government and any agency thereof,
20 and the State of West Virginia, and to accept and use bequests,
21 devises, gifts and donations from any person, firm or cor-
22 poration;

23 (6) To acquire lands and hold title thereto in its own name;

24 (7) To purchase, own, hold, sell and dispose of personal
25 property and to sell, lease or otherwise dispose of any real
26 estate which it may own;

27 (8) To borrow money and execute and deliver negotiable
28 notes, mortgage bonds, revenue bonds, other bonds, deben-
29 tures and other evidences of indebtedness therefor, and give
30 such security therefor as shall be requisite, including giving a
31 mortgage or deed of trust on its airport properties and facil-
32 ities or assigning or pledging the gross or net revenues there-
33 from;

34 (9) To raise funds by the issuance and sale of revenue
35 bonds or refunding bonds in the manner provided by the appli-
36 cable provisions of article sixteen of this chapter, it being here-
37 by expressly provided that, for that purpose, a county airport
38 authority shall be treated as a municipality or board as those
39 terms are used in said article sixteen;

40 (10) To acquire, construct, establish, equip, maintain and
41 operate, within a reasonable distance of the airport, a water-
42 works, a sewerage system or a combined waterworks and
43 sewerage system for its own use and for the use of any person,
44 and to finance the same by the issuance of revenue bonds as
45 provided in this article: *Provided, however,* That no existing
46 waterworks or sewage system, or any part thereof, may be
47 acquired without the prior consent and approval of the public
48 service commission;

49 (11) To establish, charge and collect reasonable *foes and*
50 charges for services or for the use of any part of its property
51 or facilities, or for both services and such use; and

52 (12) To expend its funds in the execution of the powers
53 and authority herein given.

CHAPTER 3

(H. B. 1153—By Mr. Speaker, Mr. McManus, and Mrs. Neal)

[Passed March 9, 1974; in effect July 1, 1974. Approved by the Governor.]

AN ACT to amend article three, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine-d, relating to levying of a tax upon purchases of intoxicating liquors from state stores or other agencies of the alcohol beverage control commissioner, outside the corporate limits of any municipality; limitation; rate of tax; collection and distribution for the use and benefit of the various counties and municipalities.

Be it enacted by the Legislature of West Virginia:

That article three, 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 nine-d, to read as follows:

ARTICLE 3. SALES BY COMMISSIONER.

§60-3-9d. Tax on purchases of intoxicating liquors outside corporate limits of municipalities; limitation; rate of tax; collection and distribution.

1 For the purpose of providing financial assistance to and for
 2 the use and benefit of the various counties and municipalities
 3 of this state, there is hereby levied a tax upon all purchases
 4 of intoxicating liquor from state stores or other agencies of
 5 the alcohol beverage control commissioner, outside the cor-
 6 porate limits of any municipality. The tax shall be three
 7 percent of the purchase price and shall be added to and
 8 collected with the purchase price by the commissioner:
 9 *Provided*, That no such tax shall be collected on the in-
 10 toxicating liquors sold by or purchased from holders of a
 11 license issued under the provisions of article seven of this
 12 chapter.

13 All such tax collected within one mile of the corporate
 14 limits of any municipality within the state shall be remitted

15 to such municipality; all other tax so collected shall be
16 remitted to the county wherein collected: *Provided*, That
17 where the corporate limits of more than one municipality be
18 within one mile of the place of collection of such tax, all
19 such tax collected shall be divided equally among each of
20 said municipalities: *Provided, however*, That such mile is
21 measured by the most direct hard surface road or access way
22 usually and customarily used as ingress and egress to the
23 place of tax collection.

24 The commissioner by appropriate rules and regulations
25 shall provide for the collection of such tax, separation or
26 proration of the same and distribution thereof to the respec-
27 tive counties and municipalities for which the same shall
28 be collected. Such rules and regulations shall provide that
29 all such taxes shall be deposited with the state treasurer and
30 distributed quarterly by the treasurer upon warrants of the
31 auditor payable to the counties and municipalities.

CHAPTER 4

(H. B. 860—By Mr. Speaker, Mr. McManus, and Mr. Saibert)

[Passed February 14, 1974; in effect from passage. Approved by the Governor.]

AN ACT transferring amounts between items of the total appropriation for certain state spending units as appropriated by chapter ten, acts of the Legislature, regular session, one thousand nine hundred seventy-three, known as the Budget Bill as amended.

Be it enacted by the Legislature of West Virginia:

That items of the total appropriation of Account No. 180, Account No. 240, Account No. 371, Account No. 376, Account No. 380, Account No. 384, Account No. 430, Account No. 432, Account No. 495, and Account No. 837, chapter ten, acts of the Legislature, regular session, one thousand nine hundred seventy-three, be transferred to read as follows:

18—*State Tax Department*

Acct. No. 180

| | | |
|---|-------------------------------------|-------------|
| 2 | Current Expenses | \$1,782,512 |
| 4 | Circuit Breaker Reimbursement | 187,350 |

23—*Attorney General*

Acct. No. 240

| | | |
|---|-------------------------------|------------|
| 2 | Other Personal Services | \$ 694,349 |
| 3 | Current Expenses | 111,150 |
| 4 | Equipment | 21,000 |

45—*Forestry Camp for Boys No. 1 (Davis)*

Acct. No. 371

| | | |
|----|-------------------------------|------------|
| 1 | Personal Services | \$ 236,360 |
| 14 | Repairs and Alterations | 10,300 |
| 15 | Equipment | 14,500 |

50—*Huttonsville Correctional Center*

Acct. No. 376

| | | |
|----|-------------------------|-------------|
| 1 | Personal Services | \$1,006,120 |
| 21 | Current Expenses | 374,372 |
| 23 | Equipment | 73,000 |

51—*West Virginia Children's Home*

Acct. No. 380

| | | |
|----|------------------------|-----------|
| 9 | Current Expenses | \$ 63,000 |
| 11 | Equipment | 8,600 |

52—*Andrew S. Rowan Memorial Home*

Acct. No. 384

| | | |
|----|-------------------------|------------|
| 1 | Personal Services | \$ 538,890 |
| 13 | Current Expenses | 243,356 |
| 15 | Equipment | 62,000 |

73—*Hopemont State Hospital*

Acct. No. 430

| | | |
|----|-------------------------|-------------|
| 1 | Personal Services | \$2,092,815 |
| 27 | Current Expenses | 462,606 |

75—*Denmar State Hospital*

Acct. No. 432

| | | |
|----|-------------------------------|-------------|
| 1 | Personal Services | \$1,425,155 |
| 21 | Current Expenses | 458,000 |
| 22 | Repairs and Alterations | 70,700 |

92—*West Virginia Racing Commission*

Acct. No. 495

| | | |
|---|------------------------|-----------|
| 2 | Current Expenses | \$ 36,230 |
| 3 | Equipment | 4,500 |

138—*West Virginia Alcohol Beverage Control Commissioner*

Acct. No. 837

| | | |
|---|-------------------------------------------------|------------|
| 6 | Social Security Matching Fund | \$ 292,250 |
| 7 | Public Employees Retirement Matching Fund | 467,000 |

The foregoing constitutes transfers of amounts from one item of appropriation to another item of appropriation within the total appropriation of the designated spending unit. The amounts as itemized for expenditure during the fiscal year one thousand nine hundred seventy-four shall be available for expenditure upon the effective date of this bill.

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CHAPTER 5

(Com. Sub. for H. B. 1007—By Mr. Seibert)

[Passed February 13, 1974; in effect from passage. Approved by the Governor.]

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

unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred seventy-three to the Governor's Office, Account No. 120, chapter ten, acts of the Legislature, regular session, one thousand nine hundred seventy-three, known as the "Budget Bill," for emergency situation relating to the trucking industry.

WHEREAS, An emergency situation relating to the trucking industry has arisen in West Virginia, resulting in property loss and the possibility of death, injury, and dispossession to the detriment of the safety, health and welfare of citizens of this state and necessitating expenditure of public moneys in aid thereof; and

WHEREAS, The Governor submitted to the Legislature the Budget Document, dated January nine, one thousand nine hundred seventy-four, which included a statement of the state fund, general revenue, including the fiscal year 1973-74, in which it is set forth and stated that cash balances and investments, as of July one, one thousand nine hundred seventy-three, amounted to \$93,732,361, which said amount is reduced by net appropriation balances forwarded of \$80,238,987, thereby leaving a net unencumbered cash balance of \$13,493,374 available for appropriation and expenditure for said fiscal year 1973-74; a portion of said net unencumbered cash balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore,

Be it enacted by the Legislature of West Virginia:

That Account No. 120, chapter ten, acts of the Legislature, regular session, one thousand nine hundred seventy-three, known as the Budget Bill, be supplemented by adding thereto the following sum to the designated line item:

EXECUTIVE

8—*Governor's Office*

Acct. No. 120

4a Emergency Relief \$500,000

The above appropriation is to be expended in connection with the emergency situation relating to the trucking industry in West Virginia.

CHAPTER 6

(H. B. 912—Originating in the House Committee on the Judiciary)

[Passed March 9, 1974; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact article seven, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section two, article one, chapter thirty-one-a of said code; and to amend and reenact sections fourteen and twenty-two, article four of said chapter thirty-one-a, all relating to industrial banks and industrial loan companies generally; providing a short title and provisions relating to rules of construction of this act; the definition of certain terms used herein; applying certain provisions contained in said chapter thirty-one-a, including the penalty provisions contained therein, to the provisions contained in said article seven, chapter thirty-one; establishing the procedures for incorporating and chartering industrial banks and industrial loan companies; providing for the capital stock requirements of such corporations; providing for the voting rights of the holders of such stock; restricting the use of certain words in the corporate name of such corporations; the form and contents of application to organize an industrial bank; the examination and investigation by the West Virginia board of banking and financial institutions of any proposed industrial bank and the matters to be considered by such board with respect to such examination and investigation; the powers and duties of said board and the commissioner of banking of West Virginia with respect to said industrial banks and industrial loan companies generally; requiring industrial banks to secure federal deposit insurance and to notify their depositors upon termination of such insurance; the rights of depositors upon the termination of such insurance; the powers of industrial banks and industrial loan companies and the limitation of such powers; the cash reserves required to be maintained by industrial banks and industrial loan companies and the form and nature of such reserves; the supervision and control of industrial loan companies by said commissioner and board and the power of each to regulate other firms, corporations, partnerships or associations owning more than forty percent of the stock of any such industrial loan company;

the subrogation rights of the federal deposit insurance corporation in certain instances; annual and special meetings of stockholders of industrial banks and industrial loan companies and providing for the voting rights of such stockholders and quorum requirements at such meetings; providing for the number, duties, qualifications and oath of the directors and officers of industrial banks and industrial loan companies and the manner in which vacancies shall be filled; the bonding requirements for such directors, officers and the managers and employees of any such industrial bank or industrial loan company and requirements with respect to the defalcation of any such bond; requiring that a list of stockholders be open for inspection at any such industrial bank and industrial loan company; establishing procedures for the declaring and paying of dividends by any such bank or company; the procedures for amending the charter or bylaws of any such bank or company; procedures for the dissolution of industrial loan companies; limiting loans to officers and employees of industrial loan companies in certain cases and providing for penalty for the violation of such provisions; requiring and prohibiting certain advertising practices by such banks or companies; restricting certain statements made by industrial loan companies with respect to the guaranteeing of payment of its evidences or certificates of indebtedness; prohibiting the use of certain symbols, seals, trademarks or devices by industrial loan companies; the rule making and regulatory functions of said commissioner and board and the procedures to be followed for the adoption and promulgation of such rules; the collection of certain fees, costs and expenses by the commissioner in certain cases; procedures for hearings by commissioner and board and providing for appeal and judicial review therefrom; and providing for the applicability of this act to certain existing companies.

Be it enacted by the Legislature of West Virginia:

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

Chapter**31. Corporations.****31A. Banks and Banking.****CHAPTER 31. CORPORATIONS.****ARTICLE 7. INDUSTRIAL BANKS AND INDUSTRIAL LOAN COMPANIES.**

- §31-7-1. Short title.
- §31-7-2. Construction of article; general corporation laws applicable.
- §31-7-3. Definitions.
- §31-7-4. Incorporators; name; minimum capital stock; voting rights of classes of stock; common stock to be paid in before business commenced; use of certain words in corporate name prohibited.
- §31-7-5. Industrial banks; requirements and procedure for incorporation; agreement of incorporation; issuance of certificate of incorporation.
- §31-7-6. Application for authority to organize an industrial bank; contents; forms prescribed by commissioner.
- §31-7-7. Examination and investigation of proposed industrial bank by board.
- §31-7-8. Requirements for federal deposit insurance; notice to depositors upon termination.
- §31-7-9. Industrial loan companies; agreement of incorporation; issuance of certificate of incorporation; recordation; application for and issuance of certificate or license to engage in business.
- §31-7-10. Powers of industrial banks; limitation of powers.
- §31-7-11. Powers of industrial loan companies; limitation of powers.
- §31-7-12. Cash reserves.
- §31-7-13. Supervision and control.
- §31-7-14. Branch industrial loan companies or industrial banks forbidden; limited off-premises industrial bank facility permitted; limitation on purchases of industrial bank stock; penalties.
- §31-7-15. Subrogation.
- §31-7-16. Annual and special meetings of stockholders; quorum; annual report; voting; proxies.
- §31-7-17. Directors; officers.
- §31-7-18. Chief executive and other officers to be bonded; personal liability of directors for manager's defalcation.
- §31-7-17. Directors; officers.
- §31-7-18. Chief executive and other officers to be bonded; personal liability of directors for manager's defalcation.
- §31-7-19. List of stockholders; right of inspection.
- §31-7-20. Dividends.
- §31-7-21. Amendments to bylaws by industrial loan companies.
- §31-7-22. Voluntary dissolution of industrial loan companies.
- §31-7-23. Loans to officers and employees of industrial loan companies; penalty.
- §31-7-24. Advertising requirements and prohibitions.
- §31-7-25. Restrictions upon statements or advertisements relating to guaranteeing the payment to holders of certificates of indebtedness; use of certain symbols or devices prohibited.

§31-7-26. Rules and regulations.

§31-7-27. Additional powers and duties of the commissioner; fees; powers of the board; appeals and judicial review.

§31-7-28. Article applicable to existing companies of like nature originally chartered under building and loan association laws.

§31-7-29. Severability and constitutionality.

§31-7-1. Short title.

1 This article shall be known and may be cited as the "West

2 Virginia Industrial Bank and Industrial Loan Company Act."

§31-7-2. Construction of article; general corporation laws applicable.

1 (a) Except as otherwise specified herein the provisions
2 of chapter thirty-one-a of this code, insofar as the same relates
3 to the inspection, examination, supervision, regulation and
4 control of banking institutions, including but not limited
5 to all of the penalty provisions contained in said chapter
6 thirty-one-a, shall apply to industrial banks and industrial
7 loan companies organized pursuant to this article to the
8 extent that the provisions of this article and the provisions
9 of said chapter thirty-one-a are not inconsistent. To the
10 extent of any inconsistencies between the provisions of this
11 article and provisions of chapter thirty-one-a of this code,
12 the provisions of this article shall prevail to the extent of
13 such inconsistencies.

14 (b) The general corporation laws of the state, including the
15 provisions of article one of chapter thirty-one of this code,
16 shall govern industrial loan companies and industrial banks
17 and the chartering thereof, except as otherwise provided
18 herein or where inconsistent with the provisions of this article
19 or chapter thirty-one-a of this code, and to the extent of such
20 inconsistencies, the provisions of this article and chapter thirty-
21 one-a shall prevail.

§31-7-3. Definitions.

1 As used in this article, unless the context otherwise requires a
2 different meaning, the term:

3 (a) "Board" shall mean the West Virginia board of banking
4 and financial institutions;

5 (b) "Commissioner" or "commissioner of banking" shall
6 mean the commissioner of banking of West Virginia and shall
7 also include the department of banking of West Virginia;

8 (c) "Deposit" or "deposits" shall mean the unpaid balance
9 of money or its equivalent received or held by an industrial
10 bank organized pursuant to this article in the usual course
11 of its business and for which it has given or is obligated to
12 give credit, either conditionally or unconditionally, to a savings,
13 time or thrift account, or which is evidenced by its certificate of
14 deposit, but shall not include checking accounts or demand
15 deposits or evidences or certificates of indebtedness;

16 (d) "Industrial bank" shall mean any corporation formed
17 under the provisions of this article with the approval of the
18 board and which is authorized to receive deposits from the
19 general public, and such corporations are hereby declared to
20 be banking institutions within the meaning of section two,
21 article one, chapter thirty-one-a, subject to the limitations
22 contained in this article; and

23 (e) "Industrial loan company" shall mean any corporation
24 formed under the provisions of this article with the approval
25 of the commissioner of banking of this state and which is
26 authorized to sell or offer for sale its secured or unsecured
27 evidences or certificates of indebtedness as hereinafter pre-
28 scribed, but shall not be authorized to accept deposits.

**§31-7-4. Incorporators; name; minimum capital stock; voting rights
of classes of stock; common stock to be paid in be-
fore business commenced; use of certain words in
corporate name prohibited.**

1 (a) In the case of an industrial loan company, any number
2 of persons, not fewer than thirteen, citizens of this state, may
3 become an industrial loan company on the terms and condi-
4 tions and subject to the liabilities prescribed in this article.
5 The name of any industrial loan company formed under this
6 article shall not contain the words "savings" or "savings and
7 loan" and shall not be that of any other existing corporation
8 of this state: *Provided*, That any such corporation heretofore
9 organized which uses the words "savings and loan" as a part
10 of its corporate name shall be authorized to continue to use

11 such words. The capital stock of any such corporation shall
12 not be less than twenty-five thousand dollars, and shall con-
13 sist of shares of common stock. The voting power and con-
14 trol of the corporation during its life shall be vested in the
15 common stock only if more than one class of stock is to be
16 issued. Such common stock, with which it will commence
17 business, shall be paid in before such corporation shall be
18 authorized to engage in business, except such business as is
19 incidental and necessarily preliminary to its organization.

20 (b) In the case of an industrial bank, any number of per-
21 sons, not fewer than thirteen, citizens of this state, may become
22 an industrial bank on the terms and conditions and subject to
23 the liabilities prescribed by this article and the provisions of
24 article four, chapter thirty-one-a of this code subject to such
25 exceptions contained in this article. The name of any industrial
26 bank formed under the provisions of this subsection (b), sec-
27 tion four, shall be, "Industrial Financing Corporation," and
28 shall include no other words except a trading area, community,
29 city, county or other local identity approved by the board. The
30 capital stock requirements of any such industrial bank shall be
31 the same as those prescribed in subsections (a) and (c) of sec-
32 tion three, article four, chapter thirty-one-a of this code. The
33 voting power and control of any industrial bank shall be vested
34 in the common stock only and such corporations shall issue but
35 one class of stock. Such common stock with which it will com-
36 mence business shall be paid in before such corporation shall be
37 authorized to engage in business as an industrial bank except
38 such business as is incidental and necessarily preliminary to its
39 organization.

**§31-7-5. Industrial banks; requirements and procedure for in-
corporation; agreement of incorporation; issuance of
certificate of incorporation.**

1 Persons desiring to form an industrial bank shall sign and
2 acknowledge an agreement of incorporation, as provided in
3 article one of this chapter.

4 The incorporators shall file with the board such agreement
5 in duplicate and, when filed with the board, shall be accom-
6 panied by the statutory corporation charter fees, and an exam-
7 ination and investigation fee of one thousand dollars payable

8 to the board. If, at the time of such filing, the corporation
9 has already qualified and is conducting business as an indus-
10 trial loan company, then an examination and investigation fee
11 of five hundred dollars shall be payable to the board. When
12 transmitting the agreement to the board, the incorporators shall
13 designate by name and give the address of the attorney, agent
14 or other responsible party with whom the board may commu-
15 nicate, on whom the board may call for further information,
16 and to whom the board may officially report as to action on
17 the agreement so filed with him. The agreement shall consti-
18 tute and may be considered and treated by the board as an
19 application for the board's approval to incorporate and organ-
20 ize an industrial bank in this state.

21 The provisions of section seven, article four, chapter thirty-
22 one-a of this code shall apply to any application for a charter
23 and the issuance of such charter to any industrial bank.

**§31-7-6. Application for authority to organize an industrial bank;
contents; forms prescribed by commissioner.**

1 In addition to any of the requirements contained in chapter
2 thirty-one-a of this code, written application for authority to
3 establish an industrial bank shall be filed with the board by an
4 existing industrial loan company or by a newly formed cor-
5 poration desiring to become an industrial bank and such ap-
6 plication shall include:

7 (a) The name, residence and occupation of each incorpora-
8 tor and stock subscriber and the amount of stock held or sub-
9 scribed for by each, together with a statement under oath of
10 each stock subscriber or stockholder that he subscribes for or
11 holds such stock in good faith in his own right and not as
12 agent or attorney or trustee for any undisclosed person, or,
13 if such agency, attorney relationship or trusteeship exists, then
14 the name, residence and occupation of the beneficial owners
15 or prospective holders of such stock shall be included.

16 (b) The proposed name of such industrial bank.

17 (c) The total capital, the number of shares and the par
18 value of such shares.

19 (d) The address where the proposed industrial bank is to be
20 located.

21 (e) The names of the persons who are to serve as officers
22 and directors of the proposed industrial bank and the official
23 position proposed to be held by each.

24 (f) Such additional information as may be prescribed by the
25 board or the commissioner.

26 Such application shall be made upon forms prescribed and
27 furnished by the commissioner and the commissioner may
28 require such information as he deems necessary to properly
29 consider the merits of such application.

**§31-7-7. Examination and investigation of proposed industrial
bank by board.**

1 (a) When an agreement of incorporation and an applica-
2 tion, fully complying with the requirements of this article, have
3 been filed with the board, it shall promptly make or cause to
4 be made a careful examination and investigation relative to the
5 following:

6 (1) The character, reputation, financial standing and mo-
7 tives of the organizers, incorporators and subscribers in or-
8 ganizing the proposed industrial bank;

9 (2) The need for the facilities and services which the pro-
10 posed industrial bank will offer in the community where it is
11 to be located, giving particular consideration to the adequacy
12 of existing banking services and facilities and financial institu-
13 tions;

14 (3) The present and future ability of the community to sup-
15 port the proposed industrial bank and all other existing banking
16 and other financial institution facilities and services in the
17 community;

18 (4) The character, financial responsibility, banking experi-
19 ence and business qualifications of the proposed officers; and

20 (5) The character, financial responsibility, business experi-
21 ence and standing of the proposed stockholders and directors.

22 (b) The board shall approve or disapprove the application,
23 in the exercise of its reasonable discretion, but shall not ap-
24 prove such application unless it finds:

25 (1) Public convenience and advantage will be promoted by
26 the establishment of the proposed industrial bank;

27 (2) Local conditions assure reasonable promise of success-
28 ful operation for the proposed industrial bank and other finan-
29 cial institutions and other banking institutions already estab-
30 lish in the community;

31 (3) The proposed capital structure is adequate;

32 (4) The proposed officers and directors have sufficient
33 banking experience, ability, character and standing to assure
34 reasonable promise of successful operation;

35 (5) The name of the proposed industrial bank is not so
36 similar as to cause confusion with the name of an existing bank
37 or other financial institution; and

38 (6) Provision has been made for suitable banking house
39 quarters in the community specified in the application.

40 (c) In the course of its examination and investigation, the
41 board may call upon the attorney, agent or other responsible
42 person representing the incorporators and upon the incorpora-
43 tors for additional information and disclosures it deems neces-
44 sary in taking appropriate action on and making proper dis-
45 position of the application.

46 (d) If the proposed industrial bank was in existence and
47 was conducting its affairs as an industrial loan company prior
48 to the effective date of this act, and was selling its certificates
49 or evidences of indebtedness to the general public prior to
50 January first, one thousand nine hundred seventy-four, the
51 board shall not disapprove the application solely for the reasons
52 set forth in subsections (a) (2), (a) (3), (b) (1) and (b)
53 (2) of this section if the proposed industrial bank meets all
54 other requirements.

§31-7-8. Requirements for federal deposit insurance; notice to depositors upon termination.

1 In addition to any other requirements set forth in this article,
2 or which may be set forth in chapter thirty-one-a of this code,
3 any proposed industrial bank shall qualify for federal deposit
4 insurance and be, in fact, insured by the federal deposit insur-

5 ance corporation prior to engaging in business as an industrial
6 bank and shall maintain such insurance during its corporate
7 existence as an industrial bank.

8 If any industrial bank proposes or intends to terminate its
9 insurance with the federal deposit insurance corporation or if
10 notice of termination by the federal deposit insurance corpora-
11 tion has been received by such industrial bank, such industrial
12 bank shall abide by rules and regulations of the federal deposit
13 insurance corporation.

**§31-7-9. Industrial loan companies; agreement of incorporation;
issuance of certificate of incorporation; recordation;
application for and issuance of certificate or license to
engage in business.**

1 Persons desiring to form an industrial loan company shall
2 sign and acknowledge an agreement of incorporation, as pro-
3 vided in article one of this chapter.

4 The agreement shall be delivered to the secretary of state,
5 who, after the agreement has been approved in writing by the
6 commissioner of banking, shall issue to the incorporators his
7 certificate under the great seal of the state as provided in
8 article one of this chapter: *Provided*, That hereafter no charter
9 shall be issued to any industrial loan company under the pro-
10 visions of this article, nor shall any amendment under general
11 law or under the provisions of this article be made to the
12 charter of any existing industrial loan company coming within
13 the terms of this article, whether heretofore or hereafter orga-
14 nized, until the application for such charter or for an amend-
15 ment to such already existing charter has been approved in
16 writing by the commissioner of banking. Such charter, when
17 issued, shall be filed and recorded as provided by law for gen-
18 eral corporations organized under the laws of this state. The
19 provisions of section five, article two, chapter thirty-one-a, in-
20 sofar as the same relates to financial institutions, other than
21 banking institutions, shall apply to the application and issuance
22 of a certificate or license by the commissioner to an industrial
23 loan company.

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

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

2 four, chapter thirty-one-a to the contrary notwithstanding, and
3 subject to the provisions of subsection (b) of this section, in
4 addition to the general powers conferred upon corporations by
5 the laws of this state and subject to the restrictions, rules and
6 regulations of the federal deposit insurance corporation and
7 the provisions of chapter sixteen, Title 12 of the United
8 States Code, each industrial bank organized pursuant to this
9 article shall have power to exercise by its board of directors or
10 duly authorized officers or agents only those powers conferred
11 upon industrial loan companies under the provisions of section
12 eleven of this article and in addition thereto shall have the
13 power to receive deposits from the general public only as long
14 as such deposits are insured by the federal deposit insurance
15 corporation, but shall not be depositories of funds from the
16 government of the United States or from any of its agencies or
17 political subdivisions or from the state of West Virginia or
18 from any of its agencies or political subdivisions or from any
19 other governmental agency.

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

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

27 (2) Hold at any one time the primary obligation or obliga-
28 tions of any one person, firm or corporation, for more than
29 ten percent of the amount of the paid-up capital and surplus
30 of such industrial bank;

31 (3) Hold at any one time the obligation or obligations of
32 persons, firms or corporations purchased from any person,
33 firm or corporation in excess of twenty percent of the aggre-
34 gate paid-up capital and surplus of such industrial bank;

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

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

44 (6) Deposit any of its funds except with a national or state
45 bank doing business in this state or with solvent banking insti-
46 tutions in other states which are federally insured;

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

55 (8) Pay any fees, bonuses, commissions, rewards, or other
56 consideration to any person, firm or corporation for the privi-
57 lege of using any plan of operation, scheme or device for the or-
58 ganization or carrying on of business under this article, or the
59 use of any name, trademark or copyright to be so used; nor shall
60 any industrial bank organized under this article enter into any
61 contract for such purpose or purposes, or for the purpose of
62 giving to or vesting in any other corporation any power or
63 authority over the organization or management of such in-
64 dustrial bank organized under this article;

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

67 (10) Sell or offer for sale evidences or certificates of indebt-
68 edness; or

69 (11) Receive checking accounts or demand deposits.

§31-7-11. Powers of industrial loan companies; limitation of powers.

1 (a) In addition to the general powers conferred upon cor-
2 porations by the laws of this state, each industrial loan
3 company shall have power to exercise by its board of directors
4 or duly authorized officers or agents, subject to law, all such
5 powers as shall be necessary to:

6 (1) Lend money to any person, firm or corporation, se-
7 cured by the obligation of such person, firm or corporation,

8 or otherwise; and, in addition, to receive and require uniform
9 periodical installments for the repayment of the loan;

10 (2) Sell or offer for sale its secured or unsecured evidences
11 or certificates of indebtedness, and such secured or unsecured
12 evidences or certificates of indebtedness are hereby defined
13 as money for the purpose of taxation, but every such evidence
14 or certificate of indebtedness shall state, on its face, in a
15 clearly visible manner approved by the commissioner, that
16 such evidence or certificate of indebtedness is not federally
17 insured;

18 (3) Buy and sell bonds or choses in action of any person,
19 firm or corporation;

20 (4) Impose a charge of five cents for each default in the
21 payment of one dollar, or fraction thereof, at the time at
22 which any periodical installment for the repayment of a loan
23 becomes due;

24 (5) Demand and receive for loans or for notes, bills or
25 evidences of debt discounted or purchased, such rate of
26 interest as may be agreed upon by the parties, not exceeding
27 the lawful rate of interest, and it shall be lawful to receive
28 such interest in advance;

29 (6) Charge for a loan made pursuant to this section, one
30 dollar for each fifty dollars, or fraction thereof, loaned, for
31 expenses including any examination or investigation of the
32 character and circumstances of the borrower, comaker or
33 surety, and the drawing and taking the acknowledgment of
34 necessary papers, or other expenses, incurred in making the
35 loan. No additional charge shall be made except to reimburse
36 the corporation for money actually expended for additional
37 service actually rendered the borrower. No charge shall be
38 collected unless a loan shall have been made as the result
39 of such examination or investigation;

40 (7) Purchase, hold and convey real estate as follows:

41 (A) Such as shall be necessary for the convenient trans-
42 action of its business, including with its office other apart-
43 ments or offices to rent as a source of income, which invest-
44 ment shall not exceed twenty-five percent of its paid-in
45 capital stock and surplus;

46 (B) Such as is mortgaged to it in good faith by way of
47 security for loans made by or money due to such industrial
48 loan company;

49 (C) Such as is conveyed to it in satisfaction of debts
50 previously contracted in the course of its dealings;

51 (D) Such as is acquired by sale on execution or judgment
52 or decree of any court in its favor.

53 Industrial loan companies shall not purchase, hold or
54 convey any real estate in any other case or for any other
55 purpose whatever. Real estate shall be conveyed only by
56 authority of the board of directors of any such industrial
57 loan company. No real estate acquired in the cases con-
58 templated in paragraphs (B), (C) and (D) of subdivision (7)
59 shall be held for a longer time than five years, unless such
60 period shall be extended by the commissioner of banking.

61 (b) An industrial loan company shall not:

62 (1) Accept or receive deposits;

63 (2) Make any loan under the provisions of this article for
64 a longer period than two years from the date thereof, except
65 upon express authorization of the board of directors of such
66 company;

67 (3) Hold at any one time the primary obligation or
68 obligations of any one person, firm or corporation, for more
69 than ten percent of the amount of the paid-up capital and
70 surplus of such industrial loan company;

71 (4) Hold at any one time the obligation or obligations
72 of persons, firms or corporations purchased from any person,
73 firm or corporation in excess of twenty percent of the aggre-
74 gate paid-up capital and surplus of such industrial loan
75 company;

76 (5) Make any loan or discount on the security of its own
77 capital stock (controlling and voting stock, if there be more
78 than one class), unless such security or purchase shall be
79 necessary to prevent loss upon a debt previously contracted
80 in good faith. Stock so purchased or acquired shall be sold
81 at public or private sale or otherwise disposed of within
82 ninety days from the time of its purchase or acquisition;

83 (6) Have outstanding at any time its evidences or cer-
84 tificates of indebtedness, in an aggregate sum in excess of
85 ten times the aggregate amount of its paid-up capital (voting
86 and controlling stock) and surplus;

87 (7) Deposit any of its funds with any other moneyed
88 corporation unless such corporation has been designated as
89 such depository by a vote of the majority of the board of
90 directors;

91 (8) Pledge or hypothecate any of its securities or notes
92 owned by it to any creditor, except that such companies shall
93 have the power to rediscount or to borrow money from any
94 source in addition to selling its evidences or certificates of in-
95 debtedness, but the aggregate amount of such rediscounting and
96 borrowing shall at no time exceed the sum total of the capital,
97 surplus and reserve funds of such company, and the security so
98 pledged therefor shall not exceed two times the amount bor-
99 rowed and rediscounted;

100 (9) Pay any fees, bonuses, commissions, rewards, or other
101 consideration to any person, firm or corporation for the
102 privilege of using any plan of operation, scheme or device for
103 the organization or carrying on of business under this article,
104 or the use of any name, trademark or copyright to be so used;
105 nor shall any industrial loan company under this article enter
106 into any contract for such purpose or purposes, or for the pur-
107 pose of giving to or vesting in any other corporation any power
108 or authority over the organization or management of corpora-
109 tions under this article.

§31-7-12. Cash reserves.

1 (a) Every industrial bank organized pursuant to this article
2 shall at all times maintain a cash reserve equal to five percent
3 of its aggregate deposits and for such purpose the regulatory,
4 reporting and penalty provisions of section twenty-two, article
5 four, chapter thirty-one-a of this code shall apply to such
6 reserves as shall the provision of said section twenty-two with
7 respect to the form or nature of such reserves.

8 (b) Every industrial loan company organized pursuant to
9 the provisions of this article, shall at all times maintain a

10 cash reserve equal to five percent of its issued and outstanding
11 evidences or certificates of indebtedness and the commissioner
12 may prescribe by rule or regulation the form or nature of such
13 reserves.

§31-7-13. Supervision and control.

1 (a) Every industrial loan company shall be subject to
2 the inspection, examination, supervision, jurisdiction and con-
3 trol of the commissioner and the board in the same manner
4 and to the same extent as is the case of banking institutions
5 organized under the laws of this state under the provisions of
6 chapter thirty-one-a of this code insofar as the same are appli-
7 cable thereto. Where forty percent or more of the common
8 stock of any industrial loan company is owned or is held in trust
9 for the benefit of or by any other single firm, corporation, part-
10 nership or association, such other firm, corporation, partnership
11 or association shall also be subject to the same jurisdiction and
12 powers of inspection, examination, supervision and control of
13 the commissioner and of the board in the same manner and to
14 the same extent as if such other firm, corporation, partnership
15 or association were an industrial loan company.

16 (b) Every industrial bank shall be subject to the inspection,
17 examination, supervision, jurisdiction and control of the com-
18 missioner and of the board in the manner provided in chapter
19 thirty-one-a of this code and to the same extent as is the case
20 of other banking institutions organized under the laws of
21 this state and in addition, shall be subject to all of the
22 provisions, regulations and requirements of the federal deposit
23 insurance corporation including the right of inspection, exami-
24 nation, supervision and control as may be required by the
25 federal deposit insurance corporation.

**§31-7-14. Branch industrial loan companies or industrial banks for-
bidden; limited off-premises industrial bank facility
permitted; limitation on purchases of industrial bank
stock; penalties.**

1 (a) No industrial loan company or industrial bank shall:
2 (1) Install or maintain any branch industrial loan com-
3 pany or branch industrial bank; or

4 (2) Engage in business at any place other than at its prin-
5 cipal office in this state: *Provided*, That at any time any such
6 industrial bank may operate one and only one off-premises
7 walk-in or drive-in industrial banking facility, on or in con-
8 junction with or entirely separate from a parking lot for the
9 customers of such industrial bank, for the purpose of receiving
10 deposits, cashing checks, making change, selling and issuing
11 money orders and travelers checks and receiving payments on
12 installment accounts, and for no other purposes, provided such
13 off-premises banking facility is located within two thousand feet
14 of the banking house premises of the industrial bank operating
15 such off-premises facility measured between the nearest points
16 of the banking house premises and the premises on which such
17 off-premises banking facility is located.

18 (b) It shall be unlawful for any individual, partnership,
19 society, association, firm, institution, trust, syndicate, public
20 or private corporation, or any other legal entity, or combina-
21 tion of entities acting in concert, to directly or indirectly own,
22 control or hold with power to vote, twenty-five percent or more
23 of the voting shares of more than seven industrial banks, or
24 to control in any manner the election of a majority of the
25 directors of more than seven industrial banks, and the pro-
26 visions of this subsection shall govern and control irrespective
27 of any other provision of this code restricting or limiting the
28 ownership or control of voting shares of industrial banks or the
29 control of the election of directors thereof, whether such other
30 provision was enacted before or after the enactment of this
31 article.

32 (c) Any violation of any provision of this section shall
33 constitute a misdemeanor offense punishable by applicable
34 penalties as provided in section fifteen, article eight, chapter
35 thirty-one-a of this code."

§31-7-15. Subrogation.

1 The provisions of section 1821 (g), chapter sixteen, Title
2 12 of the United States Code shall specifically apply to
3 and shall be a condition upon each deposit in an industrial
4 bank to the same extent as if such provisions were set forth in
5 extenso herein.

§31-7-16. Annual and special meetings of stockholders; quorum; annual report; voting; proxies.

1 The stockholders of each industrial loan company shall
2 meet annually in the month of February, a majority of the
3 outstanding voting stock to constitute a quorum; and it shall
4 be the duty of the secretary to prepare and submit to the
5 stockholders a clear and concise statement of the financial
6 condition of the corporation as of the close of business on the
7 last day of the year next preceding. At such meeting the stock-
8 holders shall elect a board of directors of not less than five nor
9 more than twenty-five, a majority of which shall be bona fide
10 residents of the state of West Virginia. Special meetings may be
11 called by order of the board of directors or by request in
12 writing of ten per centum of the stockholders.

13 In all elections of directors of the corporation each stockhold-
14 er shall have the right to cast one vote for each share of stock
15 owned by him and entitled to vote, and he may cast the same in
16 person or by proxy, for as many persons as there are directors
17 to be elected, or he may cumulate such votes and give one candi-
18 date as many votes as the number of directors to be elected
19 multiplied by the number of his shares of stock shall equal; or
20 he may distribute them on the same principle among as many
21 candidates and in such manner as he may desire, and the direc-
22 tors shall not be elected in any other manner, and on any other
23 question to be determined by a vote of shares at any meeting of
24 stockholders each stockholder shall be entitled to one vote for
25 each share of stock owned by him and entitled to vote, and he
26 may exercise this right in person or by proxy, but if by proxy, in
27 no instance can it be voted in any meeting other than which it
28 was first intended.

29 The provisions of section twenty, article four, chapter thirty-
30 one-a shall govern and control stockholders' meetings of in-
31 dustrial banks.

§31-7-17. Directors; officers.

1 The affairs of every industrial bank and industrial loan
2 company shall be managed by a board of not less than five
3 nor more than twenty-five directors who shall meet at least
4 once each month, a majority of whom shall at all times be

5 bona fide residents of this state, and shall own and hold
6 in his own name at least five hundred dollars par value in
7 unpledged shares of the capital stock or voting stock of such
8 industrial bank or industrial loan company.

9 Immediately upon the adjournment of the stockholders'
10 meeting or as soon thereafter as convenient, the newly
11 elected directors shall meet and every such director elected
12 shall take an oath that he will, so far as duty devolves on
13 him, diligently and honestly administer the affairs of such
14 industrial bank or industrial loan company, and will not know-
15 ingly and willingly violate, or permit to be violated, any of the
16 provisions of this article, and that he is the owner in good
17 faith, and in his own right, of at least five hundred dollars
18 par value in shares of the capital stock of such industrial bank
19 or industrial loan company, as required by this section,
20 subscribed by him or standing in his name on the books of such
21 industrial bank or loan company, and that the same are not
22 hypothecated or in any way pledged as security for any loan
23 or debt. Such oath, when subscribed by the director making
24 it, and certified by the officer before whom it was taken, shall
25 immediately be transmitted to the commissioner of banking,
26 and shall be filed and preserved in his office. Should a director
27 fail to subscribe to the oath herein provided for within sixty
28 days after notice of his election or at any time after qualifying
29 as such, sell or dispose of, or in any manner hypothecate or
30 pledge as security for a debt or obligation, such qualifying
31 shares, or any number thereof, necessary for his qualification,
32 or due to death, resignation or inability to serve of any
33 elected director, thereupon the remaining directors shall elect
34 another director in his stead.

35 It shall be the duty of the board at their organization meeting
36 or as soon thereafter as convenient to elect a president who
37 shall be a director, one or more vice presidents, a secretary
38 or manager, treasurer and such other officers necessary for
39 the conduct of business as may be designated in the bylaws.

§31-7-18. Chief executive and other officers to be bonded; personal liability of directors for manager's defalcation.

1 (a) The directors of every industrial loan company shall
2 require the manager or other chief executive officer appointed

3 by them in lieu of a manager, before he performs or enters up-
4 on any duties as such manager or chief executive officer, to
5 give a bond or bonds, with a surety company authorized to
6 transact business in this state as surety thereon, the amount to
7 be fixed by them, but in no case shall the penalty be less than
8 five thousand dollars. Other officers and personnel are to be
9 bonded in amounts commensurate with their duties and re-
10 sponsibilities, to be fixed by the board of directors, and all
11 bonds are to be approved by the commissioner of banking and
12 a copy filed with his department; and it shall be the duty of
13 the directors, as often as once in every year, to pass upon the
14 sufficiency of such bond or bonds, and if insufficient, to re-
15 quire without delay new and additional bonds and securities to
16 be given. If the directors shall fail to perform any or all of the
17 requirements of this section, they shall be jointly and severally
18 liable to the industrial bank or to the industrial loan company,
19 as the case may be; to the extent of any defalcation of or de-
20 ficiency in the funds of such bank or company created or
21 caused by such manager, not in excess of the penalty of his
22 bond, the same to be recovered by such industrial bank or
23 industrial loan company in any court of competent jurisdiction
24 of this state.

25 (b) The directors, managers, chief executive officers and
26 employees of an industrial bank shall give a bond or bonds as
27 may be required by the provisions of chapter thirty-one-a of
28 this code and the federal deposit insurance corporation. The
29 requirements of said chapter thirty-one-a and the requirements,
30 rules and regulations of the federal deposit insurance corpor-
31 ation shall apply to any defalcation of any such bond or bonds.

§31-7-19. List of stockholders; right of inspection.

1 The president, manager or treasurer of every industrial bank
2 or of every industrial loan company shall at all times cause to
3 be kept a true and accurate list of the names of stockholders
4 of record, with the amount of stock held by each, which list
5 shall at all times during business hours be open to the inspec-
6 tion of any stockholder, or to the inspection of the commis-
7 sioner or his duly authorized representative or to the autho-
8 rized personnel or representatives of the federal deposit insur-
9 ance corporation.

§31-7-20. Dividends.

1 The board of directors of any industrial loan company may
2 at any time declare dividends out of the net accrued cash earn-
3 ings of the company, payable upon the controlling and voting
4 stock thereof, but no such dividend shall be paid until after
5 the payment of all the fixed amounts agreed to be paid upon
6 other classes of stock and the interest upon the evidences or
7 certificates of indebtedness of the company. Unearned interest,
8 accrued and uncollected interest shall not be distributed as a
9 part of the profits.

10 Dividends of an industrial bank shall be declared and paid
11 in accordance with the provisions of section twenty-five, article
12 four, chapter thirty-one-a of this code.

§31-7-21. Amendments to bylaws by industrial loan companies.

1 The stockholders at any regular, or special meeting called
2 for that purpose, may amend the bylaws of any industrial loan
3 company organized under the provisions of this article, but
4 before they become operative they must be approved by the
5 commissioner of banking.

§31-7-22. Voluntary dissolution of industrial loan companies.

1 Whenever any industrial loan company shall determine by
2 its board of directors, with the consent of three fourths of the
3 holders of its controlling and voting stock, to discontinue its
4 business and settle its affairs, it shall be lawful for such board
5 of directors to file with the commissioner of banking of this
6 state a certificate in writing, signed and acknowledged by such
7 stockholders, expressing such consent, and likewise the certi-
8 ficate of the board of directors under the corporate seal, set-
9 ting forth such intention, and that they thereby surrender to
10 the state their corporate privileges and powers and authority
11 to do business as an industrial loan company. Thereupon such
12 corporation shall be deemed and taken to be dissolved, except
13 for the purpose of distributing its assets and otherwise settling
14 its affairs, as provided in article one of this chapter.

§31-7-23. Loans to officers and employees of industrial loan companies; penalty.

1 No industrial loan company shall make any loan to its

2 president, its vice president, its manager, or to any of its di-
3 rectors, or to any of its clerks, tellers, bookkeepers, agents, ser-
4 vants or other persons in its employ, until the proposition to
5 make such loan, stating the amount, terms and security, if
6 any, offered therefor shall have been submitted in writing by
7 the person desiring the same to a meeting of the board of di-
8 rectors of such company or of the executive or discount com-
9 mittee of such board, if any, and accepted and approved by
10 the vote of a majority of those present constituting a quorum.
11 The president, vice president, director, manager, clerk, teller,
12 bookkeeper, or agent of any industrial loan company who
13 knowingly violates this section, or who aids or abets any offi-
14 cer, clerk or agent in any such violation, shall be deemed guilty
15 of a misdemeanor, and, upon conviction thereof, shall be fined
16 not more than one thousand dollars or imprisoned in the
17 county jail not more than one year, or both.

§31-7-24. Advertising requirements and prohibitions.

1 (a) No industrial loan company shall hereafter advertise
2 for the purpose of soliciting the sale or offer for sale of its
3 secured or unsecured evidences or certificates of indebtedness
4 irrespective of the advertising media used unless such adver-
5 tisement shall contain a statement that such corporation is not
6 insured by any agency of the federal government and that such
7 evidences or certificates of indebtedness are not insured by any
8 agency of the federal government unless such insurance does
9 in fact exist and, if so, the amount of such insurance shall be
10 stated; nor shall any such advertisement refer to such evi-
11 dences or certificates of indebtedness as "savings accounts,"
12 "deposits" or "savings deposits" and the use of such terms in
13 any such advertisement is hereby prohibited.

14 The display of the words "NOT FEDERALLY INSURED"
15 in letters at least one third the size of the largest type size used
16 in any display or advertisement, but in no event smaller than
17 twelve point type bold upper case, shall be deemed to be com-
18 pliance with this section.

19 (b) No industrial bank shall advertise itself as a bank nor
20 shall any of its advertisements, irrespective of the media used,
21 contain the word or term "bank," "banker," "banking com-

22 pany," "banking association," "bankers association," "savings
23 bank" or "trust company."

§31-7-25. Restrictions upon statements or advertisements relating to guaranteeing the payment to holders of certificates of indebtedness; use of certain symbols or devices prohibited.

1 (a) No industrial loan company in advertising for the pur-
2 pose of soliciting the sale or offer for sale or for any other pur-
3 pose related to the sale of its secured or unsecured evidences or
4 certificates of indebtedness or for any other purpose irrespective
5 of the media used or in any statements made in any manner to
6 any prospective purchaser of such evidences or certificates shall
7 state that the payment required by the terms of such evidences
8 or certificates of indebtedness is guaranteed unless such pay-
9 ment is so guaranteed by a source or from resources which are
10 independent of and separate from the resources and assets of
11 such company and if so guaranteed the source, terms and con-
12 ditions of such guarantee shall be stated upon the face of every
13 such evidence or certificate of indebtedness in the manner and
14 form prescribed by the commissioner and such source, terms
15 and conditions shall be first approved in writing by the com-
16 missioner.

17 (b) No industrial loan company shall use in any of its
18 advertisements, signs, displays, stationery, or documents or
19 in any other manner use any symbol, device, trademark or
20 seal which is alike or deceptively similar to any device,
21 symbol, trademark, or seal of the federal deposit insurance
22 corporation or of any other federal agency or of any other
23 corporation authorized to transact business in this state
24 and any such symbol, device, trademark or seal proposed to
25 be adopted or used by any such industrial loan company
26 shall, prior to its adoption or use, be approved in writing
27 by the commissioner.

§31-7-26. Rules and regulations.

1 The commissioner and the board may, from time to time,
2 adopt and promulgate such rules and regulations as they
3 deem appropriate to carry into effect the provisions of this
4 article in accordance with the provisions of chapter thirty-

5 one-a of this code. All such rules and regulations shall be
6 so adopted and promulgated in the manner prescribed in
7 chapter twenty-nine-a of this code and the provisions of said
8 chapter twenty-nine-a shall apply to the adoption and pro-
9 mulgation of such rules and regulations as if such provisions
10 were set forth in extenso herein.

**§31-7-27. Additional powers and duties of the commissioner; fees;
powers of the board; appeals and judicial review.**

1 (a) Except as may be inconsistent with the provisions of
2 this article, all of the duties, powers and authority imposed
3 upon the commissioner or vested in him by the provisions
4 of chapter thirty-one-a of this code shall be applicable with
5 respect to industrial banks and industrial loan companies
6 created pursuant to the provisions of this article and all fees,
7 costs and expenses authorized to be collected by the com-
8 missioner by the terms of said chapter thirty-one-a shall
9 apply to and be collected from such industrial banks and
10 industrial loan companies when appropriate. Appeals from
11 any orders or actions of the commissioner or judicial review
12 thereof shall be in the same manner as may be prescribed in
13 chapter twenty-nine-a of this code.

14 (b) Except as may be inconsistent with the provisions of
15 this article, the board shall have the same general powers and
16 duties with respect to industrial banks and industrial loan
17 companies organized and created under the provisions of this
18 article as are contained in chapter thirty-one-a of this code.
19 All provisions for hearing procedures and procedures for
20 judicial review and appeals therefrom as are contained in
21 said articles three and eight, chapter thirty-one-a shall apply
22 to this article to the same extent as if such provisions were
23 set forth in extenso herein.

**§31-7-28. Article applicable to existing companies of like nature
originally chartered under building and loan associa-
tion laws.**

1 Any corporation now organized, existing and doing any
2 business in this state on a plan which would come within the
3 scope of the regulatory provisions of this article, and which
4 was originally chartered with the approval of the commissioner

5 of banking under the laws of this state providing for the
6 organization of building and loan associations, shall fully
7 comply with, and be subject to, all the regulatory provisions
8 hereof and shall be subject to the supervision and control of
9 the commissioner as herein provided; but nothing herein
10 shall affect or modify the corporate existence of any such
11 existing corporation, and any such existing corporation shall
12 be authorized and allowed to sell the full amount of its
13 present authorized capital stock on the terms and conditions
14 heretofore approved by the commissioner.

§31-7-29. Severability and constitutionality.

1 If any provisions of this article or the application thereof to
2 any person or circumstance is held to be unconstitutional or
3 otherwise invalid, the remainder of this article and the applica-
4 tion of such provision to other persons or circumstances shall
5 not be affected thereby, and it shall be conclusively presumed
6 that the Legislature would have enacted the remainder of this
7 article without such invalid or unconstitutional provisions.

CHAPTER 31A. BANKS AND BANKING.

Article

1. **General Provisions and Definitions.**
4. **Banking Institutions and Services Generally.**

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§31A-1-2. Definitions.

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

3 (a) The word "action," in the sense of a judicial pro-
4 ceeding, means any proceeding in a court of competent juris-
5 diction in which rights are adjudicated and determined and
6 shall embrace and include recoupment, counterclaim, setoff
7 and other related, similar and summary proceedings;

8 (b) The words "bank" and "banking institution" mean a
9 corporation heretofore or hereafter chartered to conduct a
10 banking business under the laws of West Virginia or an
11 association heretofore or hereafter authorized to conduct a
12 banking business in West Virginia under the laws of the

13 United States and having its principal office in this state and
14 shall embrace and include a trust company or an institution
15 combining banking and trust company facilities, functions and
16 services so chartered or authorized to conduct such business
17 in this state, and shall include industrial banks authorized by
18 article seven, chapter thirty-one of this code, subject to the
19 limitations therein imposed on such industrial banks and
20 further subject to the limitations imposed thereon in this
21 article;

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

26 (d) The word "board" means the West Virginia board of
27 banking and financial institutions;

28 (e) The words "commissioner" or "commissioner of bank-
29 ing" mean the commissioner of banking of West Virginia;

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

33 (g) The word "department" means the department of
34 banking of West Virginia;

35 (h) The words "deputy commissioner" or "deputy com-
36 missioner of banking" mean the deputy commissioner of
37 banking of West Virginia;

38 (i) The word "fiduciary" means any trustee, agent, execu-
39 tor, administrator, curator, committee, guardian or conserva-
40 tor, special commissioner, receiver, trustee in bankruptcy,
41 assignee for creditors, or any holder of a similar position of
42 trust or responsibility;

43 (j) The words "financial institutions" mean banks, build-
44 ing and loan associations, industrial banks, industrial loan
45 companies, small loan companies, credit unions and all other
46 similar institutions, whether persons, firms or corporations,
47 which are by law under the jurisdiction and supervision of
48 the commissioner of banking;

49 (k) The word "officer" when referring to any financial
50 institution, means any person designated as such in the bylaws
51 and includes, whether or not so designated, any executive
52 officer, the chairman of the board of directors, the chairman
53 of the executive committee, and any trust officer, assistant
54 vice president, assistant treasurer, assistant secretary, assistant
55 trust officer, assistant cashier, assistant comptroller, or any
56 other person who performs the duties appropriate to those
57 offices, and the term "executive officer" as herein used, when
58 referring to banking institutions, means an officer of a bank
59 whose duties involve regular, active and substantial participa-
60 tion in the daily operations of such institution and who, by
61 virtue of his position, has both a voice in the formulation of
62 the policy of the bank and responsibility for implementation
63 of the policy, such responsibility of and functions performed
64 by the individual, and not his title or office, being determina-
65 tive of whether he is an "executive officer";

66 (l) The words "person" or "persons" mean any individual,
67 partnership, society, association, firm, institution, company,
68 public or private corporation, state, governmental agency,
69 bureau, department, division or instrumentality, political sub-
70 division, county court, municipality, trust, syndicate, estate or
71 any other legal entity whatsoever, formed, created or existing
72 under the laws of this state or any other jurisdiction;

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

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

81 (o) The words "trust business" mean the functions, services
82 and activities contained, detailed and embraced in section
83 fourteen of article four of this chapter and as elsewhere de-
84 fined by law and as may be included within the meaning of
85 the term "banking business."

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-14. Trust powers of banking institutions.

§31A-4-22. Reserves required of banking institutions; reports; penalties.

§31A-4-14. Trust powers of banking institutions.

1 Every state banking institution, except industrial banks
2 created and organized pursuant to the provisions of article
3 seven, chapter thirty-one of this code, which files the certificate
4 required in the following section and which is otherwise autho-
5 rized to do so, shall have and exercise the following powers:

6 (a) All the powers, rights and privileges of any state bank-
7 ing institution;

8 (b) To act as trustee, assignee, special commissioner, gen-
9 eral or special receiver, guardian, executor, administrator,
10 committee, agent, curator, or in any other fiduciary capacity,
11 and to take, assume, accept and execute trusts of every de-
12 scription not inconsistent with the Constitution and laws of
13 the United States of America or of this state; and to receive,
14 hold, manage and apply any sinking fund on the terms and for
15 the purposes specified in the instrument creating such fund;

16 (c) To act as registrar, transfer agent or dividend or coupon
17 paying agent for any corporation;

18 (d) To make, hold and dispose of investments and establish
19 common trust funds, and account therefor, pursuant to the
20 provisions of chapter forty-four of this code;

21 (e) To purchase and sell and take charge of and receive the
22 rents, issues and profits of any real estate for other persons or
23 corporations;

24 (f) To act as trustee or agent in any collateral trust and in
25 order to secure the payment of any obligations of any person,
26 firm, private corporation, public corporation, public body or
27 public agency to receive and hold in trust any items of personal
28 property (including without limitation notes, bonds, debentures,
29 obligations and certificates for shares of stock) with the right in
30 case of default to sell and dispose of such personal property
31 and to collect, settle and adjust any obligations for the pay-
32 ment of money, and at any sale of such personal property held

33 by it, to purchase the same for the benefit of all or any of the
34 holders of the obligations, to secure the payment of which such
35 items of personal property were pledged and delivered to the
36 trustee or agent. Any such sale may be made without any pro-
37 ceedings in any court, and at such times and upon such terms
38 as may be specified in the instrument or instruments creating
39 the trust, or, in the absence of any specification of terms, at
40 such time and upon such terms as the trustee shall deem rea-
41 sonable; and

42 (g) To do and perform any act or thing requisite or neces-
43 sary in, or incidental to, the exercise of the general powers
44 herein set forth.

45 All national banks having their principal offices in this state
46 which have been, or hereafter may be, authorized under the
47 laws of the United States to act as trustee and in other fidu-
48 ciary capacities in the state of West Virginia shall have all the
49 rights, powers, privileges and immunities conferred hereunder,
50 provided they have a capital of at least one hundred thousand
51 dollars and comply with the requirements hereof.

**§31A-4-22. Reserves required of banking institutions; reports;
penalties.**

1 Each state banking institution, except industrial banks
2 created and organized pursuant to the provisions of article
3 seven, chapter thirty-one of this code shall at all times main-
4 tain on hand as a reserve in lawful money of the United
5 States of America an amount equal to at least seven percent
6 of the aggregate of all of its deposits which are subject to
7 withdrawal on demand and three percent of its time deposits.
8 Whenever the commissioner of banking shall determine that
9 the maintenance of sound banking practices or the prevention
10 of injurious credit expansion or contraction makes such
11 action advisable, he may by rule or regulation from time to
12 time change such requirements as to reserves against demand
13 or time deposits, or both, but the reserves so prescribed shall
14 in no event be less than those specified in this section nor
15 more than twice those specified. Whenever such reserve shall
16 fall below that required, the institution shall not thereafter
17 make any new loan or investment until the required reserve

18 shall be restored. For the purpose of computing such reserve,
19 all deposits requiring notice of thirty days or more for with-
20 drawal and time certificates of deposit and Christmas savings
21 shall be deemed time deposits, and all checking accounts,
22 certified checks, cashier's checks, demand certificates of deposit
23 and balances due other banks shall be deemed demand de-
24 posits. But in lieu of lawful money on hand, four fifths of
25 such reserve may consist of balances payable on demand
26 from any national or state bank doing business in this state
27 or solvent banking institutions in other states. The reserve
28 balances required herein shall be computed on the basis of
29 average daily net deposit balances and average daily currency
30 and coin during biweekly periods. The required reserve bal-
31 ance of each bank shall be computed at the close of business
32 each day based upon its net deposit balances and currency and
33 coin at the opening of business on the same day. The
34 biweekly period shall end at the close of business on days
35 to be fixed by the commissioner in his promulgated rules
36 and regulations. When, however, the reserve computation
37 period ends with a nonbusiness day, or two or more con-
38 secutive nonbusiness days, such nonbusiness day or days may,
39 at the option of the banking institution, and whether or not
40 it had a deficiency in reserve balances in such computation
41 period, be included in the next biweekly computation period.

42 The commissioner shall, by rule and regulation, require
43 regular reports from such banking institutions, which reports
44 shall be submitted at such times and contain such information
45 as will enable the commissioner to adequately supervise the
46 maintenance of reserves under this section. Penalties for any
47 deficiencies in the required reserves of any banking institution
48 shall be assessed monthly by the commissioner on the basis
49 of average daily deficiencies during each of the computation
50 periods ending in the preceding calendar month. Such
51 penalties shall be assessed at a rate of two percent per annum
52 above the lowest rate applicable to borrowings by member
53 banks from the federal reserve bank of the district in which
54 such deficient institution is located on the first day of the
55 calendar month in which the deficiencies occurred. Such
56 penalties shall be paid by the commissioner into the treasury
57 of the state of West Virginia and credited to the general fund.

58 Compliance on the part of any such banking institution
59 which is a member of the federal reserve system with the
60 reserve requirements of the Federal Reserve Act, as amended,
61 shall be full compliance with the provisions hereof. No such
62 member bank shall be required to carry or maintain a reserve
63 other than such as required under terms of the Federal
64 Reserve Act, as amended.

CHAPTER 7

(S. B. 539—By Mr. Harman and Mr. Hinkle)

[Passed March 9, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article eight, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twelve-a, relating to prohibiting the transaction of banking business in a mobile unit not permanently attached to the real estate.

Be it enacted by the Legislature of West Virginia:

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

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

§31A-8-12a. Banking from mobile units prohibited.

1 It is illegal for any banking institution, building and
2 loan association, industrial loan company or small loan
3 company to conduct its business in a facility that is a
4 mobile unit not permanently attached to the real estate
5 upon which it is located, except that such mobile units
6 may be used as temporary banking quarters pending
7 construction of a permanent bank building on the same
8 or adjacent property thereto if a charter for said bank
9 has previously been approved.

CHAPTER 8

(H. B. 1024—By Miss Prestera and Mr. Sommerville)

[Passed March 8, 1974; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and three, article one, chapter thirteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to bond issues by local units of government; and expanding the purposes for which bonds may be issued by local units of government.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. BOND ISSUES FOR ORIGINAL INDEBTEDNESS.

§13-1-2. Purposes for which bonds may be issued.

§13-1-3. Amount and purpose of indebtedness for which bonds may be issued.

§13-1-2. Purposes for which bonds may be issued.

1 Debt may be incurred and bonds issued under this article for
 2 the purpose of acquiring, constructing and erecting, enlarging,
 3 extending, reconstructing or improving any building, work,
 4 utility or undertaking, or for furnishing, equipping and ac-
 5 quiring or procuring the necessary apparatus for any building,
 6 work, improvement or department, or for establishing and
 7 maintaining a library or museum for the public use, or
 8 a building or structure for educational purposes, or acquiring
 9 a recreation park for the public use, or for acquiring, con-
 10 structing, furnishing, equipping and maintaining civic arenas,
 11 auditoriums, exhibition halls and theaters, or for other similar
 12 corporate purpose, for which the political division is authorized
 13 to levy taxes or expend public money. But no bonds shall
 14 be issued for the purpose of providing funds for the current
 15 expenses of any body or political division. Interest accruing
 16 during the construction period, that is to say, the time when
 17 an improvement is under construction and six months there-
 18 after, shall be deemed a part of the cost of the improvement,
 19 and shall not be deemed current expenses. All engineering
 20 and inspection costs, including a proper proportion of the

21 compensation, salaries and expenses of the engineering staff
22 of the political division properly chargeable to any work or
23 improvements, as determined by the governing body, or the
24 estimated amount of such costs, shall be deemed part of the
25 cost of an improvement. All costs and estimated costs of the
26 issuance of bonds shall be deemed a part of the cost of the
27 work or improvement, or of the property, or of the carrying
28 out of the purposes for which such bonds are to be issued.
29 The power to acquire or construct any building, work or
30 improvement as herein provided shall be deemed to include
31 the power to acquire the necessary lands, sites and rights-of-
32 way therefor.

33 Bonds may also be issued by any municipality having a
34 population of fifty thousand or more or by any county for the
35 purpose of acquiring land and constructing a building or
36 buildings for use and occupancy as a college. The proposal
37 for such a bond issue shall contain a provision that there shall
38 be created a commission or committee for the purpose of
39 operating the building or buildings and for renting the same
40 for an amount sufficient to pay the interest and sinking fund
41 on the bonds proposed to be issued, and shall contain a
42 further provision that in the event a sufficient amount is not
43 realized from rent or rents for the purpose of meeting the
44 debt service, then the city or county shall lay a levy for such
45 purpose in an amount sufficient within the constitutional and
46 statutory limitation to pay the interest and principal on such
47 bonds as the same become due and payable. The proposal may
48 also contain a provision that when the bonds and the interest
49 thereon shall have been paid, then the title to the land and the
50 building or buildings situated thereon may be transferred to
51 the college to which the same have been rented.

**§13-1-3. Amount and purpose of indebtedness for which bonds
may be issued.**

1 No political division authorized by this article to issue
2 bonds, except county boards of education, shall by any bond
3 issue, become indebted to an amount, including all other in-
4 debtedness, exceeding two and one-half percent of the value
5 of the taxable property therein, as shown by the last assessment

6 thereof, for state and county purposes, next prior to the is-
7 suing of such bonds: *Provided*, That any county for the erection
8 and equipment of a courthouse and/or jail for such county,
9 with funds borrowed from the government of the United States
10 or any governmental agency, federal or state, and any muni-
11 cipal corporation of three hundred inhabitants or more, for the
12 purpose of grading, paving, sewerage, and otherwise improving
13 or reimproving its streets and alleys, or for establishing and
14 maintaining a library or museum for the public use, or a
15 building or structure for educational purposes, or acquiring a
16 recreation park for the public use, or for acquiring, con-
17 structing, furnishing, equipping and maintaining civic arenas,
18 auditoriums, exhibition halls and theaters, may become in-
19 debted and issue bonds in an additional sum not exceeding two
20 and one-half percent of the value of the taxable property
21 therein, ascertained as aforesaid: *Provided, however*, That no
22 county board of education authorized by this article to issue
23 bonds, shall, by any bond issue, become indebted, in any man-
24 ner, or for any purpose, to an amount, including all other in-
25 debtedness, in the aggregate, exceeding five percent on the
26 value of the taxable property therein, in the county school dis-
27 trict to be ascertained by the last assessment for state and
28 county taxes, previous to the incurring of such indebtedness,
29 in the manner provided by the "School Bond Amendment," as
30 ratified.

31 The term "sewerage" as used herein shall be treated in a
32 comprehensive sense, so as to include all mains, laterals, con-
33 nections, traps, incinerating and disposal plants, and other
34 necessary and convenient accessories to a modern sanitary and
35 efficient sewerage system and shall include storm sewers.

36 The county court of any county is hereby authorized and
37 empowered to negotiate and sell to the government of the
38 United States or to any governmental agency, federal or state,
39 at private sale, at not less than par any bonds issued for the
40 purpose of erecting and equipping a courthouse or other public
41 buildings for such county, under and by virtue of this article,
42 without first offering them for sale at public auction, or to any
43 other person or agency.

CHAPTER 9

(S. B. 362—By Mr. Jones)

[Passed March 9, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article five, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the continuing jurisdiction of the juvenile court.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. JUVENILE COURTS.**§49-5-2. "Child" defined; continuing jurisdiction of court.**

1 "Child" means a person under the age of eighteen years.
2 When jurisdiction shall have been obtained by any court
3 of competent jurisdiction in the case of any child, such
4 child shall continue under the jurisdiction of the court
5 until he becomes eighteen years of age unless discharged
6 prior thereto or, in the event such child is committed to a
7 correctional or other institution, until he is released there-
8 from. A person subject to the jurisdiction of the juvenile
9 court may be brought before it by either of the following
10 means and no other:

11 (a) By petition praying that the person be adjudged
12 neglected or delinquent;

13 (b) Certification from any other court before which
14 such person is brought, charged with the commission of a
15 crime.

CHAPTER 10

(H. B. 907—By Mr. Terry and Mr. Brenda)

[Passed March 9, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article thirteen, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to preference rating of veterans on written examination on nonpartisan merit basis extended to veterans of Korean and Southeast Asian conflicts for positions in state departments.

Be it enacted by the Legislature of West Virginia:

That section one, article thirteen, 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 13. PREFERENCE RATING OF VETERANS ON WRITTEN EXAMINATIONS ON NONPARTISAN MERIT BASIS.

§6-13-1. Preference rating of veterans on written examinations for positions in state departments filled under nonpartisan merit system.

1 For positions in any department or agency in which posi-
2 tions are filled under civil service or any job classification
3 system, a preference of five points in addition to the regu-
4 lar numerical score received on examination shall be awarded
5 to all veterans having qualified for appointment by making a
6 minimum passing grade; and to all veterans awarded the purple
7 heart, or having a compensable service-connected disability,
8 as established by any proper veterans' bureau or department of
9 the federal government, an additional five points shall be al-
10 lowed.

11 For the purpose of this article, "veteran" shall mean any
12 person who has served in the armed forces of the United
13 States during the Spanish American War, World War I,
14 World War II, the Korean Conflict or the Southeast Asian
15 Conflict, and who has been honorably discharged from such
16 service.

17 Such awards shall be made for the benefit and preference
18 in appointment of all veterans who have heretofore or who
19 shall hereafter take such examinations, but shall not operate
20 to the detriment of any person heretofore appointed to a po-
21 sition in such department or agency.

CHAPTER 11

(H. B. 1125—By Mr. Terry)

[Passed March 8, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article two, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to venue for certain suits and actions against the state and permitting certain such actions involving real estate to be brought in the county where such real estate is located.

Be it enacted by the Legislature of West Virginia:

That section two, 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.

§14-2-2. Venue for certain suits and actions.

- 1 (a) The following proceedings shall be brought and prose-
2 cuted only in the circuit court of Kanawha county:
 - 3 1. Any suit in which the governor, any other state officer,
4 or a state agency is made a party defendant, except as gar-
5 nishee or suggestee.
 - 6 2. Any suit attempting to enjoin or otherwise suspend or
7 affect a judgment or decree on behalf of the state obtained in
8 any circuit court.
- 9 (b) Any proceeding for injunctive or mandamus relief in-
10 volving the taking, damage or title to real property may be

11 brought and presented in the circuit court of the county in
12 which the real property affected is situate.

13 This section shall apply only to such proceedings as are not
14 prohibited by the constitutional immunity of the state from suit
15 under section thirty-five, article six of the constitution of the
16 state.

CHAPTER 12

(Com. Sub. for S. B. 240—By Mr. Brotherton, Mr. President)

[Passed March 5, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal article seven-a, chapter forty-seven; and to amend and reenact section thirty, article four, chapter thirty-one-a, and sections five and five-a, article six, chapter forty-seven, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said code by adding thereto a new chapter, designated chapter forty-six-a, relating to expenses, charges and interest allowed in certain cases; relating to precomputed installment loans; providing a method of calculating a refund or rebate on any such precomputed installment loan; relating to acceleration of any such installment note; providing for the enactment of a consumer credit and protection act to be known as the "West Virginia Consumer Credit and Protection Act"; relating to certain consumer and other credit transactions; consolidating and revising certain aspects of the law relating to consumer and other loans, consumer and other sales of goods, services and interests in land, and consumer leases; relating to claims and defenses against a holder in due course, or an assignee of an instrument, contract or other writing, or a lender in an interlocking loan relationship; prescribing certain maximum charges and penalties and consumer protection provisions respecting transactions covered by the act and displacing other provisions in regard thereto; prescribing the application of the act and providing cer-

tain exclusions therefrom; defining certain terms used in the act; exempting certain property from execution or other judicial process and specifying detailed provisions in connection therewith; providing for limitations on assignment of earnings; providing for service of notice and process on nonresidents; providing for cancellation of indebtedness on certain contracts for magazines and correspondence courses; specifying restrictions and limitations upon debt collection practices; fixing maximum rates and charges and permitting certain other and additional charges with respect to, and regulating practices with respect to insurance in regard to, loans and sales of goods and services covered by the act including without limitation loans and certain sales secured by an interest in land and loans insured or guaranteed by the United States or an agency thereof; establishing a class of lenders designated as "supervised lenders"; providing for the licensing and regulation of supervised lenders; fixing the loan finance charges which supervised lenders may make; providing the maximum amount of loans to which such charges apply; revising the laws relating to usury; limiting certain agreements and practices and limiting and abolishing certain remedies of creditors respecting particular consumer credit transactions; creating a division of consumer protection in the office of the attorney general; providing that the attorney general and commissioner of banking in various respects shall administer the act; requiring all persons other than supervised financial organizations to obtain a license from the commissioner before making certain consumer loans and providing the requirements for such license; providing debtors' remedies and civil and criminal penalties for violation of the act; relating to unfair methods of competition and unfair or deceptive acts or practices; relating to warranties and privity of contract; granting to the attorney general and such commissioner certain powers to regulate persons engaging in transactions subject to the act including without limitation the power to adopt regulations, investigate complaints, issue subpoenas, hold hearings, issue orders and seek injunctions and other judicial relief; providing for judicial review; providing that the attorney general may bring a civil

action to restrain unconscionable conduct; requiring the giving of certain notice by persons engaged in certain consumer transactions; relating to a consumer advisory council; providing an operative date of the act and providing for transition; providing that certain transactions entered into prior to the operative date shall be governed by any statute, rule of law or law repealed or modified by such act, except as otherwise provided; providing a legal rate and a contract rate of interest; providing an interest rate on certain loans repayable in installments; providing for refunds or rebates with respect thereto; and providing for the severability of the act's provisions.

Be it enacted by the Legislature of West Virginia:

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

Chapter

31A. Banks and Banking.

46A. West Virginia Consumer Credit and Protection Act.

47. Regulation of Trade.

CHAPTER 31A. BANKS AND BANKING.

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-30. Charges and interest allowed in certain cases; negotiability of installment notes.

1 In addition to the interest rate provided in article six
 2 of chapter forty-seven of this code and elsewhere by law,
 3 a banking institution may charge and collect a reasonable
 4 amount to cover the expenses incurred in procuring reports
 5 and information respecting loans and the value of and title
 6 to property offered as security therefor, and a charge of
 7 three dollars may be made for any loan or forbearance of
 8 money or other thing where the interest at the rate of six

9 percent per annum would not amount to that sum and the
10 same shall not be a usurious charge or rate of interest.
11 Except in cases where it is otherwise specially provided by
12 law, any banking institution authorized to do, and doing
13 business in this state, may contract for and charge interest
14 for a secured or unsecured loan, repayable in installments
15 at a rate not in excess of: (a) Six percent per annum upon
16 the principal amount of the loan, for the entire period of
17 the loan, and add such charge to the principal amount of
18 the loan; or (b) six percent per annum upon the face
19 amount of the instruments evidencing the obligation to re-
20 pay the loan, for the entire period of the loan, and deduct
21 such charge in advance but in no case shall the interest on
22 such a discount loan exceed an annual percentage rate of
23 fifteen percent per annum calculated according to the ac-
24 tual method: *Provided*, That upon prepayment in full of
25 a precomputed loan, the bank shall rebate that portion of
26 such charge attributable to the prepaid periodic install-
27 ment periods. When the total amount is payable in substan-
28 tially equal consecutive monthly installments, the portion
29 of such charge attributable to any particular monthly in-
30 stallment period shall be that proportion of the charge
31 originally contracted for, as the balance scheduled to be
32 outstanding on the last day of the monthly installment
33 period before deducting the payment, if any, scheduled to
34 be made on that day bears to the sum of all the monthly in-
35 stallment balances under the original schedule of pay-
36 ments. (This method of allocation is the sum of the digits
37 method, commonly referred to as the "Rule of 78.") If pre-
38 payment in full of an obligation payable in monthly in-
39 stallments is made on other than an installment due date,
40 the rebate shall be calculated as of the nearest installment
41 due date. For the purpose of determining the installment
42 due date nearest the date of any prepayment in full, any
43 prepayment in full of an obligation payable in monthly
44 installments made on or before the fifteenth day following
45 the installment due date shall be determined to have been
46 made as of such installment due date, and any prepayment
47 in full made on or after the sixteenth day shall be deemed
48 to have been made on the next succeeding installment
49 due date. The commissioner of banking shall prescribe
50 by rule the method or procedure for the allocation of

51 charges and the calculation of rebates consistent with the
 52 sum of the digits method where the precomputed loan is
 53 payable in unequal or irregular or in other than substan-
 54 tially equal consecutive monthly installments. Any note
 55 evidencing any such installment loan may provide that the
 56 entire unpaid balance thereof at the option of the holder
 57 shall become due and payable upon default in the payment
 58 of any stipulated installment without impairing the nego-
 59 tiability of such note if otherwise negotiable.

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

Article

1. **Short Title, Definitions and General Provisions.**
2. **Consumer Credit Protection.**
3. **Finance Charges and Related Provisions.**
4. **Supervised Lenders.**
5. **Civil Liability and Criminal Penalties.**
6. **General Consumer Protection.**
7. **Administration.**
8. **Operative Date and Provisions for Transition.**

ARTICLE 1. SHORT TITLE, DEFINITIONS AND GENERAL PROVISIONS.

- §46A-1-101. Short title.
- §46A-1-102. General definitions.
- §46A-1-103. Effect of chapter on powers of persons making consumer credit sales and consumer loans, and others; consumer protection generally.
- §46A-1-104. Application.
- §46A-1-105. Exclusions.
- §46A-1-106. Sales or loans subject to chapter by agreement of parties.
- §46A-1-107. Waiver.

§46A-1-101. Short title.

- 1 This chapter shall be known and may be cited as the
- 2 "West Virginia Consumer Credit and Protection Act."

§46A-1-102. General definitions.

- 1 In addition to definitions appearing in subsequent arti-
- 2 cles, in this chapter:
- 3 (1) "Actuarial method" means the method, defined by
- 4 rules adopted by the commissioner, of allocating payments
- 5 made on a debt between principal or amount financed and
- 6 loan finance charge or sales finance charge pursuant to

7 which a payment is applied first to the accumulated loan
8 finance charge or sales finance charge and the balance is
9 applied to the unpaid principal or unpaid amount financed.

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

15 (3) "Agricultural purpose" means a purpose related to
16 the production, harvest, exhibition, marketing, transporta-
17 tion, processing or manufacture of agricultural products by
18 a natural person who cultivates, plants, propagates, or nur-
19 tures the agricultural products. "Agricultural products"
20 includes agricultural, horticultural, viticultural and dairy
21 products, livestock, wildlife, poultry, bees, forest products,
22 fish and shellfish, and any products thereof, including pro-
23 cessed and manufactured products, and any and all prod-
24 ucts raised or produced on farms and any processed or
25 manufactured products thereof.

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

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

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

34 (c) If not included in the cash price:

35 (i) Any applicable sales, use, privilege, excise or docu-
36 mentary stamp taxes;

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

39 (iii) Additional charges permitted by this chapter.

40 (5) "Average daily balance" in a billing cycle for which
41 a sales finance charge or loan finance charge is made is the
42 sum of the amount unpaid each day during that cycle di-
43 vided by the number of days in that cycle. The amount un-

44 paid on a day is determined by adding to the balance, if
45 any, unpaid as of the beginning of that day all purchases
46 and other debits and deducting all payments and other
47 credits made or received as of that day.

48 (6) The "cash price" of goods, services or an interest in
49 land means the price at which the goods, services or inter-
50 est in land are offered for sale by the seller to cash buyers
51 in the ordinary course of business, and may include (a) ap-
52 plicable sales, use, privilege, and excise and documentary
53 stamp taxes, (b) the cash price of accessories or related
54 services such as delivery, installation, servicing, repairs, al-
55 terations and improvements, and (c) amounts actually paid
56 or to be paid by the seller for registration, certificate of
57 title, or license fees.

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

60 (a) Fees or premiums for title examination, title insur-
61 ance or similar purposes including surveys;

62 (b) Fees for preparation of a deed, deed of trust, mort-
63 gage, settlement statement or other documents;

64 (c) Escrows for future payments of taxes and insurance;

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

67 (e) Appraisal fees; and

68 (f) Credit reports.

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

71 (9) "Commissioner" means the commissioner of banking
72 of West Virginia.

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

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

80 (12) (a) Except as provided in paragraph (b), "con-
81 mer credit sale" is a sale of goods, services or an interest
82 in land in which:

83 (i) Credit is granted either by a seller who regularly en-
84 gages as a seller in credit transactions of the same kind or
85 pursuant to a seller credit card;

86 (ii) The buyer is a person other than an organization;

87 (iii) The goods, services or interest in land are purchased
88 primarily for a personal, family, household or agricultural
89 purpose;

90 (iv) Either the debt is payable in installments or a sales
91 finance charge is made; and

92 (v) With respect to a sale of goods or services, the
93 amount financed does not exceed twenty-five thousand
94 dollars.

95 (b) "Consumer credit sale" does not include a sale in
96 which the seller allows the buyer to purchase goods or ser-
97 vices pursuant to a lender credit card or similar arrange-
98 ment.

99 (13) (a) "Consumer lease" means a lease of goods:

100 (i) Which a lessor regularly engaged in the business of
101 leasing makes to a person, other than an organization, who
102 takes under the lease primarily for a personal, family,
103 household or agricultural purpose;

104 (ii) In which the amount payable under the lease does
105 not exceed twenty-five thousand dollars; and

106 (iii) Which is for a term exceeding four months.

107 (b) "Consumer lease" does not include a lease made pur-
108 suant to a lender credit card or similar arrangement.

109 (14) "Consumer loan" is a loan made by a person regu-
110 larly engaged in the business of making loans in which:

111 (a) The debtor is a person other than an organization;

112 (b) The debt is incurred primarily for a personal,
113 family, household or agricultural purpose;

114 (c) Either the debt is payable in installments or a loan
115 finance charge is made; and

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

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

122 (16) "Earnings" means compensation paid or payable to
123 an individual or for his account for personal services ren-
124 dered or to be rendered by him, whether denominated as
125 wages, salary, commission, bonus or otherwise, and in-
126 cludes periodic payments pursuant to a pension, retire-
127 ment or disability program.

128 (17) "Federal Consumer Credit Protection Act" means
129 the "Consumer Credit Protection Act" (Public Law 90-
130 321; 82 Stat. 146), as amended, and includes regulations
131 issued pursuant to that act.

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

136 (19) "Home solicitation sale" means a consumer credit
137 sale in excess of twenty-five dollars in which the buyer re-
138 ceives a solicitation of the sale at a place other than the
139 seller's business establishment at a fixed location and the
140 buyer's agreement or offer to purchase is there given to
141 the seller or a person acting for the seller. The term does
142 not include a sale made pursuant to a preexisting open-
143 end credit account with the seller in existence for at least
144 three months prior to the transaction, a sale made pursuant
145 to prior negotiations between the parties at the seller's
146 business establishment at a fixed location, a sale of motor
147 vehicles, mobile homes or farm equipment or a sale which
148 may be rescinded under the Federal Truth in Lending
149 Act (being Title I of the Federal Consumer Credit Protec-
150 tion Act). A sale which would be a home solicitation sale if
151 credit were extended by the seller is a home solicitation
152 sale although the goods or services are paid for in whole

153 or in part by a consumer loan in which the creditor is
154 subject to claims and defenses arising from the sale
155 (§46A-2-103).

156 (20) Except as otherwise provided, "lender" includes an
157 assignee of the lender's right to payment but use of the
158 term does not in itself impose on an assignee any obligation
159 of the lender.

160 (21) "Lender credit card or similar arrangement" means
161 an arrangement or loan agreement, other than a seller
162 credit card, pursuant to which a lender gives a debtor the
163 privilege of using a credit card, letter of credit, or other
164 credit confirmation or identification in transactions out of
165 which debt arises:

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

168 (b) By the lender's payment or agreement to pay the
169 consumer's obligations; or

170 (c) By the lender's purchase from the obligee of the
171 consumer's obligations.

172 (22) "Loan" includes:

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

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

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

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

183 (23) (a) "Loan finance charge" means the sum of (i) all
184 charges payable directly or indirectly by the debtor and
185 imposed directly or indirectly by the lender as an incident
186 to the extension of credit, including any of the following
187 types of charges which are applicable: Interest or any
188 amount payable under a point, discount, or other system of

189 charges, however denominated, premium or other charge
190 for any guarantee or insurance protecting the lender
191 against the consumer's default or other credit loss; and (ii)
192 charges incurred for investigating the collateral or credit-
193 worthiness of the consumer or for commissions or broker-
194 age for obtaining the credit, irrespective of the person to
195 whom the charges are paid or payable, unless the lender
196 had no notice of the charges when the loan was made. The
197 term does not include charges as a result of default, addi-
198 tional charges, delinquency charges or deferral charges.

199 (b) If a lender makes a loan to a consumer by purchas-
200 ing or satisfying obligations of the consumer pursuant to a
201 lender credit card or similar arrangement, and the pur-
202 chase or satisfaction is made at less than the face amount
203 of the obligation, the discount is not part of the loan finance
204 charge.

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

209 (25) "Official fees" means:

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

215 (b) Premiums payable for insurance or fees escrowed
216 in a special account for the purpose of funding self-insur-
217 ance or its equivalent in lieu of perfecting a security inter-
218 est otherwise required by the creditor in connection with
219 the sale, lease or loan, if such premium or fee does not
220 exceed the fees and charges described in paragraph (a)
221 which would otherwise be payable.

222 (26) "Organization" means a corporation, government or
223 governmental subdivision or agency, trust, estate, partner-
224 ship, cooperative or association.

225 (27) "Payable in installments" means that payment is re-
226 quired or permitted by agreement to be made in (a) two or

227 more periodic payments, excluding a down payment, with
228 respect to a debt arising from a consumer credit sale pur-
229 suant to which a sales finance charge is made, (b) four or
230 more periodic payments, excluding a down payment, with
231 respect to a debt arising from a consumer credit sale pur-
232 suant to which no sales finance charge is made, or (c) two
233 or more periodic payments with respect to a debt arising
234 from a consumer loan. If any periodic payment other than
235 the down payment under an agreement requiring or per-
236 mitting two or more periodic payments is more than twice
237 the amount of any other periodic payment, excluding the
238 down payment, the consumer credit sale or consumer loan
239 is "payable in installments".

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

242 (29) "Person related to" with respect to an individual
243 means (a) the spouse of the individual, (b) a brother,
244 brother-in-law, sister or sister-in-law of the individual, (c)
245 an ancestor or lineal descendant of the individual or his
246 spouse, and (d) any other relative, by blood or marriage, of
247 the individual or his spouse who shares the same home with
248 the individual. "Person related to" with respect to an orga-
249 nization means (a) a person directly or indirectly con-
250 trolling, controlled by or under common control with the
251 organization, (b) an officer or director of the organization
252 or a person performing similar functions with respect to
253 the organization or to a person related to the organization,
254 (c) the spouse of a person related to the organization,
255 and (d) a relative by blood or marriage of a person related
256 to the organization who shares the same home with him.

257 (30) "Precomputed loan." A loan, refinancing or consoli-
258 dation is "precomputed" if the debt is expressed as a sum
259 comprising the principal and the amount of the loan fi-
260 nance charge computed in advance.

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

265 (32) "Presumed" or "presumption" means that the trier

266 of fact must find the existence of the fact presumed unless
267 and until evidence is introduced which would support a
268 finding of its nonexistence.

269 (33) "Principal" of a loan means the total of:

270 (a) The net amount paid to, receivable by or paid or pay-
271 able for the account of the debtor;

272 (b) The amount of any discount excluded from the
273 loan finance charge; and

274 (c) To the extent that payment is deferred:

275 (i) Amounts actually paid or to be paid by the lender for
276 registration, certificate of title, or license fees if not
277 included in (a); and

278 (ii) Additional charges permitted by this chapter.

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

288 (35) "Revolving loan account" means an arrangement
289 between a lender and a consumer including, but not limi-
290 ted to, a lender credit card or similar arrangement, pursu-
291 ant to which (a) the lender may permit the consumer to
292 obtain loans from time to time, (b) the unpaid balances of
293 principal and the loan finance and other appropriate
294 charges are debited to an account, (c) a loan finance charge
295 if made is not precomputed but is computed periodically
296 on the outstanding unpaid balances of the principal of the
297 consumer's account from time to time, and (d) there is the
298 privilege of paying the balances in installments.

299 (36) "Sale of goods" includes any agreement in the form
300 of a bailment or lease of goods if the bailee or lessee agrees
301 to pay as compensation for use a sum substantially equiva-
302 lent to or in excess of the aggregate value of the goods in-

303 volved and it is agreed that the bailee or lessee will become,
304 or for no other or a nominal consideration has the option
305 to become, the owner of the goods upon full compliance
306 with his obligations under the agreement.

307 (37) "Sale of an interest in land" includes a lease in
308 which the lessee has an option to purchase the interest and
309 all or a substantial part of the rental or other payments
310 previously made by him are applied to the purchase price.

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

314 (39) "Sales finance charge" means the sum of (a) all
315 charges payable directly or indirectly by the buyer and im-
316 posed directly or indirectly by the seller or issuer of a seller
317 credit card as an incident to the extension of credit, includ-
318 ing any of the following types of charges which are appli-
319 cable: Time-price differential, however denominated, in-
320 cluding service, carrying or other charge, premium or
321 other charge for any guarantee or insurance protecting the
322 seller against the buyer's default or other credit loss, and
323 (b) charges incurred for investigating the collateral or
324 credit-worthiness of the buyer or for commissions or bro-
325 kerage for obtaining the credit, irrespective of the person
326 to whom the charges are paid or payable; unless the seller
327 had no notice of the charges when the credit was granted.
328 The term does not include charges as a result of default,
329 additional charges, delinquency charges or deferral
330 charges. If the seller or issuer of a seller credit card pur-
331 chases or satisfies obligations of the consumer and the pur-
332 chase or satisfaction is made at less than the face amount
333 of the obligation, the discount is not part of the sales
334 finance charge.

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

339 (41) "Seller credit card" means an arrangement pursu-
340 ant to which a person gives to a buyer or lessee the privi-
341 lege of using a credit card, letter of credit, or other credit

342 confirmation or identification primarily for the purpose of
343 purchasing or leasing goods or services from that person,
344 that person and any other person or persons, a person re-
345 lated to that person, or others licensed or franchised or
346 permitted to do business under his business name or trade
347 name or designation or on his behalf.

348 (42) "Services" includes (a) work, labor and other per-
349 sonal services, (b) privileges with respect to transporta-
350 tion, use of vehicles, hotel and restaurant accommodations,
351 education, entertainment, recreation, physical culture,
352 hospital accommodations, funerals, cemetery accommoda-
353 tions, and the like, and (c) insurance.

354 (43) "Supervised financial organization" means a person,
355 other than a supervised lender or an insurance company or
356 other organization primarily engaged in an insurance busi-
357 ness:

358 (a) Organized, chartered or holding an authorization cer-
359 tificate under the laws of this state or of the United States
360 which authorizes the person to make consumer loans; and

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

364 (44) "Supervised lender" means a person authorized to
365 make or take assignments of supervised loans.

366 (45) "Supervised loan" means a consumer loan made by
367 other than a supervised financial organization, including a
368 loan made pursuant to a revolving loan account, where the
369 principal does not exceed one thousand two hundred dol-
370 lars and in which the rate of the loan finance charge ex-
371 ceeds eight percent per year as determined according to
372 the actuarial method.

**§46A-1-103. Effect of chapter on powers of persons making
consumer credit sales and consumer loans, and
others; consumer protection generally.**

1 (1) This chapter prescribes maximum charges for all
2 creditors, except lessors and those excluded, making con-
3 sumer credit sales and consumer loans, and sales and loans
4 made subject to the provisions of this chapter by agree-

5 ment, and except as otherwise provided by this chapter
6 displaces any existing limitations and provisions regulating
7 maximum interest and charges, minimum charges, addi-
8 tional charges, delinquency charges, deferral charges, al-
9 location of charges and methods of computing rebates up-
10 on prepayment, refinancing or consolidation with respect
11 to consumer credit sales and consumer loans, and the deb-
12 tors' remedies and penalties provided by this chapter dis-
13 place all existing provisions relating to remedies, penalties
14 and forfeitures for usury and usurious contracts as to
15 transactions covered by this chapter: *Provided*, That this
16 chapter shall not displace those provisions of subdivision
17 (6), subsection (a), section eleven, article seven, chapter
18 thirty-one of this code relating to additional charges which
19 may be imposed and collected by industrial loan companies.

20 (2) Except as provided in subsection (1) of this section
21 or elsewhere in this chapter, this chapter does not dis-
22 place powers or limitation on powers which supervised
23 financial organizations and supervised lenders are autho-
24 rized to exercise under the laws of the United States or
25 other laws of this state in effect after the operative date
26 of this chapter.

27 (3) This chapter also prescribes in articles six and seven
28 protective measures for consumers in transactions not nec-
29 essarily involving consumer credit.

§46A-1-104. Application.

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

§46A-1-105. Exclusions.

1 This chapter does not apply to:

2 (1) Extensions of credit to government or governmental
3 agencies or instrumentalities;

4 (2) The sale of insurance by an insurer, except as other-
5 wise provided in this chapter;

6 (3) Transactions under public utility or common carrier
 7 tariffs if a subdivision or agency of this state or of the
 8 United States regulates the charges for the services in-
 9 volved, the charges for delayed payment, and any discount
 10 allowed for early payment; or

11 (4) Licensed pawnbrokers and secondary mortgage len-
 12 ders licensed under the provisions of article seventeen,
 13 chapter thirty-one of this code.

§46A-1-106. Sales or loans subject to chapter by agreement of parties.

1 The parties to any sale or loan, other than a consumer
 2 credit sale or consumer loan, may agree in writing signed
 3 by the parties that the sale or loan is subject to the pro-
 4 visions of this chapter applying to consumer credit sales
 5 or consumer loans. If the parties so agree, the sale or
 6 loan is subject to this chapter.

§46A-1-107. Waiver.

1 Except as otherwise provided in this chapter, a con-
 2 sumer may not waive or agree to forgo rights or benefits
 3 under this chapter.

ARTICLE 2. CONSUMER CREDIT PROTECTION.

- §46A-2-101. Holders of negotiable instruments subject to claims and defenses.
- §46A-2-102. Assignee subject to claims and defenses.
- §46A-2-103. Lender subject to claims and defenses arising from sales.
- §46A-2-104. Notice to cosigners.
- §46A-2-105. Balloon payments.
- §46A-2-106. Notice of consumer's right to cure default; cure; acceleration.
- §46A-2-107. Security in sales or leases.
- §46A-2-108. Cross-collateral.
- §46A-2-109. Debt secured by cross-collateral.
- §46A-2-110. Referral sales or leases.
- §46A-2-111. Consumer leases; information to be furnished.
- §46A-2-112. Restriction on liability in consumer lease.
- §46A-2-113. Notice of assignment.
- §46A-2-114. Receipts; statements of account; evidence of payment.
- §46A-2-115. Limitation on default charges.
- §46A-2-116. Assignment of earnings.
- §46A-2-117. Authorization to confess judgment prohibited.
- §46A-2-118. No garnishment before judgment.

- \$46A-2-119. Restrictions on deficiency judgments.
- \$46A-2-120. Extortionate extensions of credit.
- \$46A-2-121. Unconscionability; inducement by unconscionable conduct.
- \$46A-2-122. Definitions.
- \$46A-2-123. Practice of law by debt collectors.
- \$46A-2-124. Threats or coercion.
- \$46A-2-125. Oppression and abuse.
- \$46A-2-126. Unreasonable publication.
- \$46A-2-127. Fraudulent, deceptive or misleading representations.
- \$46A-2-128. Unfair or unconscionable means.
- \$46A-2-129. Postal violations.
- \$46A-2-130. Limitation on garnishment.
- \$46A-2-131. No discharge or reprisal because of garnishment.
- \$46A-2-132. Home solicitation; buyer's right to cancel; notice.
- \$46A-2-133. Form of agreement or offer to purchase; statement of buyer's rights.
- \$46A-2-134. Restoration of down payment.
- \$46A-2-135. Buyer's duty; seller's right; no compensation for certain services.
- \$46A-2-136. Personal property exemptions.
- \$46A-2-137. Service of process on certain nonresidents.
- \$46A-2-138. Buyer's right to cancel certain subscriptions and other obligations.

§46A-2-101. Holders of negotiable instruments subject to claims and defenses.

1 (1) The following limitations shall be applicable to
2 negotiable instruments, other than a currently dated
3 check, evidencing an obligation arising from a consumer
4 credit sale or consumer lease, other than a sale or lease
5 primarily for an agricultural purpose, made on the date
6 this chapter becomes operative or within a period of one
7 year thereafter;

8 (a) Notwithstanding any term or agreement to the
9 contrary or the provisions of section three hundred five,
10 article three, chapter forty-six of this code, a holder in
11 due course of any such negotiable instrument shall take
12 and hold such instrument subject to all claims and de-
13 fenses arising from that specific consumer credit sale or
14 consumer lease which the buyer or lessee has against the
15 seller or lessor but the holder's liability shall not exceed
16 the amount owing to the holder at the time the holder
17 receives notice of the claims or defenses, if such claims
18 and defenses are asserted by the buyer or lessee by written

19 notice given to the holder within a period of one hundred
20 eighty days after the holder has delivered or mailed to the
21 buyer or lessee a written notice of negotiation complying
22 with the requirements of subdivision (b) of this sub-
23 section (1).

24 (b) The notice of negotiation from the holder to the
25 buyer or lessee contemplated in subdivision (a) of this
26 subsection (1) shall be in writing, identify the negotiable
27 instrument, briefly describe the goods or services, state
28 the name and address of the holder, state the initial de-
29 ferred balance of such negotiable instrument payable by
30 the buyer or lessee and the number, amount and due
31 dates of installments, the amount currently payable by
32 the buyer or lessee, and inform the buyer or lessee in a
33 conspicuous manner that he has one hundred eighty days
34 from a specified date (which date shall be the date the
35 notice was delivered or mailed to the buyer or lessee)
36 within which to notify the holder in writing of any claims
37 and defenses he may have against the seller or lessor
38 arising from that specific consumer credit sale or con-
39 sumer lease; and that if written notification of any such
40 claims and defenses is not given to the holder within such
41 one hundred eighty day period, the holder will have the
42 right to enforce the instrument free of any such claims
43 and defenses the buyer or lessee may have against the
44 seller or lessor. Such notice of negotiation, if given by
45 mail, is given when it is mailed to the buyer's or lessee's
46 last-known address by registered or certified mail, return
47 receipt requested.

48 (c) In order to preserve all of his claims and defenses
49 against a holder under subdivision (a) of this subsection
50 (1), the buyer or lessee must, after receiving the written
51 notice of negotiation provided for in subdivision (b) of
52 this subsection (1), and before the expiration of a period
53 of one hundred eighty days, notify such holder in writ-
54 ing as to any claims and defenses he has against the
55 seller or lessor arising from that specific consumer credit
56 sale or consumer lease. The notice by the buyer or
57 lessee need not take any particular form and shall be
58 sufficient if it indicates the claims and defenses which

59 the buyer or lessee has against the seller or lessor in a
60 manner sufficient to apprise the holder of the nature of
61 such claims and defenses. Such notice, if given by mail, is
62 given when it is mailed to the holder's last-known ad-
63 dress by registered or certified mail, return receipt re-
64 quested. All claims and defenses of the buyer or lessee
65 against the seller or lessor arising out of a consumer
66 credit sale or consumer lease shall be valid against the
67 holder unless the notice of negotiation is given pursuant
68 to this subsection (1).

69 (d) In a consumer credit sale or consumer lease when
70 goods or services cannot be delivered or completed im-
71 mediately after the sale or lease or when the rendition
72 of future services constitutes a material part of the sale
73 or lease agreement, the notice of negotiation contem-
74 plated in subdivision (a) of this subsection (1) shall not
75 be given to the buyer or lessee until the seller or lessor
76 has furnished a certificate to the buyer or lessee which
77 indicates that delivery of such goods has been made or
78 such services completed and such certificate has been
79 duly executed by the buyer or lessee and, in the case of
80 future services, until the buyer or lessee shall forward
81 to the holder a written reaffirmation of the completion of
82 such future services which are the subject of such sale
83 or lease. Such reaffirmation shall not be made until ex-
84 ecution by the buyer or lessee of the certificate of com-
85 pletion. Such reaffirmation shall be forwarded directly
86 by United States mail to the holder by the buyer or lessee.
87 If the seller or lessor directly or indirectly obtains such
88 reaffirmation, it shall be void and have no force or legal
89 effect. A completion certificate need not take any par-
90 ticular form, but shall indicate the names and addresses
91 of the parties to the consumer credit sale or consumer
92 lease, the goods delivered or the services completed and
93 the date on which actual delivery was made or actual
94 performance was completed.

95 (e) Whenever any such negotiable instrument, and an
96 instrument, contract or other writing (other than a nego-
97 tiable instrument) executed in connection with such
98 negotiable instrument, are negotiated and assigned to the

99 same person, either the notices contemplated and pro-
100 vided for in this subsection (1) or the notices contem-
101 plated and provided for in section one hundred two of
102 this article need be given, and it shall not be necessary
103 for notices to be given pursuant to both this subsection
104 (1) and said section one hundred two.

105 (2) Notwithstanding any provisions of this section, a
106 holder shall be subject to any claim or defense based
107 upon lack or failure of consideration.

108 (3) Nothing contained in this section shall be con-
109 strued as affecting any buyer's or lessee's right of action,
110 claim or defense which is otherwise provided for in this
111 code or at common law.

112 (4) Nothing contained in this section shall be con-
113 strued in any manner as affecting any negotiation of any
114 negotiable instrument made prior to the operative date
115 of this chapter.

116 (5) With respect to a consumer credit sale or consumer
117 lease made or entered into more than one year after the
118 operative date of this chapter, other than a sale or lease
119 primarily for an agricultural purpose, the seller or lessor
120 may not take a negotiable instrument other than a cur-
121 rently dated check as evidence of the obligation of the
122 buyer or lessee. The holder in due course of a negotiable
123 instrument taken in violation of this subsection shall, not-
124 withstanding the provisions of section three hundred five,
125 article three, chapter forty-six of this code, be subject to
126 all claims and defenses arising from that specific con-
127 sumer credit sale or consumer lease which the buyer or
128 lessee has against the seller or lessor.

129 (6) For the purpose of determining the amount owing
130 to a holder in due course of a negotiable instrument
131 evidencing an obligation of a buyer or lessee arising from
132 a consumer credit sale or consumer lease:

133 (a) Payments received after the consolidation of two
134 or more consumer credit sales, other than pursuant to a
135 revolving charge account, are deemed to have been first
136 applied to the payment of the sales first made; if the sales

137 consolidated arose from sales made on the same day, pay-
138 ments are deemed to have been first applied to the smaller
139 or smallest sale or sales;

140 (b) Payments received upon a revolving charge ac-
141 count are deemed to have been first applied to the pay-
142 ment of sales finance charges in the order of their entry
143 to the account and then to the payment of debts in the
144 order in which the entries of the debts are made to the
145 account.

146 (7) A claim or defense which a buyer or lessee may
147 assert against a holder in due course of a negotiable
148 instrument under the provisions of this section may be
149 asserted only as a matter of defense to or setoff against
150 a claim by the holder: *Provided*, That if a buyer or lessee
151 shall have a claim or defense which could be asserted
152 under the provisions of this section as a matter of de-
153 fense to or setoff against a claim by the holder in due
154 course of a negotiable instrument were such holder to
155 assert such claim against the buyer or lessee, then such
156 buyer or lessee shall have the right to institute and main-
157 tain an action or proceeding seeking to obtain the can-
158 cellation in whole or in part of the indebtedness evi-
159 denced by such negotiable instrument or the release in
160 whole or in part of any lien upon real or personal
161 property securing the payment thereof: *Provided, how-*
162 *ever*, That any claim or defense founded in fraud, lack or
163 failure of consideration or a violation of the provisions
164 of this chapter as specified in section one hundred one,
165 article five of this chapter, may be asserted by a buyer
166 or lessee at any time, subject to the provisions of this
167 code relating to limitation of actions.

168 (8) Notwithstanding any provisions of this section, a
169 holder shall not be subject to any claim or defense arising
170 from or growing out of personal injury or death resulting
171 therefrom or damage to property.

§46A-2-102. Assignee subject to claims and defenses.

1 (1) The following limitations shall be applicable to
2 instruments, contracts or other writings, other than nego-

3 tiable instruments, evidencing an obligation arising from
4 a consumer credit sale or consumer lease, other than a
5 sale or lease primarily for an agricultural purpose, made
6 on the date this chapter becomes operative or within
7 a period of one year thereafter:

8 (a) Notwithstanding any term or agreement to the
9 contrary or the provisions of article two, chapter forty-
10 six of this code or section two hundred six, article nine
11 of said chapter forty-six, an assignee of any such instru-
12 ment, contract or other writing shall take and hold such
13 instrument, contract or other writing subject to all claims
14 and defenses of the buyer or lessee against the seller or
15 lessor arising from that specific consumer credit sale
16 or consumer lease of goods or services but the assignee's
17 liability shall not exceed the amount owing to the as-
18 signee at the time the assignee receives notice of the
19 claims or defenses, if such claims and defenses are as-
20 serted by the buyer or lessee by written notice given to
21 the assignee within a period of one hundred eighty days
22 after the assignee has delivered or mailed to the buyer
23 or lessee a written notice of assignment complying with
24 the requirements of subdivision (b) of this subsec-
25 tion (1).

26 (b) The notice of assignment from the assignee to
27 the buyer or lessee contemplated in subdivision (a) of
28 this subsection (1) shall be in writing, identify the in-
29 strument, contract or other writing, briefly describe the
30 goods or services, state the name and address of the
31 assignee, state the initial deferred balance of such in-
32 strument, contract or other writing payable by the buyer
33 or lessee and the number, amount and due dates of in-
34 stallments, the amount currently payable by the buyer
35 or lessee, and inform the buyer or lessee in a conspicuous
36 manner that he has one hundred eighty days from a
37 specified date (which date shall be the date the notice
38 was delivered or mailed to the buyer or lessee) within
39 which to notify the assignee in writing of any claims and
40 defenses he may have against the seller or lessor arising
41 from that specific consumer credit sale or consumer lease;
42 and that if written notification of any such claims and

43 defenses is not given to the assignee within such one
44 hundred eighty day period, the assignee will have the
45 right to enforce the instrument, contract or other writing
46 free of any claims and defenses the buyer or lessee may
47 have against the particular seller or lessor. Such
48 notice of assignment, if given by mail, is given when
49 it is mailed to the buyer's or lessee's last-known
50 address by registered or certified mail, return receipt
51 requested.

52 (c) In order to preserve all of his claims and defenses
53 against an assignee under subdivision (a) of this subsec-
54 tion (1), the buyer or lessee must, after receiving the
55 written notice of assignment provided for in subdivision
56 (b) of this subsection (1), and before the expiration of
57 a period of one hundred eighty days, notify such as-
58 signee in writing as to any claims and defenses he has
59 against the seller or lessor arising from that specific
60 consumer credit sale or consumer lease. The notice by
61 the buyer or lessee need not take any particular form
62 and shall be sufficient if it indicates the claims and de-
63 fenses which the buyer or lessee has against the seller or
64 lessor in a manner sufficient to apprise the assignee of the
65 nature of such claims and defenses. Such notice,
66 if given by mail, is given when it is mailed to the as-
67 signee's last-known address by registered or certified mail,
68 return receipt requested. All claims and defenses of the
69 buyer or lessee against the seller or lessor arising out
70 of a consumer credit sale or consumer lease shall
71 be valid against the assignee unless notice of as-
72 signment is given pursuant to this subsection (1).

73 (d) In a consumer credit sale or consumer lease when
74 goods or services cannot be delivered or completed im-
75 mediately after the sale or lease or when the rendition of
76 future services constitutes a material part of the sale
77 or lease agreement, the notice of assignment contem-
78 plated in subdivision (a) of this subsection (1) shall not
79 be given to the buyer or lessee until the seller or lessor
80 has furnished a certificate to the buyer or lessee which
81 indicates that delivery of such goods has been made or
82 such services completed and such certificate has been

83 duly executed by the buyer or lessee and, in the case of
84 future services, until the buyer or lessee shall forward
85 to the assignee a written reaffirmation of the completion
86 of such future services which are the subject of such sale
87 or lease. Such reaffirmation shall not be made until exe-
88 cution by the buyer or lessee of the certificate of com-
89 pletion. Such reaffirmation shall be forwarded directly
90 by United States mail to the assignee by the buyer or
91 lessee. If the seller or lessor directly or indirectly ob-
92 tains such reaffirmation, it shall be void and have no
93 force or legal effect. A completion certificate need not
94 take any particular form, but shall indicate the names
95 and addresses of the parties to the consumer credit sale or
96 consumer lease, the goods delivered or the services com-
97 pleted and the date on which actual delivery was made
98 or actual performance was completed.

99 (e) Whenever any such instrument, contract or other
100 writing (other than a negotiable instrument), and a nego-
101 tiable instrument executed in connection with such other
102 instrument, contract or writing, are assigned and
103 negotiated to the same person, either the notices
104 contemplated and provided for in this subsection (1)
105 or the notices contemplated and provided for in section
106 one hundred one of this article need be given, and it
107 shall not be necessary for notices to be given pursuant
108 to both this subsection (1) and said section one hundred
109 one.

110 (2) Notwithstanding any provisions of this section,
111 an assignee shall be subject to any claim or defense
112 based upon lack or failure of consideration.

113 (3) Nothing contained in this section shall be con-
114 strued as affecting any buyer's or lessee's right of action,
115 claim or defense which is otherwise provided for in this
116 code or at common law.

117 (4) Nothing contained in this section shall be con-
118 strued in any manner as affecting any assignment
119 of any such instrument, contract or other writing, made
120 prior to the operative date of this chapter.

121 (5) The following provisions shall be applicable to

122 instruments, contracts or other writings, other than nego-
123 tiable instruments, evidencing an obligation arising from
124 a consumer credit sale or consumer lease, other than a
125 sale or lease primarily for an agricultural purpose, made
126 after the expiration of one year after the oper-
127 ative date of this chapter: Notwithstanding any term
128 or agreement to the contrary or the provisions of article
129 two, chapter forty-six of this code or section two hundred
130 six, article nine of said chapter forty-six, an assignee of
131 any such instrument, contract or other writing shall
132 take and hold such instrument, contract or other writing
133 subject to all claims and defenses of the buyer or lessee
134 against the seller or lessor arising from that specific con-
135 sumer credit sale or consumer lease of goods or services,
136 but the total of all claims and defenses which may be
137 asserted against the assignee under this subsection or
138 subsection (7) of this section shall not exceed the amount
139 owing to the assignee at the time of such assignment,
140 except (i) as to any claim or defense founded in fraud
141 and (ii) for any excess charges and penalties recover-
142 able under section one hundred one, article five of this
143 chapter.

144 (6) For the purpose of determining the amount owing
145 to an assignee of any such instrument, contract or other
146 writing evidencing an obligation of a buyer or lessee
147 arising from a consumer credit sale or consumer lease:

148 (a) Payments received after the consolidation of two
149 or more consumer credit sales, other than pursuant to
150 a revolving charge account, are deemed to have been
151 first applied to the payment of the sales first made; if
152 the sales consolidated arose from sales made on the same
153 day, payments are deemed to have been first applied to
154 the smaller or smallest sale or sales;

155 (b) Payments received upon a revolving charge ac-
156 count are deemed to have been first applied to the pay-
157 ment of sales finance charges in the order of their entry
158 to the account and then to the payment of debts in the
159 order in which the entries of the debts are made to the
160 account.

161 (7) A claim or defense which a buyer or lessee may
162 assert against an assignee of such instrument, contract
163 or other writing under the provisions of this section may
164 be asserted only as a matter of defense to or setoff against
165 a claim by the assignee: *Provided*, That if a buyer or
166 lessee shall have a claim or defense which could be
167 asserted under the provisions of this section as a matter
168 of defense to or setoff against a claim by the assignee were
169 such assignee to assert such claim against the buyer or les-
170 see, then such buyer or lessee shall have the right to insti-
171 tute and maintain an action or proceeding seeking to obtain
172 the cancellation in whole or in part of the indebtedness
173 evidenced by such instrument, contract or other writing
174 or the release in whole or in part of any lien upon real
175 or personal property securing the payment thereof: *Pro-*
176 *vided, however*, That any claim or defense founded in
177 fraud, lack or failure of consideration or a violation of
178 the provisions of this chapter as specified in section one
179 hundred one, article five of this chapter, may be asserted
180 by a buyer or lessee at any time, subject to the provisions
181 of this code relating to limitation of actions.

182 (8) Notwithstanding any provisions of this section, an
183 assignee shall not be subject to any claim or defense aris-
184 ing from or growing out of personal injury or death re-
185 sulting therefrom or damage to property.

**§46A-2-103. Lender subject to claims and defenses arising
from sales.**

1 (1) The following limitations shall be applicable to
2 claims and defenses of borrowers, arising from consumer
3 sales, with respect to consumer loans made on the date this
4 chapter becomes operative or within a period of one year
5 thereafter:

6 (a) A lender, other than the issuer of a lender credit
7 card, who, with respect to a particular transaction, makes
8 a consumer loan for the purpose of enabling a borrower
9 to buy goods or services, other than primarily for an agri-
10 cultural purpose, is subject to all claims and defenses of
11 the borrower against the seller arising from that specific
12 sale of goods or services if such lender participates in or is

13 connected with the sales transaction, and if such claims
14 and defenses are asserted by the borrower by written
15 notice given to the lender within a period of one hundred
16 eighty days after the lender has delivered or mailed to the
17 borrower a written notice complying with the require-
18 ments of subdivision (b) of this subsection (1). Without
19 limiting the generality of the foregoing, a lender is deemed
20 to be connected with such sales transaction if:

21 (i) The lender and the seller have arranged for a com-
22 mission or brokerage or referral fee for the extension of
23 credit by the lender;

24 (ii) The lender is a person related to the seller unless
25 the relationship is remote or is not a factor in the trans-
26 action;

27 (iii) The seller guarantees the loan or otherwise as-
28 sumes the risk of loss by the lender upon the loan other
29 than a risk of loss arising solely from the seller's failure to
30 perfect a lien securing the loan;

31 (iv) The lender directly supplies the seller with docu-
32 ments used by the borrower to evidence the transaction
33 or the seller directly supplies the lender with documents
34 used by the borrower to evidence the transaction;

35 (v) The loan is conditioned upon the borrower's pur-
36 chase of the goods or services from the particular seller,
37 but the lender's payment of proceeds of the loan to the
38 seller does not in itself establish that the loan was so con-
39 ditioned;

40 (vi) The seller in such sale has specifically recommend-
41 ed such lender by name to the borrower and the lender
42 has made ten or more loans to borrowers within a period
43 of twelve months within which period the loan in question
44 was made, the proceeds of which other ten or more loans
45 were used in consumer credit sales with the seller or a per-
46 son related to the seller, if in connection with such other
47 ten or more loans, the seller also specifically recommended
48 such lender by name to the borrowers involved; or

49 (vii) The lender was the issuer of a credit card other
50 than a lender credit card which may be used by the bor-

51 rower in the sale transaction as a result of a prior agree-
52 ment between the issuer and the seller.

53 (b) The notice from the lender to the borrower con-
54 templated in subdivision (a) of this subsection (1) shall
55 be in writing, identify the loan, and inform the borrower
56 in a conspicuous manner that he has one hundred eighty
57 days from a specified date (which date shall be the date
58 the notice was delivered or mailed to the borrower) with-
59 in which to notify the lender in writing of any claims and
60 defenses he may have against the particular seller arising
61 from that specific sale; and that if written notification of
62 any such claims and defenses is not given to the lender
63 within such one hundred eighty day period, the lender
64 will have the right to enforce the note, loan agreement
65 and other instruments evidencing and securing the loan,
66 free of any claims and defenses the borrower may have
67 against the particular seller. Such notice, if given by mail,
68 is given when it is mailed to the borrower's last-known
69 address by registered or certified mail, return receipt re-
70 quested.

71 (c) In order to preserve all of his claims and defenses
72 against a lender under subdivision (a) of this subsection
73 (1), the borrower must, after receiving the written notice
74 provided for in subdivision (b) of this subsection (1), and
75 before the expiration of a period of one hundred eighty
76 days, notify such lender in writing as to any claims and
77 defenses he has against the particular seller arising from
78 that specific consumer sale. The notice by the borrower
79 need not take any particular form and shall be sufficient if
80 it indicates the claims and defenses which the borrower
81 has against the seller in a manner sufficient to apprise the
82 lender of the nature of such claims and defenses. Such
83 notice, if given by mail, is given when it is mailed to the
84 lender's last-known address by registered or certified mail,
85 return receipt requested. All claims and defenses of the
86 borrower against the particular seller arising out of such
87 consumer sale shall be valid against the lender unless
88 notice is given pursuant to this subsection (1).

89 (2) The following provisions shall be applicable to the
90 claims and defenses of borrowers, arising from consumer

91 sales, with respect to consumer loans made after the ex-
92 piration of one year after the date this chapter becomes
93 operative: A lender, other than the issuer of a lender
94 credit card, who, with respect to a particular transaction,
95 makes a consumer loan for the purpose of enabling a bor-
96 rower to buy goods or services, other than primarily for
97 an agricultural purpose, is subject to all claims and de-
98 fenses of the borrower against the seller arising from that
99 specific sale of goods or services if the lender participates
100 in or is connected with the sales transaction as provided
101 in subdivision (a), subsection (1) of this section, without
102 regard to the provisions therein as to notices.

103 (3) The total of all claims and defenses which a bor-
104 rower is permitted to assert against a lender under the
105 provisions of this section shall not exceed that portion of
106 the loan used for that sale, except (i) as to any claim or
107 defense founded in fraud and (ii) for any excess charges
108 and penalties recoverable under section one hundred one,
109 article five of this chapter.

110 (4) An agreement may not limit or waive the claims
111 and defenses of a borrower under this section.

112 (5) "Lender credit card" as used in this section means
113 an arrangement or loan agreement, other than a seller
114 credit card, pursuant to which a lender gives a debtor the
115 privilege of using the credit card in transactions which
116 entitles the user thereof to purchase goods or services
117 from at least one hundred persons not related to the issuer
118 of the lender credit card, out of which debt arises:

119 (a) By the lender's honoring a draft or similar order
120 for the payment of money drawn or accepted by the con-
121 sumer;

122 (b) By the lender's payment or agreement to pay the
123 consumer's obligation; or

124 (c) By the lender's purchase from the obligee of the
125 consumer's obligations.

126 (6) A claim or defense which a borrower may assert
127 against a lender under the provisions of this section may be
128 asserted only as a defense to or setoff against a claim by the

129 lender: *Provided*, That if a borrower shall have a claim or
 130 defense which could be asserted under the provisions of
 131 this section as a matter of defense to or setoff against a
 132 claim by the lender were such lender to assert such claim
 133 against the borrower, then the borrower shall have the
 134 right to institute and maintain an action or proceeding
 135 seeking to obtain the cancellation in whole or in part of
 136 the indebtedness evidenced by a negotiable instrument or
 137 other instrument or the release in whole or in part of any
 138 lien upon real or personal property securing the payment
 139 thereof: *Provided, however*, That any claim or defense
 140 founded in fraud, lack or failure of consideration or a
 141 violation of the provisions of this chapter as specified
 142 in section one hundred one, article five of this chapter,
 143 may be asserted by a borrower at any time, subject to the
 144 provisions of this code relating to limitation of actions.

145 (7) Nothing contained in this section shall be con-
 146 strued in any manner as affecting any loan made prior to
 147 the operative date of this chapter.

148 (8) Notwithstanding any provisions of this section, a
 149 lender shall not be subject to any claim or defense arising
 150 from or growing out of personal injury or death resulting
 151 therefrom or damage to property.

§46A-2-104. Notice to cosigners.

1 No person, other than the spouse of a consumer, shall be
 2 held liable as surety, cosigner, comaker, endorser or guar-
 3 antor or be charged with personal liability for payment in
 4 a consumer credit sale or consumer loan unless that per-
 5 son, in addition to and before signing any instrument evi-
 6 dencing the transaction, signs and receives a separate
 7 notice which clearly explains his liability in the event of
 8 default by the consumer and also receives a copy of the
 9 disclosure required by the "Federal Consumer Credit Pro-
 10 tection Act." Such notice shall be sufficient if it appears
 11 under the conspicuous caption "NOTICE" and contains
 12 substantially the following language typewritten or
 13 printed in at least twelve point bold upper case type:
 14 "You are about to sign a _____ as
 15 _____ under the terms and provisions of

16 which instrument you are liable for the full payment
17 thereof together with the finance charges or interest which
18 may accrue thereon."

§46A-2-105. Balloon payments.

1 (1) With respect to a consumer credit sale or a con-
2 sumer loan in which the initial total amount payable
3 is less than one thousand five hundred dollars, other
4 than one primarily for an agricultural purpose or one
5 pursuant to a revolving charge account or revolving
6 loan account, if any scheduled payment is more than
7 twice as large as the average of earlier scheduled pay-
8 ments, the consumer has the right to refinance the
9 amount of that payment, hereinafter in this section
10 referred to as a balloon payment, at the time it is due
11 without penalty.

12 (2) With respect to a consumer credit sale or consumer
13 loan whenever any scheduled payment is at least twice
14 as large as the smallest of all earlier scheduled payments
15 other than any down payment, any writing purporting
16 to contain the agreement of the parties shall contain
17 the following language typewritten or printed in a
18 conspicuous manner. THIS CONTRACT IS NOT PAY-
19 ABLE IN INSTALLMENTS OF EQUAL AMOUNTS: Fol-
20 lowed, if there is only one installment which is at least
21 twice as large as the smallest of all earlier scheduled
22 payments other than any down payment, by: AN IN-
23 STALLMENT OF \$..... WILL BE DUE ON.....
24 or, if there is more than one such installment, by: LAR-
25 GER INSTALLMENTS WILL BE DUE AS FOLLOWS:
26 (The amount of every such installment and its due date
27 shall be inserted).

28 (3) The provisions of this section shall not apply to
29 the extent that the payment schedule is adjusted to the
30 seasonal or irregular income of the consumer.

31 (4) Notwithstanding the foregoing provisions of this
32 section, the commissioner may, by rules and regulations,
33 if necessary to further protect consumers, otherwise reg-
34 ulate or control agreements to be entered into in a con-
35 sumer credit sale or consumer loan transaction which

36 provide for a balloon payment or prohibit parties from
37 entering into any agreement in a consumer credit sale
38 or consumer loan transaction which provides for a bal-
39 loon payment.

**§46A-2-106. Notice of consumer's right to cure default; cure;
acceleration.**

1 After a consumer has been in default on an obligation
2 for five days for failure to make a scheduled payment
3 or otherwise perform pursuant to a consumer credit sale
4 or consumer loan other than with respect to a covenant
5 to provide insurance for or otherwise to protect and pre-
6 serve the property covered by a security interest, the
7 creditor may give him notice of such fact in the manner
8 provided for herein. Actual delivery of such notice to a
9 consumer or delivery or mailing of same to the last-
10 known address of the consumer is sufficient for the pur-
11 pose of this section. If given by mail, notice is given when
12 it is deposited in a mailbox properly addressed and post-
13 age prepaid. Notice shall be in writing and shall con-
14 spicuously state the name, address and telephone num-
15 ber of the creditor to whom payment or other perform-
16 ance is owed, a brief description of the transaction, the
17 consumer's right to cure such default and the amount
18 of payment and other required performance and date by
19 which it must be paid or accomplished in order to cure
20 the default. Except as hereinafter in this section provided,
21 after a default, other than with respect to a covenant to
22 provide insurance for or otherwise to protect and preserve
23 the property covered by a security interest, a creditor
24 may not accelerate maturity of the unpaid balance of the
25 obligation, commence any action or demand or take
26 possession of collateral on account of default until ten
27 days after notice has been given to the consumer of his
28 right to cure such default. Until such period expires, the
29 consumer shall have the right to cure any default by
30 tendering the amount of all unpaid sums due at the time
31 of the tender, without acceleration, plus any unpaid de-
32 linquency or deferral charges and by tendering any other
33 performance necessary to cure such default. Any such
34 cure shall restore a consumer to all his rights under the

35 agreement the same as if there had been no default. A
36 consumer who has been in default three or more times
37 on the same obligation and who has been given notice
38 of such fact three or more times shall not have the right
39 to cure a default under this section even though previous
40 defaults have been cured and his creditor's right to pro-
41 ceed against him and his collateral shall not be impaired
42 or limited in any way by this section. There shall be no
43 acceleration of the maturity of all or part of any amount
44 owing in a consumer credit sale or consumer loan, except
45 where nonperformance specified in the agreement as con-
46 stituting default has occurred.

§46A-2-107. Security in sales or leases.

1 (1) With respect to a consumer credit sale, a seller or
2 issuer of a seller credit card may take a security interest
3 in the property sold. In addition, a seller or issuer of
4 a seller credit card may take a security interest in goods
5 upon which services are performed or in which goods
6 sold are installed or to which they are annexed, or in
7 land to which the goods are affixed or which is main-
8 tained, repaired or improved as a result of the sale of the
9 goods or services, if in the case of a security interest in
10 land the debt secured is one thousand five hundred dol-
11 lars or more, or, in the case of a security interest in goods
12 the debt secured is three hundred dollars or more. The
13 seller or issuer of a seller credit card may also take a
14 security interest in any property of the buyer to secure
15 the debt arising from a consumer credit sale primarily
16 for an agricultural purpose. Except as provided with re-
17 spect to cross-collateral in connection with consolidated
18 debts, a seller or issuer of a seller credit card may not
19 otherwise take a security interest in property of the
20 buyer to secure the debt arising from a consumer credit
21 sale.

22 (2) With respect to a consumer lease other than a
23 lease primarily for an agricultural purpose, a lessor may
24 not take a security interest in property of the lessee to
25 secure the debt arising from the lease.

26 (3) A security interest taken in violation of this sec-
27 tion is void.

28 (4) "Security interest" as used in this section means
29 a security interest arising by agreement of the parties and
30 does not include a lien arising by operation of law. Any
31 such agreement must contain a description of the security
32 interest retained and must contain a clear identification of
33 each particular item of collateral, including if appropriate,
34 the name of the manufacturer of such item and its make,
35 model and serial number. If the item is a used or rebuilt
36 sample or demonstrator, such fact shall also be stated in
37 the security agreement.

§46A-2-108. Cross-collateral.

1 In addition to contracting for a security interest pur-
2 suant to the provisions on security in sales or leases, a
3 seller or issuer of a seller credit card in a consumer credit
4 sale may secure the debt arising from the sale by con-
5 tracting for a security interest in other property if as a
6 result of a prior sale the seller or issuer of a seller credit
7 card has an existing security interest in the other prop-
8 erty and such debts are consolidated. The seller or issuer
9 of a seller credit card may also contract for a security
10 interest in the property sold in the subsequent sale as
11 security for the previous debt if such debts are consoli-
12 dated.

§46A-2-109. Debt secured by cross-collateral.

1 (1) If debts arising from two or more consumer credit
2 sales, other than sales primarily for an agricultural pur-
3 pose or pursuant to a revolving charge account, are se-
4 cured by cross-collateral and consolidated into one debt
5 payable on a single schedule of payments, and the debt
6 is secured by security interests taken with respect to one
7 or more of the sales, payments received by the seller
8 after the taking of the cross-collateral and the consolida-
9 tion are deemed, for the purpose of determining the
10 amount of the debt secured by the various security in-
11 terests, to have been first applied to the payment of the
12 debts arising from the sales first made. To the extent
13 debts are paid according to this section, security interests
14 in items of property terminate as the debts originally in-
15 curred with respect to each item are paid.

16 (2) Payments received by the seller upon a revolving
17 charge account are deemed, for the purpose of determin-
18 ing the amount of the debt secured by the various se-
19 curity interests, to have been applied first to the payment
20 of sales finance charges in the order of their entry to the
21 account and then to the payment of debts in the order in
22 which the entries to the account showing the debts were
23 made.

24 (3) If the debts consolidated arose from two or more
25 sales made on the same day, payments received by the
26 seller are deemed, for the purpose of determining the
27 amount of the debt secured by the various security in-
28 terests, to have been applied first to the payment of the
29 smallest debt.

§46A-2-110. Referral sales or leases.

1 With respect to a consumer credit sale or consumer
2 lease, the seller or lessor may not give or offer to give a
3 rebate or discount or otherwise pay or offer to pay value
4 to the buyer or lessee as an inducement for a sale or
5 lease in consideration of his giving to the seller or lessor
6 the names of prospective purchasers or lessees, or other-
7 wise aiding the seller or lessor in making a sale or lease
8 to another person, if the earning of the rebate, discount
9 or other value is contingent upon the occurrence of an
10 event subsequent to the time the buyer or lessee agrees
11 to buy or lease. If a buyer or lessee is induced by a viola-
12 tion of this section to enter into a consumer credit sale or
13 consumer lease, the agreement is unenforceable by the
14 seller or lessor and the buyer or lessee, at his option, may
15 rescind the agreement or retain the goods delivered and
16 the benefit of any services performed, without any obli-
17 gation to pay for them.

§46A-2-111. Consumer leases; information to be furnished.

1 With respect to a consumer lease the lessor shall give
2 to the lessee the following information:

3 (1) Brief description or identification of the goods;

4 (2) Amount of any payment required at the incep-
5 tion of the lease;

6 (3) Amount paid or payable for official fees, registra-
7 tion, title privilege, certificate of title or license fees or
8 taxes;

9 (4) Amount of other charges not included in the peri-
10 odic payment and a brief description of the charges;

11 (5) Brief description of insurance to be provided or
12 paid for by the lessor, including the types and amounts
13 of the coverages;

14 (6) Number of periodic payments, the amount of each
15 payment, the due date of the first payment, the due dates
16 of subsequent payments or interval between payments,
17 and the total amount payable by the lessee;

18 (7) Statement of the conditions under which the lessee
19 may terminate the lease prior to the end of the term; and

20 (8) Statement of the liabilities the lease imposes upon
21 the lessee at the end of the term.

§46A-2-112. Restriction on liability in consumer lease.

1 The obligation of a lessee upon expiration of a con-
2 sumer lease, other than one primarily for an agricultural
3 purpose, may not exceed twice the average payment al-
4 locable to a monthly period under the lease. This limita-
5 tion does not apply to charges for damages to the leased
6 property or for other default.

§46A-2-113. Notice of assignment.

1 A consumer is authorized to pay the original creditor
2 until he receives notification of assignment of rights to
3 payment pursuant to a consumer credit sale or a consumer
4 loan and that payment is to be made to the assignee. A
5 notification which does not reasonably identify the rights
6 assigned is ineffective. If requested by the consumer, the
7 assignee must seasonably furnish reasonable proof that
8 the assignment has been made and unless he does so the
9 consumer may pay the original creditor.

**§46A-2-114. Receipts; statements of account; evidence of pay-
ment.**

1 (1) The creditor shall deliver or mail to the consumer,

2 without request, a written receipt for each payment by
3 coin or currency on an obligation pursuant to a consumer
4 credit sale or consumer loan. A periodic statement show-
5 ing a payment received complies with this subsection.

6 (2) Upon written request of a consumer, the person to
7 whom an obligation is owed pursuant to a consumer credit
8 sale or consumer loan, other than one pursuant to a re-
9 volving charge account or revolving loan account, shall
10 provide a written statement of the dates and amounts of
11 payments made within the past twelve months and the
12 total amount unpaid. The requested statement shall be
13 provided without charge once during each year of the
14 term of the sale or loan. If additional statements are re-
15 quested the creditor may charge not in excess of three
16 dollars for each additional statement.

17 (3) After a consumer has fulfilled all obligations with
18 respect to a consumer credit sale or consumer loan, other
19 than one pursuant to a revolving charge account or re-
20 volving loan account, the person to whom the obligation
21 was owed shall, upon the request of the consumer, deliver
22 or mail to the consumer written evidence acknowledging
23 payment in full of all obligations with respect to the trans-
24 action.

§46A-2-115. Limitation on default charges.

1 Except for reasonable expenses including costs and fees
2 authorized by statute, incurred in realizing on a security
3 interest, the agreement with respect to a consumer credit
4 sale or a consumer loan may not provide for charges as a
5 result of default by the consumer other than those autho-
6 rized by this chapter. A provision in violation of this
7 section is unenforceable.

§46A-2-116. Assignment of earnings.

1 (1) The maximum part of the aggregate disposable
2 earnings of an individual for any workweek which may
3 be subjected to any one or more assignments of earnings
4 for the payment of a debt or debts arising from one or
5 more consumer credit sales or one or more consumer
6 loans, or one or more sales as defined in section one hun-

7 dred two, article six of this chapter, may not exceed
8 twenty-five percent of his disposable earnings for that week.

9 (2) As used in this section:

10 (a) "Disposable earnings" means that part of the earn-
11 ings of an individual remaining after the deduction from
12 those earnings of amounts required by law to be with-
13 held; and

14 (b) "Assignment of earnings" includes all forms of
15 assignments, deductions, transfers, or sales of earnings
16 to another, either as payment or as security, and whether
17 stated to be revocable or nonrevocable, and includes any
18 deductions authorized under the provisions of section
19 three, article five, chapter twenty-one of this code, except
20 deductions for union or club dues, pension plans, pay-
21 roll savings plans, charities, stock purchase plans and hos-
22 pitalization and medical insurance.

23 (3) Any assignment of earnings and any deduction un-
24 der said section three, article five, chapter twenty-one of
25 this code shall be revocable by the employee at will at any
26 time, notwithstanding any provision to the contrary.

27 (4) The priority of multiple assignments of earnings
28 shall be according to the date and time of each such as-
29 signment.

§46A-2-117. Authorization to confess judgment prohibited.

1 A consumer may not authorize any person to confess
2 judgment on a claim arising out of a consumer credit sale
3 or a consumer loan. An authorization in violation of this
4 section is void. The provisions of this section shall not be
5 construed as in any way impliedly authorizing a confes-
6 sion of judgment in any other type of transaction.

§46A-2-118. No garnishment before judgment.

1 Prior to entry of judgment in an action against the
2 debtor for debt arising from a consumer credit sale or a
3 consumer loan, the creditor may not attach unpaid earn-
4 ings of the debtor by garnishment or like proceedings. The
5 provisions of this section shall not be construed as in any

- 6 way impliedly authorizing garnishment before judgment
7 in any other type of transaction.

§46A-2-119. Restrictions on deficiency judgments.

1 (1) This section applies to a deficiency on a consumer
2 credit sale of goods or services and on a consumer loan
3 in which the lender is subject to claims and defenses aris-
4 ing from sales (§46A-2-103).

5 (2) If the seller repossesses or voluntarily accepts sur-
6 render of goods which were the subject of the sale and in
7 which he has a security interest and the balance owed for
8 the goods repossessed or surrendered was at the time of
9 such repossession or surrender one thousand dollars or
10 less, the buyer is not personally liable to the seller for
11 the unpaid balance of the debt arising from the sale of the
12 goods, and the seller's duty to dispose of the collateral is
13 governed by the provisions on disposition of collateral
14 (§46-9-505) of the "Uniform Commercial Code."

15 (3) If the seller repossesses or voluntarily accepts a sur-
16 render of goods which were not the subject of the sale but
17 in which he has a security interest to secure a debt arising
18 from a sale of goods or services or a combined sale of goods
19 and services and the balance owed on such debt was at the
20 time of such repossession or surrender one thousand dol-
21 lars or less, the buyer is not personally liable to the seller
22 for the unpaid balance of the debt arising from the sale,
23 and the seller's duty to dispose of the collateral is gov-
24 erned by the provisions on disposition of collateral (§46-9-
25 505) of the "Uniform Commercial Code."

26 (4) If the lender takes possession or voluntarily ac-
27 cepts a surrender of goods in which he has a security in-
28 terest to secure a debt arising from a consumer loan in
29 which the lender may be subject to claims and defenses
30 arising from sales (§46A-2-103) and the balance owed on
31 the net proceeds of the loan paid to or for the benefit of
32 the borrower was at the time of such repossession or sur-
33 render one thousand dollars or less, the borrower is not
34 personally liable to the lender for the unpaid balance of
35 the debt arising from the loan and the lender's duty to

36 dispose of the collateral is governed by the provisions on
37 disposition of collateral (§46-9-505) of the "Uniform Com-
38 mercial Code."

39 (5) For the purpose of determining the unpaid balance
40 of consolidated debts or debts pursuant to revolving
41 charge accounts or revolving loan accounts, the allocation
42 of payments to a debt shall be determined in the same
43 manner as provided for determining the amount of debt
44 secured by various security interests (§46A-2-109).

45 (6) The consumer may be liable in damages to the
46 creditor if the consumer has wrongfully damaged the
47 collateral or if after default and demand, the consumer
48 has wrongfully failed to make the collateral available to
49 the creditor.

50 (7) If the creditor elects to bring an action against the
51 consumer for a debt arising from a consumer credit sale
52 of goods or services or from a consumer loan in which the
53 lender is subject to claims and defenses arising from sales
54 (§46A-2-103), when under this section he would not be en-
55 titled to a deficiency judgment if he took possession of the
56 collateral, and obtains judgment:

57 (a) He may not take possession of the collateral, and

58 (b) The collateral is not subject to levy or sale on exe-
59 cution or similar proceedings pursuant to the judgment.

§46A-2-120. Extortionate extensions of credit.

1 (1) If the court finds as a matter of fact that it was the
2 understanding of the creditor and the consumer at the time
3 an extension of credit was made that delay in making re-
4 payment or failure to make repayment could result in the
5 use of violence or other criminal means to cause harm to
6 the person, reputation or property of any person, the re-
7 payment of the extension of credit is unenforceable
8 through civil judicial process against the consumer.

9 (2) If a court finds as a matter of fact that an exten-
10 sion of credit was made at a rate in excess of that per-
11 mitted for such transaction by the provisions of this chap-
12 ter and that the creditor then had a reputation for the use

13 or threat of use of violence or other criminal means to
14 cause harm to the person, reputation or property of any
15 person to collect extensions of credit or to punish the non-
16 repayment thereof, there is prima facie evidence that the
17 extension of credit was unenforceable under subsection
18 (1).

§46A-2-121. Unconscionability; inducement by unconscionable conduct.

1 (1) With respect to a transaction which is or gives rise
2 to a consumer credit sale or consumer loan, if the court as
3 a matter of law finds:

4 (a) The agreement or transaction to have been un-
5 conscionable at the time it was made, or to have been in-
6 duced by unconscionable conduct, the court may refuse to
7 enforce the agreement, or

8 (b) Any term or part of the agreement or transaction
9 to have been unconscionable at the time it was made, the
10 court may refuse to enforce the agreement, or may enforce
11 the remainder of the agreement without the unconscion-
12 able term or part, or may so limit the application of any
13 unconscionable term or part as to avoid any unconscion-
14 able result.

15 (2) If it is claimed or appears to the court that the
16 agreement or transaction or any term or part thereof may
17 be unconscionable, the parties shall be afforded a reason-
18 able opportunity to present evidence as to its setting, pur-
19 pose and effect to aid the court in making the determina-
20 tion.

21 (3) For the purpose of this section, a charge or prac-
22 tice expressly permitted by this chapter is not unconscion-
23 able.

§46A-2-122. Definitions.

1 For the purposes of this section and sections one hun-
2 dred twenty-three, one hundred twenty-four, one hundred
3 twenty-five, one hundred twenty-six, one hundred twenty-
4 seven, one hundred twenty-eight and one hundred twenty-

5 nine of this article, the following terms shall have the
6 following meanings:

7 (a) "Claim" means any obligation or alleged obliga-
8 tion arising out of or from a consumer transaction.

9 (b) "Debt collection" means any action, conduct or
10 practice of soliciting claims for collection or in the col-
11 lection of claims owed or due or alleged to be owed or due
12 to a creditor by a consumer.

13 (c) "Debt collector" means any person or organization
14 engaging directly or indirectly in debt collection. The
15 term includes any person or organization who sells or
16 offers to sell forms which are, or are represented to be, a
17 collection system, device or scheme, and are intended or
18 calculated to be used to collect claims.

§46A-2-123. Practice of law by debt collectors.

1 Unless a licensed attorney in this state, no debt collector
2 shall engage in conduct deemed the practice of law. With-
3 out limiting the general application of the foregoing, the
4 following conduct is deemed the practice of law:

5 (a) The performance of legal services, furnishing of
6 legal advice or false representation, direct or by impli-
7 cation, that any person is an attorney;

8 (b) Any communication with consumers in the name
9 of an attorney or upon stationery or other written mat-
10 ter bearing an attorney's name; and

11 (c) Any demand for or payment of money constituting
12 a share of compensation for services performed or to be
13 performed by an attorney in collecting a claim.

§46A-2-124. Threats or coercion.

1 No debt collector shall collect or attempt to collect any
2 money alleged to be due and owing by means of any
3 threat, coercion or attempt to coerce. Without limiting
4 the general application of the foregoing, the following
5 conduct is deemed to violate this section:

6 (a) The use, or express or implicit threat of use, of

7 violence or other criminal means, to cause harm to the
8 person, reputation or property of any person;

9 (b) The accusation or threat to accuse any person of
10 fraud, any crime, or any conduct which, if true, would
11 tend to disgrace such other person or in any way subject
12 him to ridicule, or any conduct which, if true, would tend
13 to disgrace such other person or in any way subject him
14 to ridicule or contempt of society;

15 (c) False accusations made to another person, in-
16 cluding any credit reporting agency, that a consumer is
17 willfully refusing to pay a just debt, or the threat to so
18 make false accusations;

19 (d) The threat to sell or assign to another the obliga-
20 tion of the consumer with an attending representation or
21 implication that the result of such sale or assignment
22 would be that the consumer would lose any defense to
23 the claim or would be subjected to harsh, vindictive or
24 abusive collection attempts;

25 (e) The threat that nonpayment of an alleged claim
26 will result in the:

27 (1) Arrest of any person; or

28 (2) Garnishment of any wages of any person or the
29 taking of other action requiring judicial sanction, without
30 informing the consumer that there must be in effect a
31 judicial order permitting such garnishment or such other
32 action before it can be taken; and

33 (f) The threat to take any action prohibited by this
34 chapter or other law regulating the debt collector's con-
35 duct.

§46A-2-125. Oppression and abuse.

1 No debt collector shall unreasonably oppress or abuse
2 any person in connection with the collection of or attempt
3 to collect any claim alleged to be due and owing by that
4 person or another. Without limiting the general applica-
5 tion of the foregoing, the following conduct is deemed
6 to violate this section:

7 (a) The use of profane or obscene language or lan-
8 guage that is intended to unreasonably abuse the hearer
9 or reader;

10 (b) The placement of telephone calls without dis-
11 closure of the caller's identity and with the intent to
12 annoy, harass or threaten any person at the called num-
13 ber;

14 (c) Causing expense to any person in the form of long
15 distance telephone tolls, telegram fees or other charges
16 incurred by a medium of communication, by concealment
17 of the true purpose of the communication; and

18 (d) Causing a telephone to ring or engaging any per-
19 son in telephone conversation repeatedly or continuously,
20 or at unusual times or at times known to be inconvenient,
21 with intent to annoy, abuse, oppress or threaten any per-
22 son at the called number.

§46A-2-126. Unreasonable publication.

1 No debt collector shall unreasonably publicize informa-
2 tion relating to any alleged indebtedness or consumer.
3 Without limiting the general application of the foregoing,
4 the following conduct is deemed to violate this section:

5 (a) The communication to any employer or his agent
6 before judgment has been rendered of any information
7 relating to an employee's indebtedness other than through
8 proper legal action, process or proceeding;

9 (b) The disclosure, publication, or communication of
10 information relating to a consumer's indebtedness to any
11 relative or family member of the consumer if such per-
12 son is not residing with the consumer, except through
13 proper legal action or process or at the express and un-
14 solicited request of the relative or family member;

15 (c) The disclosure, publication or communication of
16 any information relating to a consumer's indebtedness to
17 any other person other than a credit reporting agency, by
18 publishing or posting any list of consumers, commonly
19 known as "deadbeat lists," except lists to prevent the
20 fraudulent use of credit accounts or credit cards, by ad-

21 vertising for sale any claim to enforce payment thereof,
22 or in any manner other than through proper legal action,
23 process or proceeding; and

24 (d) The use of any form of communication to the con-
25 sumer, which ordinarily may be seen by any other per-
26 sons, that displays or conveys any information about the
27 alleged claim other than the name, address and phone
28 number of the debt collector.

**§46A-2-127. Fraudulent, deceptive or misleading representa-
tions.**

1 No debt collector shall use any fraudulent, deceptive
2 or misleading representation or means to collect or at-
3 tempt to collect claims or to obtain information con-
4 cerning consumers. Without limiting the general appli-
5 cation of the foregoing, the following conduct is deemed
6 to violate this section:

7 (a) The use of any business, company or organization
8 name while engaged in the collection of claims, other
9 than the true name of the debt collector's business, com-
10 pany or organization;

11 (b) The failure to clearly disclose in all communica-
12 tions made to collect or attempt to collect a claim or to
13 obtain or attempt to obtain information about a con-
14 sumer, that the debt collector is attempting to collect a
15 claim and that any information obtained will be used
16 for that purpose;

17 (c) Any false representation that the debt collector
18 has in his possession information or something of value
19 for the consumer that is made to solicit or discover infor-
20 mation about the consumer;

21 (d) The failure to clearly disclose the name and full
22 business address of the person to whom the claim has
23 been assigned for collection, or to whom the claim is
24 owed, at the time of making any demand for money;

25 (e) Any false representation or implication of the
26 character, extent or amount of a claim against a con-
27 sumer, or of its status in any legal proceeding;

28 (f) Any false representation or false implication that
29 any debt collector is vouched for, bonded by, affiliated
30 with or an instrumentality, agent or official of this state
31 or any agency of the federal, state or local government;

32 (g) The use or distribution or sale of any written
33 communication which simulates or is falsely represented
34 to be a document authorized, issued or approved by a
35 court, an official or any other legally constituted or autho-
36 rized authority, or which creates a false impression about
37 its source, authorization or approval;

38 (h) Any representation that an existing obligation of
39 the consumer may be increased by the addition of at-
40 torney's fees, investigation fees, service fees or any other
41 fees or charges when in fact such fees or charges may not
42 legally be added to the existing obligation; and

43 (i) Any false representation or false impression about
44 the status or true nature of or the services rendered by
45 the debt collector or his business.

§46A-2-128. Unfair or unconscionable means.

1 No debt collector shall use unfair or unconscionable
2 means to collect or attempt to collect any claim. Without
3 limiting the general application of the foregoing, the fol-
4 lowing conduct is deemed to violate this section:

5 (a) The seeking or obtaining of any written statement
6 or acknowledgment in any form that specifies that a con-
7 sumer's obligation is one incurred for necessities of life
8 where the original obligation was not in fact incurred for
9 such necessities;

10 (b) The seeking or obtaining of any written statement
11 or acknowledgment in any form containing an affirma-
12 tion of any obligation by a consumer who has been de-
13 clared bankrupt, without clearly disclosing the nature and
14 consequences of such affirmation and the fact that the
15 consumer is not legally obligated to make such affirma-
16 tion;

17 (c) The collection or the attempt to collect from the
18 consumer all or any part of the debt collector's fee or
19 charge for services rendered;

20 (d) The collection of or the attempt to collect any
21 interest or other charge, fee or expense incidental to the
22 principal obligation unless such interest or incidental fee,
23 charge or expense is expressly authorized by the agree-
24 ment creating the obligation and by statute; and

25 (e) Any communication with a consumer whenever it
26 appears that the consumer is represented by an attorney
27 and the attorney's name and address are known, or could
28 be easily ascertained, unless the attorney fails to answer
29 correspondence, return phone calls or discuss the obliga-
30 tion in question or unless the attorney consents to direct
31 communication.

§46A-2-129. Postal violations.

1 No debt collector shall use, distribute, sell or prepare for
2 use any written communication which violates or fails to
3 conform to United States postal laws and regulations.

§46A-2-130. Limitation on garnishment.

1 (1) For the purposes of the provisions in this chapter
2 relating to garnishment:

3 (a) "Disposable earnings" means that part of the earn-
4 ings of an individual remaining after the deduction from
5 those earnings of amounts required by law to be with-
6 held; and

7 (b) "Garnishment" means any legal or equitable pro-
8 cedure through which the earnings of an individual are
9 required to be withheld for payment of a debt.

10 (2) The maximum part of the aggregate disposable
11 earnings of an individual for any workweek which is sub-
12 jected to garnishment to enforce payment of a judgment
13 arising from a consumer credit sale or consumer loan may
14 not exceed the lesser of

15 (a) Twenty percent of his disposable earnings for that
16 week, or

17 (b) The amount by which his disposable earnings for
18 that week exceed thirty times the federal minimum hour-
19 ly wage prescribed by section 6 (a) (1) of the "Fair Labor

20 Standards Act of 1938," U.S.C. Title 29, §206(a) (1), in
21 effect at the time the earnings are payable.

22 (c) In the case of earnings for a pay period other than
23 a week, the commissioner shall prescribe by rule a mul-
24 tiple of the federal minimum hourly wage equivalent in
25 effect to that set forth in subdivision (b), subsection (2)
26 of this section.

27 (3) No court may make, execute or enforce an order or
28 process in violation of this section. Any time after a con-
29 sumer's earnings have been executed upon pursuant to
30 article five-a or article five-b, chapter thirty-eight of this
31 code by a creditor resulting from a consumer credit sale or
32 consumer loan, such consumer may petition any court
33 having jurisdiction of such matter or the circuit court of
34 the county wherein he resides to reduce or temporarily or
35 permanently remove such execution upon his earnings on
36 the grounds that such execution causes or will cause un-
37 due hardship to him or his family. When such fact is
38 proved to the satisfaction of such court, it may reduce or
39 temporarily or permanently remove such execution.

§46A-2-131. No discharge or reprisal because of garnishment.

1 No employer shall discharge or take any other form of
2 reprisal against an employee for the reason that a creditor
3 of the employee has subjected or attempted to subject un-
4 paid earnings of the employee to garnishment or like pro-
5 ceedings directed to the employer for the purpose of pay-
6 ing a judgment arising from a consumer credit sale or con-
7 sumer loan.

§46A-2-132. Home solicitation; buyer's right to cancel; notice.

1 In addition to any other right to revoke an offer, a buyer
2 shall have the right to cancel a home solicitation sale until
3 midnight of the third business day after the day on which
4 he has signed an agreement or offer to purchase. Cancell-
5 ation shall become effective when the buyer gives written
6 notice of his intention to cancel to the seller at the address
7 stated in the agreement or offer to purchase. Notice of
8 such cancellation, if given by mail, is given when it is de-
9 posited in a mailbox properly addressed and postage pre-
10 paid. Such notice of cancellation given by the buyer need

11 not take any particular form and shall be sufficient if it
12 indicates by any form of written expression the intention
13 of the buyer not to be bound by the home solicitation sale.
14 Notwithstanding any above-mentioned provision, a buyer
15 may not cancel a home solicitation sale where he has re-
16 quested and the seller has provided goods or services with-
17 out delay because of a bona fide emergency and either
18 the seller has in good faith made a substantial beginning
19 of performance of the agreement before the buyer has
20 given notice of cancellation, or in the case of goods, such
21 goods cannot be returned to the seller in substantially as
22 good condition as when they were received by the buyer.

**§46A-2-133. Form of agreement or offer to purchase; state-
ment of buyer's rights.**

1 In every home solicitation sale in this state, except
2 where a buyer has requested a seller to provide goods or
3 services without delay because of an emergency, the seller
4 shall present to the buyer a written agreement or offer to
5 purchase which designates as the date of the transaction
6 the day on which the buyer has signed it and which con-
7 tains a statement of the buyer's rights as hereinafter pro-
8 vided for. No such written agreement or offer to purchase
9 shall be effective until after it has been signed by the buy-
10 er and he has written the date of such signature in his
11 own handwriting. The statement must appear under the
12 conspicuous caption: "BUYER'S RIGHT TO CANCEL"
13 and read as follows: "If this agreement was solicited at a
14 place other than the seller's business establishment at a
15 fixed location and you decide you do not want these goods
16 or services, you may cancel this agreement by mailing a
17 notice to the seller. The notice must say that you do not
18 want the goods or services and must be mailed before
19 midnight of the third business day after you sign this
20 agreement. The notice must be mailed to: *(Name and*
21 *mailing address of seller).*" Until the seller has fully com-
22 plied with this section, the buyer may cancel the home
23 solicitation sale, by notifying the seller of his intention to
24 cancel in any manner. Any written agreement or offer to
25 purchase which contains the form and content of notice
26 of cancellation required by the federal trade commission

27 and which provides information substantially similar to
28 that required by this section shall be deemed to comply
29 fully with this section.

§46A-2-134. Restoration of down payment.

1 Within ten days after a home solicitation sale has been
2 cancelled or an offer to purchase has been revoked, the
3 seller shall tender to the buyer any payment made by
4 the buyer to him and any note or other evidence of in-
5 debtedness taken in the transaction. A provision permit-
6 ting the seller to keep all or part of any payment, note
7 or other evidence of indebtedness is in violation of this
8 section and unenforceable. If any down payment included
9 goods traded in, the seller shall return the goods in sub-
10 stantially as good a condition as when he received them.
11 If a seller has failed to tender goods as required by this
12 section, the buyer may elect to recover an amount equal to
13 the trade-in allowance on such goods as stated in the
14 agreement. Until a seller has complied with all the ob-
15 ligations imposed by this section, a buyer may keep any
16 goods delivered to him by the seller and he is hereby
17 given a lien on such goods for the purpose of making
18 any recovery to which he is entitled by this section.

§46A-2-135. Buyer's duty; seller's right; no compensation for certain services.

1 Within a reasonable time after a home solicitation sale
2 has been cancelled or an offer to purchase has been re-
3 voked, the seller may demand and receive any goods de-
4 livered by him to the buyer as the result of the home
5 solicitation sale. The buyer shall not be obligated to ten-
6 der such goods to the seller at any place other than the
7 buyer's residence. If the seller fails to demand possession
8 of goods within such reasonable time, such goods shall be-
9 come the buyer's property without any obligation to pay
10 for them. For the purposes of this section, twenty days
11 shall be presumed to be a reasonable time. The buyer
12 shall take reasonable care of such goods in his possession
13 before cancellation or revocation and for a reasonable
14 time thereafter, during which time the goods are other-
15 wise at the seller's risk. Where the seller has performed

16 any service pursuant to a home solicitation sale prior to
17 its cancellation or prior to giving the statement required
18 in section one hundred thirty-three of this article, he shall
19 not be entitled to any compensation for such performance.

§46A-2-136. Personal property exemptions.

1 Any consumer residing in this state may set apart and
2 hold personal property to be exempt from execution or
3 other judicial process resulting from consumer credit
4 transactions, except for the purchase money due on such
5 property, in such amounts as follows: Clothing and other
6 wearing apparel of the consumer, his spouse and any
7 dependents of such consumer, not to exceed the fair mar-
8 ket value of two hundred dollars; furniture, appliances,
9 furnishings and fixtures regularly used for family pur-
10 poses in the consumer's residence, to the extent of the
11 fair market value of one thousand dollars; children's
12 books, pictures, toys and other such personal property of
13 children; all medical health equipment used for health
14 purposes by the consumer, his spouse and any dependent
15 of such consumer; tools of trade, including any income-
16 producing property used in the consumer's principal oc-
17 cupation, to the extent of the fair market value of one
18 thousand dollars; and any policy of life or endowment in-
19 surance which is payable to the spouse or children of the
20 insured consumer or to a trustee for their benefit, ex-
21 cept the cash value of any accrued dividends thereon.
22 When a consumer claims personal property as exempt
23 under the provisions of this section, he shall deliver a list
24 containing all the personal property owned or claimed
25 by him and all items of such property he claims as exempt
26 hereunder, with the value of each separate item listed
27 according to his best knowledge, to the officer holding
28 the execution or other such process. Such list shall be
29 sworn to by affidavit. If the value of the property named
30 in such list exceeds the amounts specified in this section,
31 the consumer shall state at the foot thereof what part
32 of such property he claims as exempt. If such value does
33 not exceed the amounts specified in this section, the claim
34 of exemption shall be held to extend to the whole thereof
35 without stating more and, if no appraisal is demanded,

36 the property so claimed shall be set aside as exempt.
37 Where the consumer owning exempt property is absent
38 or incapable of acting or neglects or declines to act here-
39 under, the claim of exemption may be made, the list de-
40 livered and the affidavit made by his spouse with the
41 same effect as if the owner had done so. Upon receipt of
42 such a list, the officer to whom it is given shall immedi-
43 ately exhibit such list to the creditor or his agent or at-
44 torney. The rights granted and procedures provided for in
45 article eight, chapter thirty-eight of this code shall apply
46 to any proceeding under this section, except that the pro-
47 visions of sections one and three of such article shall not
48 apply.

§46A-2-137. Service of process on certain nonresidents.

1 Any nonresident person, except a nonresident corpora-
2 tion authorized to do business in this state pursuant to the
3 provisions of chapter thirty-one of this code, who takes or
4 holds any negotiable instrument, nonnegotiable instru-
5 ment, or contract or other writing, arising from a con-
6 sumer credit sale or consumer lease which is subject to
7 the provisions of this article, other than a sale or lease
8 primarily for an agricultural purpose, or who is a lender
9 subject to the provisions of section one hundred three of
10 this article, shall be conclusively presumed to have ap-
11 pointed the auditor of the state as his attorney-in-fact
12 with authority to accept service of notice and process in
13 any action or proceeding brought against him arising out
14 of such consumer credit sale, consumer lease or consumer
15 loan. A person shall be considered a nonresident here-
16 under if he is a nonresident at the time such service of
17 notice and process is sought. No act of such person ap-
18 pointing the auditor shall be necessary. Immediately
19 after being served with or accepting any such process or
20 notice, of which process or notice two copies for each de-
21 fendant shall be furnished the auditor with the original
22 notice or process, together with a fee of two dollars, the
23 auditor shall file in his office a copy of such process or
24 notice, with a note thereon endorsed of the time of service
25 or acceptance, as the case may be, and transmit one copy
26 of such process or notice by registered mail, return receipt

27 requested, to such person at his address, which address
28 shall be stated in such process or notice: *Provided*, That
29 such return receipt shall be signed by such person or an
30 agent or employee of such person if a corporation, or the
31 registered mail so sent by said auditor is refused by the
32 addressee and the registered mail is returned to said
33 auditor, or to his office, showing thereon the stamp of the
34 U. S. postal service that delivery thereof has been refused,
35 and such return receipt or registered mail is appended to
36 the original process or notice and filed therewith in the
37 clerk's office of the court from which such process or
38 notice was issued. But no process or notice shall be served
39 on the auditor or accepted by him less than ten days be-
40 fore the return date thereof. The court may order such
41 continuances as may be reasonable to afford each defen-
42 dant opportunity to defend the action or proceeding.

43 The provisions for service of process herein are cum-
44 ulative and nothing herein contained shall be construed
45 as a bar to the plaintiff in any action from having process
46 in such action served in any other mode and manner pro-
47 vided by law.

§46A-2-138. Buyer's right to cancel certain subscriptions and other obligations.

1 When a buyer has become indebted on a contract for
2 future deliveries of a correspondence course or on a multi-
3 ple magazine subscription contract, other than for single
4 subscriptions direct with the publisher thereof, the buyer
5 may cancel and terminate such contract at any time by
6 mailing a notice of cancellation by first class United States
7 mail to the person to whom the indebtedness is owed,
8 or his assignee, which notice shall forthwith terminate
9 and cancel any further financial obligation for goods or
10 services not received by the buyer prior to the mailing
11 of such notice of cancellation. In addition thereto, in re-
12 gard to a correspondence course contract, the buyer may
13 cancel and terminate such indebtedness without regard
14 to the amount of goods and services received by mailing
15 such notice and by returning all materials received.

ARTICLE 3. FINANCE CHARGES AND RELATED PROVISIONS.

- §46A-3-101.** Sales finance charge for consumer credit sales other than certain sales of real estate or sales made pursuant to revolving charge accounts.
- §46A-3-102.** Sales finance charge for certain consumer credit sales of real estate.
- §46A-3-103.** Sales finance charge for revolving charge accounts other than certain sales of real estate.
- §46A-3-104.** Loan finance charge for consumer loans made by supervised financial organizations and certain other lenders other than loans made pursuant to revolving loan accounts and finance charge on assigned contracts.
- §46A-3-105.** Interest rate on loans guaranteed or insured by United States or agency thereof.
- §46A-3-106.** Loan finance charge for revolving loan accounts.
- §46A-3-107.** Sales finance charges and loan finance charges on refinancing.
- §46A-3-108.** Sales finance charges and loan finance charges on consolidation.
- §46A-3-109.** Additional charges; insurance.
- §46A-3-110.** Right to prepay.
- §46A-3-111.** Application of payments on account; rebate upon prepayment, refinancing or consolidation; judgments and interest on judgments.
- §46A-3-112.** Delinquency charges on precomputed consumer credit sales or consumer loans.
- §46A-3-113.** Delinquency charges on non-precomputed consumer credit sales or consumer loans repayable in installments.
- §46A-3-114.** Deferral charges.
- §46A-3-115.** Advances to perform covenants of consumer.
- §46A-3-116.** Change in terms of revolving charge accounts or revolving loan accounts.

§46A-3-101. Sales finance charge for consumer credit sales other than certain sales of real estate or sales made pursuant to revolving charge accounts.

1 (1) With respect to a consumer credit sale, other than
 2 a sale of real estate subject to the provisions of section
 3 one hundred two of this article or a sale pursuant to a
 4 revolving charge account, a seller may contract for and
 5 receive a sales finance charge not exceeding eighteen per-
 6 cent per year on that part of the unpaid balances of the
 7 amount financed which is fifteen hundred dollars or less
 8 and twelve percent per year on that part of the unpaid
 9 balances of the amount financed which is in excess of
 10 fifteen hundred dollars, calculated according to the ac-
 11 tual method.

12 (2) This section does not limit or restrict the manner

13 of calculating the sales finance charge, whether by way
14 of add-on, discount, or otherwise, so long as the rate of the
15 sales finance charge does not exceed that permitted by
16 this section. If the sale is precomputed:

17 (a) The sales finance charge may be calculated on
18 the assumption that all scheduled payments will be made
19 when due, and

20 (b) The effect of prepayment, refinancing or consoli-
21 dation is governed by the provisions on rebate upon pre-
22 payment, refinancing or consolidation, contained in sec-
23 tion one hundred eleven of this article.

24 (3) For the purposes of this section, the term of a sale
25 agreement commences on the date the credit is granted
26 or, if goods are delivered or services performed ten days
27 or more after that date, with the date of commencement
28 of delivery or performance. Differences in the lengths of
29 months are disregarded and a day may be counted as one
30 thirtieth of a month. Subject to classifications and differ-
31 entiations the seller may reasonably establish, a part of
32 a month in excess of fifteen days may be treated as a full
33 month if periods of fifteen days or less are disregarded and
34 if that procedure is not consistently used to obtain a
35 greater yield than would otherwise be permitted.

36 (4) Subject to classifications and differentiations the
37 seller may reasonably establish, he may make the same
38 sales finance charge on all amounts financed within a
39 specified range. A sales finance charge so made does not
40 violate subsection (1) if:

41 (a) When applied to the median amount within each
42 range, it does not exceed the maximum permitted by sub-
43 section (1), and

44 (b) When applied to the lowest amount within each
45 range, it does not produce a rate of sales finance charge
46 exceeding the rate calculated according to paragraph (a)
47 by more than eight percent of the rate calculated accord-
48 ing to paragraph (a).

49 (5) Notwithstanding subsection (1), the seller may
50 contract for and receive a minimum sales finance charge

51 of not more than five dollars when the amount financed
52 does not exceed seventy-five dollars, or seven dollars and
53 fifty cents when the amount financed exceeds seventy-
54 five dollars.

55 (6) Notwithstanding any provision of this section to
56 the contrary, with respect to a consumer credit sale in-
57 volving a motor vehicle:

58 (a) A seller may contract for and receive a sales
59 finance charge not exceeding twelve percent per year
60 on the unpaid balance calculated according to the actuar-
61 ial method when such sale is made less than one year after
62 the year of the model year designation of such motor ve-
63 hicle or such motor vehicle is purchased new;

64 (b) A seller may contract for and receive a sales
65 finance charge not exceeding sixteen percent per year
66 on the unpaid balance calculated according to the actuar-
67 ial method when such sale is made more than one year
68 but less than two years after the year of the model year
69 designation of such motor vehicle; and

70 (c) A seller may contract for and receive a sales
71 finance charge not exceeding eighteen percent per year
72 on the unpaid balance calculated according to the actuar-
73 ial method when such sale is made more than two years
74 after the year of the model year designation of such motor
75 vehicle.

**§46A-3-102. Sales finance charge for certain consumer credit
sales of real estate.**

1 With respect to a consumer credit sale of real estate,
2 other than goods which become fixtures, where title is re-
3 tained or there is created or retained by agreement a pur-
4 chase money lien against that real estate, the seller may
5 contract for and receive a sales finance charge not exceed-
6 ing the interest permitted by section five, article six, chap-
7 ter forty-seven of this code.

8 In addition to the sales finance charge permitted by this
9 section with respect to such sale, a seller may also contract
10 for and receive additional charges, delinquency charges,
11 and deferral charges and compute rebates upon prepay-

12 ment, refinancing or consolidation as defined and autho-
13 rized by this chapter.

**§46A-3-103. Sales finance charge for revolving charge accounts
other than certain sales of real estate.**

1 (1) With respect to a consumer credit sale made pur-
2 suant to a revolving charge account, other than sales of
3 real estate pursuant to section one hundred two of this
4 article, the parties may contract for the payment by the
5 buyer of a sales finance charge not exceeding that per-
6 mitted in this section.

7 (2) A sales finance charge may be made in each billing
8 cycle which is a percentage of an amount not exceeding
9 the greatest of:

10 (a) The average daily balance of the account, or

11 (b) The balance of the account at the beginning of
12 the first day of the billing cycle, less all payments on and
13 credits to such account during such billing cycle and ex-
14 cluding all charges to such account during such billing
15 cycle, or

16 (c) The median amount within a specified range with-
17 in which the average daily balance of the account or the
18 balance of the account at the beginning of the first day of
19 the billing cycle, less all payments on and credits to such
20 account during such billing cycle and excluding all
21 charges to such account during such billing cycle, is in-
22 cluded. A charge may be made pursuant to this paragraph
23 only if the seller, subject to classifications and differen-
24 tiations he may reasonably establish, makes the same
25 charge on all balances within the specified range and if
26 the percentage when applied to the median amount with-
27 in the range does not produce a charge exceeding the
28 charge resulting from applying that percentage to the
29 lowest amount within the range by more than eight per-
30 cent of the charge on the median amount.

31 (3) If the billing cycle is monthly, the sales finance
32 charge may not exceed one and one-half percent on the
33 first seven hundred fifty dollars of unpaid balance and
34 one percent on the unpaid balance in excess of seven

35 hundred fifty dollars. If the billing cycle is not monthly,
36 the maximum charge is that percentage which bears the
37 same relation to the applicable monthly percentage as the
38 number of days in the billing cycle bears to thirty. A bill-
39 ing cycle is monthly if the billing statement dates are on
40 the same day each month or do not vary by more than
41 four days therefrom.

42 (4) Notwithstanding subsection (3), if there is an un-
43 paid balance on the date as of which the sales finance
44 charge is applied, the seller may contract for and receive
45 a charge not exceeding fifty cents if the billing cycle is
46 monthly or longer, or the pro rata part of fifty cents which
47 bears the same relation to fifty cents as the number of
48 days in the billing cycle bears to thirty if the billing cycle
49 is shorter than monthly.

§46A-3-104. Loan finance charge for consumer loans made by supervised financial organizations and certain other lenders other than loans made pursuant to revolving loan accounts and finance charge on assigned contracts.

1 (1) With respect to a consumer loan, other than a con-
2 sumer loan made pursuant to a revolving loan account,
3 (a) a bank, as defined in section two, article one, chapter
4 thirty-one-a of this code, may contract for and receive a
5 loan finance charge not exceeding the charge or interest
6 permitted by the provisions of section thirty, article four,
7 chapter thirty-one-a or by the provisions of section five or
8 section five-a, article six, chapter forty-seven of this code,
9 (b) an industrial loan company, as defined in section three,
10 article seven, chapter thirty-one of this code, may contract
11 for and receive a loan finance charge not exceeding the ag-
12 gregate of the interest and charges permitted by subdivi-
13 sions (5) and (6), subsection (a), section eleven, article
14 seven, chapter thirty-one of this code or by the provisions
15 of section five, article six, chapter forty-seven of this code,
16 (c) a building and loan association, as defined in section
17 two, article six, chapter thirty-one of this code, may con-
18 tract for and receive a loan finance charge not exceeding
19 the charge or interest permitted by the provisions of sec-
20 tion seventeen, article six, chapter thirty-one of this code,

21 or by the provisions of section five, article six, chapter
22 forty-seven of this code, (d) a credit union, as defined in
23 section one, article ten, chapter thirty-one of this code,
24 may contract for and receive a loan finance charge not ex-
25 ceeding the charge or interest permitted by the provisions
26 of section sixteen, article ten, chapter thirty-one of this
27 code, or by the provisions of section five, article six, chap-
28 ter forty-seven of this code, and (e) any other lender,
29 other than a supervised lender, may contract for and re-
30 ceive a loan finance charge not exceeding the charge or in-
31 terest permitted by the provisions of section five or section
32 five-a, article six, chapter forty-seven of this code.

33 (2) If the loan is precomputed:

34 (a) The loan finance charge may be calculated on the
35 assumption that all scheduled payments will be made when
36 due, and

37 (b) The effect of prepayment, refinancing or consolida-
38 tion is governed by the provisions on rebate upon prepay-
39 ment, refinancing or consolidation contained in section one
40 hundred eleven of this article.

41 (3) Notwithstanding subsection (1), the lender may
42 contract for and receive a minimum loan finance charge of
43 not more than five dollars when the amount loaned does
44 not exceed seventy-five dollars, or seven dollars and fifty
45 cents when the amount loaned exceeds seventy-five dol-
46 lars.

47 (4) An assignee of a consumer credit sale contract may
48 collect, receive or enforce the sales finance charge provided
49 in said contract, and any such charge so collected, received
50 or enforced by an assignee shall not be deemed usurious or
51 in violation of this chapter or any other provision of this
52 code if such sales finance charge does not exceed the limits
53 permitted to be charged by a seller under the provisions
54 of this chapter.

**§46A-3-105. Interest rate on loans guaranteed or insured by
United States or agency thereof.**

1 Nothing contained in this chapter or other law of this
2 state shall be taken or construed as limiting the permissi-

3 ble interest rates or loan finance charges upon loans evi-
4 denced by notes, bonds or other obligations secured by
5 mortgages or deeds of trust insured or guaranteed by the
6 federal housing commissioner or United States administra-
7 tor of veterans' affairs or by any other officer, department,
8 agency or instrumentality of the United States or evi-
9 denced by notes, bonds, debentures and other obligations
10 and securities issued by, insured by, or guaranteed by the
11 federal housing commissioner, Federal National Mortgage
12 Association, Government National Mortgage Association,
13 Small Business Administration or other federal officer,
14 department, agency or instrumentality.

§46A-3-106. Loan finance charge for revolving loan accounts.

1 (1) With respect to a consumer loan made pursuant to
2 a revolving loan account, a supervised financial organiza-
3 tion permitted to establish revolving loan accounts may
4 contract for and receive a loan finance charge not exceed-
5 ing that permitted in this section.

6 (2) A loan finance charge may be made in each billing
7 cycle which is a percentage of an amount not exceeding the
8 greatest of:

9 (a) The average daily balance of the debt,

10 (b) The balance of the debt at the beginning of the first
11 day of the billing cycle, less all payments on and credits to
12 such debt during such billing cycle and excluding all ad-
13 ditional borrowings during such billing cycle, or

14 (c) The median amount within a specified range within
15 which the average daily balance of the debt or the balance
16 of the debt at the beginning of the first day of the billing
17 cycle, less all payments on and credits to such debt during
18 such billing cycle and excluding all additional borrowings
19 during such billing cycle, is included. A charge may be
20 made pursuant to this subdivision only if the lender, sub-
21 ject to classifications and differentiations he may reason-
22 ably establish, makes the same charge on all balances with-
23 in the specified range and if the percentage when applied to
24 the median amount within the range does not produce a
25 charge exceeding the charge resulting from applying that

26 percentage to the lowest amount within the range by more
27 than eight percent of the charge on the median amount.

28 (3) If the billing cycle is monthly, the loan finance
29 charge may not exceed one and one-half percent on the first
30 seven hundred fifty dollars of unpaid principal balance and
31 one percent on the unpaid principal balance in excess of
32 seven hundred fifty dollars. If the billing cycle is not
33 monthly, the maximum charge is that percentage which
34 bears the same relation to the applicable monthly percent-
35 age as the number of days in the billing cycle bears to
36 thirty. A billing cycle is monthly if the billing statement
37 dates are on the same day each month or do not vary by
38 more than four days therefrom.

39 (4) Notwithstanding subsection (3), if there is an un-
40 paid balance on the date as of which the loan finance
41 charge is applied the lender may contract for and receive a
42 charge not exceeding fifty cents if the billing cycle is
43 monthly or longer, or the pro rata part of fifty cents which
44 bears the same relation to fifty cents as the number of days
45 in the billing cycle bears to thirty if the billing cycle is
46 shorter than monthly, but no charge may be made pursu-
47 ant to this subsection if the lender has made an annual
48 charge for the same period as permitted by the provisions
49 on additional charges.

§46A-3-107. Sales finance charges and loan finance charges on refinancing.

1 With respect to a consumer credit sale or con-
2 sumer loan, refinancing or consolidation, the seller or
3 lender may by agreement with the consumer refinance
4 the unpaid balance owed to such seller or lender
5 and may contract for and receive the applicable sales fi-
6 nance charge or loan finance charge, as the case may be,
7 based on the amount financed of a sale or principal of a
8 loan resulting from the refinancing at a rate not exceeding
9 that permitted by the provisions on sales finance charge
10 for consumer credit sales or loan finance charge for con-
11 sumer loans, as the case may be. For the purpose of deter-
12 mining the sales finance charge or loan finance charge per-
13 mitted, the amount financed or principal resulting from
14 the refinancing comprises the following:

15 (1) If the transaction was not precomputed, the total of
16 the unpaid balance and the accrued charges on the date of
17 refinancing or, if the transaction was precomputed, the
18 amount which the consumer would have been required to
19 pay upon refinancing pursuant to the provisions on rebate
20 upon refinancing on the date of refinancing except that for
21 the purpose of computing this amount no minimum sales
22 finance charge or minimum loan finance charge shall be
23 allowed;

24 (2) Appropriate additional charges, payment of which
25 is deferred; and

26 (3) Accumulated unpaid delinquency or deferral
27 charges.

§46A-3-108. Sales finance charges and loan finance charges on consolidation.

1 (1) If a consumer owes an unpaid balance to a creditor
2 with respect to a consumer credit sale or consumer loan,
3 refinancing or consolidation, and becomes obligated on an
4 other consumer credit sale or consumer loan, refinancing
5 or consolidation, with the same creditor, the parties may
6 agree to a consolidation resulting in a single schedule of
7 payments. If the previous consumer credit sale or con-
8 sumer loan was not precomputed, the parties may agree to
9 add the unpaid amount of the amount financed or prin-
10 cipal and accrued charges on the date of consolidation to
11 the amount financed or principal with respect to the sub-
12 sequent consumer credit sale or consumer loan. If the
13 previous consumer credit sale or consumer loan, refinanc-
14 ing or consolidation, was precomputed, the parties may
15 agree to refinance the unpaid balance pursuant to the pro-
16 visions on refinancing and to consolidate the amount
17 financed or principal resulting from the refinancing by
18 adding it, together with any accumulated delinquency or
19 deferral charges, to the amount financed or principal, with
20 respect to the subsequent consumer credit sale or con-
21 sumer loan. In either case the creditor may contract for
22 and receive a finance charge based on the aggregate
23 amount financed or principal resulting from the consoli-
24 dation, as specified in subsection (2) of this section.

25 (2) If the debts consolidated arise exclusively from
26 consumer credit sales owed to such creditor, the transac-
27 tion is a consolidation with respect to a consumer credit
28 sale and the amount of the sales finance charge is governed
29 by the provisions on sales finance charges for consumer
30 credit sales other than certain sales of real estate or sales
31 made pursuant to revolving charge accounts (§46A-3-101).
32 If the debts consolidated arise exclusively from consumer
33 loans owed to such creditor, the transaction is a consoli-
34 dation with respect to a consumer loan and the amount of
35 the loan finance charge is governed by the provisions on
36 loan finance charges for consumer loans. If the debts con-
37 solidated include both a debt arising from a consumer
38 credit sale or sales owed to such creditor and a debt arising
39 from a consumer loan or loans owed to such creditor, then
40 the creditor may contract for and receive a finance charge
41 not in excess of that permitted for a consumer credit sale
42 based on that portion of the consolidation attributable to
43 such consumer credit sale or sales and may contract for
44 and receive a finance charge not in excess of that per-
45 mitted for a consumer loan based on that portion of the
46 consolidation attributable to a consumer loan or loans.

47 (3) If a consumer owes an unpaid balance to a creditor
48 with respect to a consumer credit transaction arising out
49 of a consumer credit sale, and becomes obligated on an-
50 other consumer credit transaction arising out of another
51 consumer credit sale made by the same seller, the parties
52 may agree to the consolidation resulting in a single sched-
53 ule of payments either pursuant to subsection (2) or by
54 adding together the unpaid balances with respect to the
55 two sales.

56 (4) If a consumer credit sale subject to the provisions
57 of section one hundred two of this article is consolidated
58 with any other consumer credit sale or consumer loan
59 owed to the same creditor, the sales finance charge or loan
60 finance charge on the aggregate amount financed or prin-
61 cipal resulting from the consolidation shall be at the lower
62 rate.

§46A-3-109. Additional charges; insurance.

1 (1) In addition to the sales finance charge or loan

2 finance charge permitted by this chapter, a creditor may
3 contract for and receive the following additional charges
4 in connection with a consumer credit sale or a consumer
5 loan:

6 (a) Official fees and taxes;

7 (b) Charges for insurance as described in subsection
8 (2): *Provided*, That nothing contained in this section with
9 respect to insurance shall be construed as in any way
10 limiting the power and jurisdiction of the insurance com-
11 missioner of this state in the premises;

12 (c) Annual charges, payable in advance, for the priv-
13 ilege of using a lender credit card or similar arrangement
14 which entitles the user to purchase goods or services from
15 at least one hundred persons not related to the issuer of
16 the lender credit card or similar arrangement, under an
17 arrangement pursuant to which the debts resulting from
18 the purchases are payable to the issuer;

19 (d) Charges for other benefits, including insurance,
20 conferred on the consumer, if the benefits are of value to
21 him and if the charges are reasonable in relation to the
22 benefits, are of a type which is not for credit, and are
23 excluded as permissible additional charges from the sales
24 finance charge or loan finance charge by rule adopted by
25 the commissioner: *Provided, however*, That as to insur-
26 ance, the policy as distinguished from a certificate of cov-
27 erage thereunder must be issued by an individual licensed
28 under the laws of this state to sell such insurance and the
29 determination of whether the charges therefor are reason-
30 able in relation to the benefits shall be determined by the
31 insurance commissioner of this state; and

32 (e) Reasonable closing costs with respect to a debt
33 secured by an interest in land.

34 (2) A creditor may take, obtain or provide reasonable
35 insurance on the life and earning capacity of any con-
36 sumer obligated on the consumer credit sale or consumer
37 loan, reasonable insurance on any real or personal prop-
38 erty offered as security subject to the provisions of this
39 subsection, and vendor's or creditor's single interest in-

40 surance with respect to which the insurer has no right of
41 subrogation. Only one policy of life insurance and/or one
42 policy of health and accident insurance and/or one policy
43 of accident insurance on any one consumer may be in force
44 with respect to any one contract or agreement at any one
45 time, but one policy may cover both a consumer and his
46 spouse.

47 (a) The amount, terms and conditions of property in-
48 surance shall have a reasonable relation to the existing
49 hazards or risk of loss, damage or destruction and be rea-
50 sonable in relation to the character and value of the prop-
51 erty insured or to be insured; and the term of such insur-
52 ance shall be reasonable in relation to the terms of credit:
53 *And provided further*, That nothing shall be deemed to
54 prohibit the consumer from obtaining, at his option, great-
55 er coverages for longer periods of time if he so desires;

56 (b) Life insurance shall be in an initial amount not to
57 exceed the total amount repayable under the consumer
58 credit agreement, and where a consumer credit sale or
59 consumer loan is repayable in installments, such insurance
60 shall at no time exceed the scheduled or actual amount of
61 unpaid indebtedness, whichever is greater. Life insurance
62 authorized by this subdivision shall provide that the bene-
63 fits shall be paid to the creditor or reduce or extinguish the
64 unpaid indebtedness: *Provided*, That if a separate charge
65 is made for such insurance and the amount of insurance
66 exceeds the unpaid indebtedness, where not prohibited,
67 then such excess shall be payable to the estate of the con-
68 sumer. The initial term of such life insurance in connec-
69 tion with a consumer credit sale, other than a sale pur-
70 suant to a revolving charge account, or in connection with
71 a consumer loan, other than a loan pursuant to a revolv-
72 ing loan account, shall not exceed the scheduled term of
73 the consumer credit agreement by more than fifteen days.
74 The aggregate amount of periodic benefits payable by
75 credit accident and health insurance in the event of dis-
76 ability, as defined in the policy, shall not exceed the un-
77 paid amount of such indebtedness; periodic benefits pay-
78 able in connection with a consumer credit sale pursuant to
79 a revolving charge account or of a consumer loan pursuant

80 to a revolving loan account may be based upon the autho-
81 rized credit limit;

82 (c) When the insurance is obtained or provided by or
83 through a creditor, the creditor may collect from the con-
84 sumer or include as part of the cash price of a consumer
85 credit sale or as part of the principal of a consumer loan,
86 or deduct from the proceeds of any consumer loan the
87 premium, or in the case of group insurance, the identifi-
88 able charge. The premium or identifiable charge for such
89 insurance required or obtained by a creditor may equal,
90 but shall not exceed the premium rate filed by the in-
91 surer with the insurance commissioner. In any case when
92 the creditor collects the entire premium for such insur-
93 ance in advance, such premium shall be remitted by such
94 creditor to the insurer or the insurance agent, as specified
95 by the insurer, within ten days from or after the end of
96 the month in which such collection was made;

97 (d) With respect to insurance against loss of or dam-
98 age to property, or against liability, the creditor shall fur-
99 nish a clear and specific statement in writing to the debtor,
100 setting forth the cost of the insurance if obtained from or
101 through the creditor, and stating that the debtor may
102 choose the person through whom the insurance is to be
103 obtained; and

104 (e) With respect to consumer credit insurance pro-
105 viding life, accident or health coverage, no creditor shall
106 require a consumer to purchase such insurance or to pur-
107 chase such insurance from such creditor or any particular
108 agent, broker or insurance company as a condition pre-
109 cedent to extending credit to or on behalf of such con-
110 sumer.

§46A-3-110. Right to prepay.

1 Except for a consumer credit sale subject to the provi-
2 sions of section one hundred two of this article or a non-
3 precomputed consumer loan secured by an interest in land
4 and subject to the provisions on rebate upon prepayment,
5 the consumer may prepay in full the unpaid balance of a
6 consumer credit sale or a consumer loan, refinancing or
7 consolidation at any time without penalty.

§46A-3-111. Application of payments on account; rebate upon prepayment, refinancing or consolidation; judgments and interest on judgments.

1 (1) When a consumer credit sale or consumer loan is
2 precomputed all payments on account shall be applied to
3 installments in the order in which they fall due, except as
4 provided in subsection (3), section one hundred twelve of
5 this article. When the total amount is payable in sub-
6 stantially equal consecutive monthly installments, the
7 portion of the sales finance charge or loan finance charge
8 attributable to any particular monthly installment period
9 shall be that proportion of the sales finance charge or loan
10 finance charge originally contracted for, as the balance
11 scheduled to be outstanding on the last day of the monthly
12 installment period before deducting the payment, if any,
13 scheduled to be made on that day bears to the sum of all
14 the monthly installment balances under the original
15 schedule of payments. (This method of allocation is the
16 sum of the digits method, commonly referred to as the
17 "Rule of 78.")

18 (2) Upon prepayment in full of a precomputed con-
19 sumer credit sale or consumer loan by cash, a new loan,
20 refinancing, consolidation or otherwise, the creditor shall
21 rebate to the consumer that portion of the sales finance
22 charge or loan finance charge attributable to the prepaid
23 monthly installment periods: *Provided*, That upon pre-
24 payment in full of a precomputed consumer credit sale or
25 consumer loan payable in monthly installments, by cash,
26 a new loan, refinancing, consolidation or otherwise, on
27 other than an installment due date, for the purpose of
28 determining the rebate to which the consumer is entitled,
29 the rebate shall be calculated as of the nearest installment
30 due date. For the purpose of determining the installment
31 due date nearest the date of any prepayment in full, re-
32 financing or consolidation, any prepayment, refinancing or
33 consolidation of an obligation payable in monthly install-
34 ments made on or before the fifteenth day following an
35 installment due date shall be deemed to have been made
36 as of such installment due date, and any prepayment,
37 refinancing or consolidation made on or after the sixteenth

38 day shall be deemed to have been made on the next suc-
39 ceeding installment due date. Notwithstanding any other
40 provision herein contained, the creditor may collect or
41 retain the minimum charge within the limits stated in
42 this chapter if the sales finance charge or loan finance
43 charge earned at the time of prepayment, refinancing or
44 consolidation, is less than any minimum charge authorized
45 by this chapter. No rebate of less than one dollar need
46 be made.

47 (3) The commissioner shall prescribe by rule the
48 method or procedure for the allocation of charges and the
49 calculation of rebates consistent with the other provisions
50 of this chapter where the precomputed consumer credit
51 sale or consumer loan is payable in unequal or irregular or
52 in other than substantially equal consecutive monthly
53 installments.

54 (4) If the maturity of a precomputed consumer credit
55 sale or consumer loan is accelerated for any reason and
56 judgment is obtained, the debtor is entitled to the same
57 rebate as if the payment had been made on the date
58 judgment is entered, and such judgment shall bear in-
59 terest until paid at the rate of six percent per annum.

§46A-3-112. Delinquency charges on precomputed consumer credit sales or consumer loans.

1 (1) With respect to a precomputed consumer credit sale
2 or consumer loan, refinancing or consolidation, the parties
3 may contract for a delinquency charge on any installment
4 not paid in full within ten days after its scheduled due
5 date in an amount not exceeding the greater of:

6 (a) An amount, not exceeding five dollars, which is five
7 percent of the unpaid amount of the installment, but in
8 any event not less than one dollar; or

9 (b) An amount equivalent to the deferral charge (§46A-
10 3-114) that would be permitted to defer the unpaid amount
11 of the installment for the period that it is delinquent.

12 (2) A delinquency charge under subdivision (a) of sub-
13 section (1) may be collected only once on an installment
14 however long it remains in default. No delinquency charge

15 may be collected with respect to a deferred installment un-
16 less the installment is not paid in full within ten days after
17 its deferred due date. A delinquency charge may be col-
18 lected at the time it accrues or at any time thereafter.

19 (3) No delinquency charge may be collected on an in-
20 stallment which is paid in full within ten days after its
21 scheduled or deferred installment due date, even though an
22 earlier maturing installment or a delinquency or deferral
23 charge on an earlier installment may not have been paid in
24 full. For purposes of this subsection, payments shall be ap-
25 plied first to current installments, then to delinquent in-
26 stallments, and then to delinquency and other charges.

27 (4) If two installments or parts thereof of a precomputed
28 consumer credit sale or consumer loan are in default for
29 ten days or more, the creditor may elect to convert such
30 sale or loan from a precomputed sale or loan to one in
31 which the sales finance charge or loan finance charge is
32 based on unpaid balances. In such event the creditor shall
33 make a rebate pursuant to the provisions on rebate upon
34 prepayment, refinancing or consolidation as of the matur-
35 ity date of any installment then delinquent, and thereafter
36 may make a sales finance charge or loan finance charge as
37 authorized by the appropriate provisions on sales finance
38 charges or loan finance charges for consumer credit sales
39 or consumer loans.

40 The amount of the rebate shall not be reduced by the
41 amount of any permitted minimum charge. If the creditor
42 proceeds under this subsection, any delinquency or deferral
43 charges made with respect to installments due at or
44 after the maturity date of the delinquent installments shall
45 be rebated, and no further delinquency or deferral charges
46 shall be made.

47 (5) The commissioner shall prescribe by rule the method
48 or procedure for the calculation of delinquency charges
49 consistent with the other provisions of this chapter where
50 the precomputed consumer credit sale or consumer loan is
51 payable in unequal or irregular installments.

§46A-3-113. Delinquency charges on non-precomputed consumer credit sales or consumer loans repayable in installments.

1 (1) As an alternative to the continuation of the sales
2 finance charge or loan finance charge on a delinquent in-
3 stallment of a non-precomputed credit sale or consumer
4 loan, refinancing or consolidation, repayable in install-
5 ments, the parties may contract for a delinquency charge
6 on any installment not paid in full within ten days
7 after its scheduled due date in an amount, not exceeding
8 five dollars, which is five percent of the unpaid amount
9 of the installment, but in any event not less than one
10 dollar.

11 (2) A delinquency charge under subsection (1) may
12 be collected only once on an installment however long
13 it remains in default. A delinquency charge may be
14 collected at the time it accrues or at any time thereafter.

15 (3) No delinquency charge may be collected on an
16 installment which is paid in full within ten days after
17 its scheduled due date, even though an earlier maturing
18 installment or a delinquency or deferral charge on an
19 earlier installment may not have been paid in full. For
20 purposes of this subsection, payments shall be applied
21 first to current installments, then to delinquent install-
22 ments, and then to delinquency and other charges.

§46A-3-114. Deferral charges.

1 (1) With respect to a precomputed consumer credit
2 sale or consumer loan, refinancing or consolidation, the
3 parties before or after default may agree in writing to a
4 deferral of all or part of one or more unpaid install-
5 ments, and the seller or lender may make and collect a
6 deferral charge not exceeding the amount of the sales
7 finance charge or loan finance charge attributable to the
8 first of the deferred monthly installment periods multi-
9 plied by number of months in the deferral period (the
10 period in which no payment is required or made by reason
11 of a deferral): *Provided*, That no installment on which a
12 delinquency charge has been collected or partial payment

13 made shall be deferred unless the amount of the delin-
14 quency charge or partial payment is first applied to the de-
15 ferral charge. If prepayment in full occurs during a deferr-
16 ral period, the portion of the deferral charge attributable to
17 the unexpired full months in the deferral period shall be
18 also rebated.

19 (2) The seller or lender, in addition to the deferral
20 charge, may make appropriate additional charges, and the
21 amount of these charges which is not paid in cash may be
22 added to the amount deferred for the purpose of calculat-
23 ing the deferral charge.

24 (3) The parties may agree in writing at the time of a
25 precomputed consumer credit sale or consumer loan, re-
26 financing or consolidation that if an installment is not paid
27 within ten days after its due date as originally scheduled or
28 as deferred, the seller or lender may unilaterally grant a
29 deferral and make charges as provided in this section. No
30 deferral charge may be made for a period after the date on
31 which the seller or lender elects to accelerate the maturity
32 of the agreement.

33 (4) The commissioner shall prescribe by rule the
34 method or procedure for the calculation of deferral charges
35 consistent with the other provisions of this chapter where
36 the precomputed consumer credit sale or consumer loan is
37 payable in unequal or irregular installments.

§46A-3-115. Advances to perform covenants of consumer.

1 (1) If the agreement with respect to a consumer credit
2 sale or a consumer loan, refinancing or consolidation con-
3 tains covenants by the consumer to perform certain duties
4 pertaining to insuring or preserving collateral or pay-
5 ment of taxes, fees or assessments and if the creditor
6 pursuant to the agreement pays for performance of such
7 duties on behalf of the consumer, the creditor may add
8 the amounts so paid to the debt. Within a reasonable
9 time after advancing any sums, he shall state to the con-
10 sumer in writing the amount of the sums advanced, any
11 charges with respect to this amount, any revised pay-
12 ment scheduled, and, if the duties of the consumer per-
13 formed by the creditor pertain to insurance, a brief de-

14 description of the insurance paid for by the creditor includ-
15 ing the type and amount of coverages. No further infor-
16 mation need be given.

17 (2) A sales finance charge or a loan finance charge
18 may be made for sums advanced pursuant to subsection
19 (1) at a rate not exceeding the rate stated to the con-
20 sumer pursuant to the provisions of the "Federal Con-
21 sumer Credit Protection Act" with respect to the sale
22 or loan, refinancing or consolidation. With respect to a
23 revolving charge account or revolving loan account the
24 amount of the advance may be added to the unpaid
25 balance of the debt and the creditor may make a sales
26 finance charge or loan finance charge not exceeding that
27 permitted by the appropriate provisions on sales finance
28 charges or loan finance charges.

§46A-3-116. Change in terms of revolving charge accounts or revolving loan accounts.

1 (1) If a creditor makes a change in the terms of a re-
2 volving charge account or revolving loan account without
3 complying with this section, any additional cost or charge
4 to the consumer resulting from the change is an excess
5 charge and subject to the remedies provided in this chap-
6 ter.

7 (2) A creditor may change the terms of a revolving
8 charge account or revolving loan account whether or not
9 the change is authorized by prior agreement. Except as
10 provided in subsection (3), the creditor shall give to the
11 consumer written notice of such change not less than
12 fifteen days prior to the effective date of such change.

13 (3) The notice specified in subsection (2) is not re-
14 quired if:

15 (a) The consumer after otherwise receiving notice of
16 the change agrees in writing to the change;

17 (b) The consumer elects to pay an amount designated
18 on a billing statement as including a new charge for a
19 benefit offered to the debtor when the benefit and charge
20 constitute the change in terms and when the billing state-

21 ment also states the amount payable if the new charge
22 is excluded;

23 (c) The change involves no significant cost to the con-
24 sumer;

25 (d) The consumer has previously consented in writ-
26 ing to the kind of change made and notice of the change
27 is given to the consumer in two billing cycles prior to the
28 effective date of the change; or

29 (e) The change applies only to purchases made or obli-
30 gations incurred after a date specified in a notice of the
31 change given in two billing cycles prior to the effective
32 date of the change.

33 (4) The notice provided for in this section is given to
34 the debtor when mailed to him at the address used by
35 the creditor for mailing periodic billing statements.

36 (5) Under no circumstances may a change under the
37 provisions of this section be made so as to (a) increase
38 a sales finance charge or loan finance charge above that
39 permitted by the appropriate provisions on sales finance
40 charges or loan finance charges; or (b) apply a higher
41 sales finance charge or loan finance charge to the account
42 balance or debt balance unpaid as of the date the change
43 becomes effective.

ARTICLE 4. SUPERVISED LENDERS.

§46A-4-101. Authority to make supervised loans.

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

§46A-4-103. Revocation or suspension of license.

§46A-4-104. Records; annual reports.

§46A-4-105. Examinations and investigations.

§46A-4-106. Application of administrative procedures act.

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

§46A-4-108. Use of multiple loan agreements.

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

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

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

§46A-4-112. Code references to small loans and small loan companies; authority of the commissioner.

§46A-4-113. Continuation of licensing.

§46A-4-101. Authority to make supervised loans.

1 Unless a person has first obtained a license from the
2 commissioner authorizing him to make supervised loans,
3 he shall not engage in the business of:

4 (1) Making supervised loans, or

5 (2) Taking assignments of and undertaking direct
6 collection of payments from or enforcement of rights
7 against consumers arising from supervised loans.

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

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

12 (2) No license shall be issued to a supervised finan-
13 cial organization. No license shall be issued to any per-
14 son unless the commissioner, upon investigation, finds
15 that the financial responsibility, experience, character and
16 fitness of the applicant, and of the members thereof (if
17 the applicant is a co-partnership or association) and of
18 the officers and directors thereof (if the applicant is a
19 corporation), are such as to command the confidence
20 of the community and to warrant belief that the busi-
21 ness will be operated honestly, fairly and efficiently,
22 within the purposes of this chapter, and the applicant has
23 available for the operation of the business at the speci-
24 fied location assets of at least two thousand dollars, and
25 that allowing the applicant to engage in business will
26 promote the convenience and advantage of the commu-
27 nity in which the business of the applicant is to be con-
28 ducted.

29 (3) Upon written request, the applicant is entitled to a

30 hearing on the question of his qualifications for a license
31 if (a) the commissioner has notified the applicant in
32 writing that his application has been denied, or (b) the
33 commissioner has not issued a license within sixty days
34 after the application for the license was filed. A request
35 for a hearing may not be made more than fifteen days
36 after the commissioner has mailed a writing to the appli-
37 cant notifying him that the application has been denied
38 and stating in substance the commissioner's findings sup-
39 porting denial of the application.

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

47 (5) Upon giving the commissioner at least fifteen days'
48 prior written notice, a licensee may (a) change the loca-
49 tion of any place of business located within a municipality
50 to any other location within that same municipality, or
51 (b) change the location of any place of business located
52 outside of a municipality to a location no more than five
53 miles from the originally licensed location, but in no
54 case may a licensee move any place of business located
55 outside a municipality to a location within a municipality.
56 A licensee may not move the location of any place of
57 business located within a municipality to any other loca-
58 tion outside of that municipality.

59 (6) A licensee may conduct the business of making
60 supervised loans only at or from a place of business for
61 which he holds a license and not under any other name
62 than that stated in the license. A sale or lease in which
63 credit is granted pursuant to a lender credit card does not
64 violate this subsection.

65 (7) A license issued under the provisions of this sec-
66 tion shall not be transferable or assignable.

§46A-4-103. Revocation or suspension of license.

1 (1) The commissioner may issue to a person licensed

2 to make supervised loans an order to show cause why
3 his license should not be revoked or suspended for a period
4 not in excess of six months. The order shall state the
5 place for a hearing and set a time for the hearing that is
6 no less than ten days from the date of the order. After
7 the hearing the commissioner shall revoke or suspend the
8 license if he finds that:

9 (a) The licensee has repeatedly and willfully violated
10 this chapter or any rule or order lawfully made or issued
11 pursuant to this article; or

12 (b) Facts or conditions exist which would clearly have
13 justified the commissioner in refusing to grant a license
14 had these facts or conditions been known to exist at the
15 time the application for the license was made.

16 (2) No revocation or suspension of a license is lawful
17 unless prior to institution of proceedings by the commis-
18 sioner notice is given to the licensee of the facts or con-
19 duct which warrant the intended action, and the licensee
20 is given an opportunity to show compliance with all law-
21 ful requirements for retention of the license.

22 (3) If the commissioner finds that probable cause for
23 revocation of a license exists and that enforcement of
24 this article requires immediate suspension of the license
25 pending investigation, he may, after a hearing upon five
26 days' written notice, enter an order suspending the license
27 for not more than thirty days.

28 (4) Whenever the commissioner revokes or suspends
29 a license, he shall enter an order to that effect and forth-
30 with notify the licensee of the revocation or suspension.
31 Within five days after the entry of the order he shall mail
32 by registered or certified mail or deliver to the licensee
33 a copy of the order and the findings supporting the order.

34 (5) Any person holding a license to make supervised
35 loans may relinquish the license by notifying the com-
36 missioner in writing of its relinquishment, but this re-
37 linquishment shall not affect his liability for acts pre-
38 viously committed.

39 (6) No revocation, suspension or relinquishment of a
40 license shall impair or affect the obligation of any pre-

41 existing lawful contract between the licensee and any
42 consumer.

43 (7) The commissioner may reinstate a license, termi-
44 nate a suspension or grant a new license to a person whose
45 license has been revoked or suspended if no fact or condi-
46 tion then exists which clearly would have justified the
47 commissioner in refusing to grant a license.

§46A-4-104. Records; annual reports.

1 (1) Every licensee shall maintain records in conform-
2 ity with generally accepted accounting principles and
3 practices in a manner which will enable the commissioner
4 to determine whether the licensee is complying with the
5 provisions of this article. The record-keeping system of
6 a licensee shall be sufficient if he makes the required
7 information reasonably available. The records need not
8 be kept in the place of business where supervised loans
9 are made, if the commissioner is given free access to the
10 records wherever located. The records pertaining to any
11 loan need not be preserved for more than two years after
12 making the final entry relating to the loan, but in the
13 case of a revolving loan account such two-year period
14 is measured from the date of each entry.

15 (2) On or before the fifteenth day of April each year,
16 every licensee shall file with the commissioner a com-
17 posite annual report in the form prescribed by the com-
18 missioner relating to all supervised loans made by him.
19 The commissioner shall consult with comparable officials
20 in other states for the purpose of making the kinds of
21 information required in annual reports uniform among
22 the states. Information contained in annual reports shall
23 be confidential and may be published only in composite
24 form.

§46A-4-105. Examinations and investigations.

1 (1) The commissioner shall examine annually the
2 loans, business and records of every licensee. In addi-
3 tion, for the purpose of discovering violations of this arti-
4 cle or securing information lawfully required, the attorney
5 general or the commissioner may at any time investigate

6 the loans, business and records of any supervised lender.
7 For these purposes he shall have free and reasonable
8 access to the offices, places of business and records of the
9 lender.

10 (2) If the lender's records are located outside this
11 state, the lender at his option shall make them available
12 to the commissioner at a convenient location within this
13 state, or pay the reasonable and necessary expenses for
14 the commissioner or his representative to examine them
15 at the place where they are maintained. The commis-
16 sioner may designate representatives, including com-
17 parable officials of the state in which the records are
18 located, to inspect them on his behalf.

19 (3) For the purposes of this section, the commissioner
20 may administer oaths or affirmations, and upon his own
21 motion or upon request of any party, may subpoena wit-
22 nesses, compel their attendance, adduce evidence, and re-
23 quire the production of any matter which is relevant
24 to the investigation, including the existence, description,
25 nature, custody, condition and location of any books, docu-
26 ments or other tangible things and the identity and loca-
27 tion of persons having knowledge of relevant facts, or
28 any other matter reasonably calculated to lead to the
29 discovery of admissible evidence.

30 (4) Upon failure without lawful excuse to obey a sub-
31 poena or to give testimony and upon reasonable notice to
32 all persons affected thereby, the commissioner may apply
33 to any circuit court of this state for an order compelling
34 compliance.

35 (5) Every licensee shall pay to the commissioner the
36 actual costs of each examination as provided for in this
37 section.

§46A-4-106. Application of administrative procedures act.

1 Except as otherwise provided, the provisions of chap-
2 ter twenty-nine-a of this code apply to and govern all
3 administrative action taken by the commissioner pursuant
4 to the provisions of this article.

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

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

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

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

10 (b) Twenty-four percent per year on that part of the
11 unpaid balances of the principal which is more than two
12 hundred dollars but does not exceed six hundred dollars;
13 and

14 (c) Eighteen percent per year on that part of the un-
15 paid balances of the principal which is more than six
16 hundred dollars.

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

22 (a) The loan finance charge may be calculated on the
23 assumption that all scheduled payments will be made
24 when due, and

25 (b) The effect of prepayment, refinancing or con-
26 solidation is governed by the provisions on rebate
27 upon prepayment, refinancing or consolidation con-
28 tained in section one hundred eleven, article three of
29 this chapter.

30 (4) For the purposes of this section, the term of a loan
31 commences on the date the loan is made. Differences in
32 the lengths of months are disregarded and a day may be
33 counted as one thirtieth of a month. Subject to classi-
34 fications and differentiations the licensee may reasonably
35 establish, a part of a month in excess of fifteen days may
36 be treated as a full month if periods of fifteen days or

37 less are disregarded and if that procedure is not consist-
38 ently used to obtain a greater yield than would other-
39 wise be permitted.

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

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

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

53 (6) With respect to a revolving loan account:

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

58 (i) The average daily balance of the debt,

59 (ii) The balance of the debt at the beginning of the
60 first day of the billing cycle, less all payments on and
61 credits to such debt during such billing cycle and exclud-
62 ing all additional borrowings during such billing cycle,
63 or

64 (iii) Subject to subsection (5), the median amount
65 within a specified range within which the average daily
66 balance of the debt or the balance of the debt at the be-
67 ginning of the first day of the billing cycle, less all pay-
68 ments on and credits to such debt during such billing
69 cycle and excluding all additional borrowings during such
70 billing cycle, is included. For the purpose of this sub-
71 division (a) a billing cycle is monthly if the billing state-
72 ment dates are on the same day each month or do not
73 vary by more than four days therefrom.

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

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

§46A-4-108. Use of multiple loan agreements.

1 A supervised lender may not use multiple loan agree-
2 ments with intent to obtain a higher loan finance charge
3 than would otherwise be permitted by the provisions of
4 this article. A supervised lender uses multiple loan agree-
5 ments if, with intent to obtain a higher loan finance charge
6 than would otherwise be permitted, he allows any per-
7 son, or husband and wife, to become obligated in any
8 way under more than one loan agreement with the super-
9 vised lender for a supervised loan under this article.

10 The excess amount of the loan finance charge provided
11 for in agreements in violation of this section is an excess
12 charge for the purposes of the provisions on effect of
13 violations on rights of parties.

**§46A-4-109. Restrictions on interest in land as security; as-
signment of earnings to supervised lender pro-
hibited; when security interest on household
furniture not valid; prohibitions as to renegotia-
tion of loan discharged in bankruptcy.**

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

4 (2) Notwithstanding the provisions of section one hun-
5 dred sixteen, article two of this chapter, no supervised
6 lender shall take any assignment of or order for payment
7 of any earnings to secure any loan made by any super-
8 vised lender under this article. An assignment or order
9 taken in violation of this subsection is void.

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

21 (4) A supervised lender may not renegotiate the origi-
22 nal loan, or any part thereof, or make a new contract
23 covering the original loan, or any part thereof, with any
24 borrower, who has received a discharge in bankruptcy
25 of the original loan or any balance due thereon at the
26 time of said discharge from any court of the United
27 States of America exercising jurisdiction in insolvency
28 and bankruptcy matters, unless said supervised lender
29 shall pay to and deliver to the borrower the full amount
30 of the loan shown on said note, promise to pay, or security,
31 less any deductions for charges herein specifically autho-
32 rized.

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

1 No licensee shall conduct the business of making loans
2 under the provisions of this article within any office,
3 room or place of business in which any other business is
4 solicited or engaged in, or in association or conjunction
5 therewith, except as may be authorized in writing by
6 the commissioner upon his finding that the character of
7 such other business is such that the granting of such
8 authority would not facilitate evasions of this article
9 or of the rules and regulations lawfully made hereunder,

10 except nothing herein shall prohibit the licensee from
11 purchasing installment sales contracts or the sale or pro-
12 vision of insurance authorized by section one hundred
13 nine, article three of this chapter.

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

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

§46A-4-112. Code references to small loans and small loan companies; authority of the commissioner.

1 All references in other chapters of this code to small
2 loans, small loan lenders, small loan licensees and to
3 article seven-a, chapter forty-seven of this code, shall,
4 after the operative date of this chapter, and despite the
5 repeal of said statute, be read, construed and understood
6 to mean and to have reference, respectively, to super-
7 vised loans, supervised lenders, supervised lender li-
8 censees, and to this article four.

9 All authority vested by this chapter in the commissioner
10 shall be deemed to be in addition to, and not in limita-
11 tion of, the authority vested in the commissioner of bank-
12 ing by provisions contained in other chapters of this code.

§46A-4-113. Continuation of licensing.

1 All persons licensed under the provisions of article
2 seven-a, chapter forty-seven of this code, on the operative
3 date of this chapter, are licensed to make supervised
4 loans under the provisions of this article four, and all

5 provisions of this article shall after the operative date
6 of this chapter apply to the persons so previously licensed,
7 including without limitation the provisions governing
8 notification (§46A-7-115) contained in article seven of this
9 chapter.

10 The commissioner may, but is not required to, deliver
11 evidence of licensing to the persons so previously licensed.

ARTICLE 5. CIVIL LIABILITY AND CRIMINAL PENALTIES.

§46A-5-101. Effect of violations on rights of parties; limitation of actions.

§46A-5-102. Assertion of rights.

§46A-5-103. Willful violations.

§46A-5-101. Effect of violations on rights of parties; limitation of actions.

1 (1) If a creditor has violated the provisions of this
2 chapter applying to collection of excess charges (§46A-
3 1-104), security in sales and leases (§46A-2-107), disclo-
4 sure with respect to consumer leases (§46A-2-111), re-
5 cepts, statements of account and evidences of payment
6 (§46A-2-114), limitations on default charges (§46A-2-
7 115), assignment of earnings (§46A-2-116), authorizations
8 to confess judgment (§46A-2-117), illegal, fraudulent or
9 unconscionable conduct (§46A-2-121), any prohibited debt
10 collection practice (§§46A-2-123 through 129), or restric-
11 tions on interest in land as security, assignment of earn-
12 ings to supervised lender, security agreement on house-
13 hold furniture for benefit of supervised lender, and rene-
14 gotiation by supervised lender of loan discharged in bank-
15 ruptcy (§46A-4-109), the consumer has a cause of action
16 to recover actual damages and in addition a right in an
17 action to recover from the person violating this chapter
18 a penalty in an amount determined by the court not less
19 than one hundred dollars nor more than one thousand
20 dollars. With respect to violations arising from consumer
21 credit sales or consumer loans made pursuant to revolving
22 charge accounts or revolving loan accounts, or from sales
23 as defined in article six of this chapter, no action pursuant
24 to this subsection may be brought more than four years
25 after the violations occurred. With respect to violations

26 arising from other consumer credit sales or consumer
27 loans, no action pursuant to this subsection may be
28 brought more than one year after the due date of the
29 last scheduled payment of the agreement.

30 (2) If a creditor has violated the provisions of this
31 chapter respecting authority to make supervised loans
32 (§46A-4-101), the loan is void and the consumer is not
33 obligated to pay either the principal or the loan finance
34 charge. If he has paid any part of the principal or of the
35 finance charge, he has a right to recover in an action the
36 payment from the person violating this chapter or from
37 an assignee of that person's rights who undertakes direct
38 collection of payments or enforcement of rights arising
39 from the debt. With respect to violations arising from
40 supervised loans made pursuant to revolving loan ac-
41 counts, no action pursuant to this subsection may be
42 brought more than four years after the violation occurred.
43 With respect to violations arising from other supervised
44 loans, no action pursuant to this subsection may be
45 brought more than one year after the due date of the
46 last scheduled payment of the agreement pursuant to
47 which the charge was paid.

48 (3) A consumer is not obligated to pay a charge in
49 excess of that allowed by this chapter, and if he has paid
50 an excess charge he has a right to a refund. A refund
51 may be made by reducing the consumer's obligation by
52 the amount of the excess charge. If the consumer has
53 paid an amount in excess of the lawful obligation under
54 the agreement, the consumer may recover in an action
55 the excess amount from the person who made the excess
56 charge or from an assignee of that person's rights who
57 undertakes direct collection of payments from or en-
58 forcement of rights against the consumer arising
59 from the debt.

60 (4) If a creditor has contracted for or received a
61 charge in excess of that allowed by this chapter, the con-
62 sumer may, in addition to recovering such excess charge,
63 also recover from the creditor or the person liable in an
64 action a penalty in an amount determined by the court
65 not less than one hundred dollars nor more than one

66 thousand dollars. With respect to excess charges arising
67 from consumer credit sales or consumer loans made pur-
68 suant to revolving charge accounts or revolving loan
69 accounts, no action pursuant to this subsection may be
70 brought more than four years after the time the excess
71 charge was made. With respect to excess charges arising
72 from other consumer credit sales or consumer loans no
73 action pursuant to this subsection may be brought more
74 than one year after the due date of the last scheduled
75 payment of the agreement pursuant to which the charge
76 was made.

77 (5) Except as otherwise provided, a violation of this
78 chapter does not impair rights on a debt.

79 (6) If an employer discharges an employee in vio-
80 lation of the provisions prohibiting discharge (§46A-2-
81 131), the employee may within ninety days bring a civil
82 action for recovery of wages lost as a result of the viola-
83 tion and for an order requiring the reinstatement of the
84 employee. Damages recoverable shall not exceed lost
85 wages for six weeks.

86 (7) A creditor has no liability for a penalty under
87 subsection (1) or subsection (4) if within fifteen days
88 after discovering an error, and prior to the institution
89 of an action under this section or the receipt of written
90 notice of the error, the creditor notifies the person con-
91 cerned of the error and corrects the error. If the viola-
92 tion consists of a prohibited agreement, giving the con-
93 sumer a corrected copy of the writing containing the
94 error is sufficient notification and correction. If the vio-
95 lation consists of an excess charge, correction shall be
96 made by an adjustment or refund.

97 (8) If the creditor establishes by a preponderance of
98 evidence that a violation is unintentional or the result
99 of a bona fide error of fact notwithstanding the mainte-
100 nance of procedures reasonably adapted to avoid any such
101 violation or error, no liability is imposed under subsections
102 (1), (2) and (4), and the validity of the transaction is not
103 affected.

§46A-5-102. Assertion of rights.

1 Rights granted by this chapter may be asserted as a
2 defense, set-off or counterclaim to an action against a
3 consumer without regard to any limitation of actions.

§46A-5-103. Willful violations.

1 (1) A supervised lender who willfully makes charges
2 in excess of those permitted by the provisions of article
3 four of this chapter, pertaining to supervised lenders,
4 shall be guilty of a misdemeanor, and, upon conviction,
5 shall be fined not more than five thousand dollars, or
6 imprisoned not more than one year, or both fined and
7 imprisoned.

8 (2) A person who willfully engages in the business
9 of making supervised loans without a license in violation
10 of the provisions of article four of this chapter applying
11 to authority to make supervised loans shall be guilty
12 of a misdemeanor, and, upon conviction, shall be fined
13 not more than five thousand dollars, or impris-
14 oned not more than one year, or both fined and
15 imprisoned.

16 (3) A person who willfully engages in the business of
17 making consumer credit sales or consumer loans, or of
18 taking assignments of rights against consumers arising
19 therefrom and undertakes direct collection of payments
20 or enforcement of these rights, without complying with
21 the provisions of section one hundred fifteen, article
22 seven of this chapter, concerning notification, shall be
23 guilty of a misdemeanor, and, upon conviction, shall be
24 fined not more than one hundred dollars.

25 (4) Any person who willfully violates any of the
26 provisions of sections one hundred twenty-three through
27 one hundred twenty-eight, inclusive, article two of this
28 chapter, by committing any of the specifically described
29 and enumerated acts contained therein, shall be guilty
30 of a misdemeanor, and, upon conviction thereof, shall
31 be fined not more than one thousand dollars, or impris-
32 oned in the county jail not more than one year, or both
33 fined and imprisoned.

ARTICLE 6. GENERAL CONSUMER PROTECTION.

- §46A-6-101. Legislative declarations; statutory construction.
- §46A-6-102. Definitions.
- §46A-6-103. Rules and regulations.
- §46A-6-104. Unlawful acts or practices.
- §46A-6-105. Exempted transactions.
- §46A-6-106. Actions by consumers.
- §46A-6-107. Disclaimer of warranties and remedies prohibited.
- §46A-6-108. Breach of warranty; privity abolished.

§46A-6-101. Legislative declarations; statutory construction.

1 (1) The Legislature hereby declares that the purpose
2 of this article is to complement the body of federal law
3 governing unfair competition and unfair, deceptive and
4 fraudulent acts or practices in order to protect the public
5 and foster fair and honest competition. It is the intent
6 of the Legislature that, in construing this article, the
7 courts be guided by the interpretation given by the fed-
8 eral courts to the various federal statutes dealing with
9 the same or similar matters. To this end, this article
10 shall be liberally construed so that its beneficial purposes
11 may be served.

12 (2) It is, however, the further intent of the Legis-
13 lature that this article shall not be construed to prohibit
14 acts or practices which are reasonable in relation to the
15 development and preservation of business or which are
16 not injurious to the public interest, nor shall this article
17 be construed to repeal by implication the provisions of
18 articles eleven, eleven-a and eleven-b, chapter forty-
19 seven of this code.

§46A-6-102. Definitions.

1 When used in this article the following words, terms and
2 phrases, and any variations thereof required by the con-
3 text, shall have the meaning ascribed to them in this
4 article, except where the context indicates a different
5 meaning:

6 (a) "Advertisement" means the publication, dissemi-
7 nation or circulation of any matter, oral or written, in-
8 cluding labeling, which tends to induce, directly or indi-
9 rectly, any person to enter into any obligation, sign any
10 contract, or acquire any title or interest in any goods or

11 services and includes every word device to disguise any
12 form of business solicitation by using such terms as "re-
13 newal," "invoice," "bill," "statement" or "reminder," to
14 create an impression of existing obligation when there
15 is none, or other language to mislead any person in re-
16 lation to any sought-after commercial transaction.

17 (b) "Merchantable" means, in addition to the qualities
18 prescribed in section three hundred fourteen, article two,
19 chapter forty-six of this code, that the goods conform in all
20 material respects to applicable state and federal statutes
21 and regulations establishing standards of quality and
22 safety of goods and, in the case of goods with me-
23 chanical, electrical or thermal components, that the goods
24 are in good working order and will operate properly in
25 normal usage for a reasonable period of time.

26 (c) "Sale" includes any sale, offer for sale or attempt
27 to sell any goods for cash or credit or any services or
28 offer for services for cash or credit.

29 (d) "Trade" or "commerce" means the advertising,
30 offering for sale, sale or distribution of any goods or
31 services and shall include any trade or commerce, directly
32 or indirectly, affecting the people of this state.

33 (e) "Unfair methods of competition and unfair or
34 deceptive acts or practices" means and includes, but is not
35 limited to, any one or more of the following:

36 (1) Passing off goods or services as those of another;

37 (2) Causing likelihood of confusion or of misunder-
38 standing as to the source, sponsorship, approval or certi-
39 fication of goods or services;

40 (3) Causing likelihood of confusion or of misunder-
41 standing as to affiliation, connection or association with,
42 or certification by, another;

43 (4) Using deceptive representations or designations
44 of geographic origin in connection with goods or services;

45 (5) Representing that goods or services have sponsor-
46 ship, approval, characteristics, ingredients, uses, benefits
47 or quantities that they do not have, or that a person has

48 a sponsorship, approval, status, affiliation or connection
49 that he does not have;

50 (6) Representing that goods are original or new if
51 they are deteriorated, altered, reconditioned, reclaimed,
52 used or secondhand;

53 (7) Representing that goods or services are of a par-
54 ticular standard, quality or grade, or that goods are of a
55 particular style or model, if they are of another;

56 (8) Disparaging the goods, services or business of
57 another by false or misleading representation of fact;

58 (9) Advertising goods or services with intent not to
59 sell them as advertised;

60 (10) Advertising goods or services with intent not to
61 supply reasonably expectable public demand, unless the
62 advertisement discloses a limitation of quantity;

63 (11) Making false or misleading statements of fact
64 concerning the reasons for, existence of or amounts of
65 price reductions;

66 (12) Engaging in any other conduct which similarly
67 creates a likelihood of confusion or of misunderstanding;

68 (13) The act, use or employment by any person of
69 any deception, fraud, false pretense, false promise or
70 misrepresentation, or the concealment, suppression or
71 omission of any material fact with intent that others
72 rely upon such concealment, suppression or omission, in
73 connection with the sale or advertisement of any goods
74 or services, whether or not any person has in fact been
75 misled, deceived or damaged thereby; or

76 (14) Advertising, printing, displaying, publishing, dis-
77 tributing or broadcasting, or causing to be advertised,
78 printed, displayed, published, distributed or broadcast in
79 any manner, any statement or representation with regard
80 to the sale of goods or the extension of consumer credit
81 including the rates, terms or conditions for the sale of such
82 goods or the extension of such credit, which is false, mis-
83 leading, or deceptive, or which omits to state material in-
84 formation which is necessary to make the statements
85 therein not false, misleading or deceptive.

86 (f) "Warranty" means express and implied warranties
87 described and defined in sections three hundred thirteen,
88 three hundred fourteen and three hundred fifteen, article
89 two, chapter forty-six of this code and expressions or
90 actions of a merchant which assure the consumer that the
91 goods have described qualities or will perform in a des-
92 cribed manner.

§46A-6-103. Rules and regulations.

1 The attorney general of the state of West Virginia
2 may make rules and regulations interpreting and defining
3 the provisions of section one hundred two of this article.
4 Such rules and regulations shall conform as nearly as
5 practicable with the rules, regulations and decisions of the
6 federal trade commission and the federal courts in in-
7 terpreting the provisions of the "Federal Trade Com-
8 mission Act," as from time to time amended.

§46A-6-104. Unlawful acts or practices.

1 Unfair methods of competition and unfair or deceptive
2 acts or practices in the conduct of any trade or commerce
3 are hereby declared unlawful.

§46A-6-105. Exempted transactions.

1 Nothing in this article shall apply to acts done by the
2 publisher, owner, agent or employee of a newspaper,
3 periodical or radio or television station in the publication
4 or dissemination of an advertisement, when the owner,
5 agent or employee did not have knowledge of the false,
6 misleading or deceptive character of the advertisement,
7 did not prepare the advertisement and did not have a
8 direct financial interest in the sale or distribution of the
9 advertised goods or services.

§46A-6-106. Actions by consumers.

1 (1) Any person who purchases or leases goods or
2 services and thereby suffers any ascertainable loss of
3 money or property, real or personal, as a result of the use
4 or employment by another person of a method, act or
5 practice prohibited or declared to be unlawful by the
6 provisions of this article, may bring an action in the

7 circuit court of the county in which the seller or lessor
8 resides or has his principal place of business or is doing
9 business, or as provided for in sections one and two,
10 article one, chapter fifty-six of this code, to recover
11 actual damages or two hundred dollars, whichever is
12 greater. The court may, in its discretion, provide such
13 equitable relief as it deems necessary or proper.

14 (2) Any permanent injunction, judgment or order of
15 the court under section one hundred eight, article seven
16 of this chapter for a violation of section one hundred
17 four of this article shall be prima facie evidence in an
18 action brought under this section one hundred six that
19 the respondent used or employed a method, act or prac-
20 tice declared unlawful by said section one hundred four
21 of this article.

§46A-6-107. Disclaimer of warranties and remedies prohibited.

1 Notwithstanding any other provision of law to the con-
2 trary with respect to goods which are the subject of or
3 are intended to become the subject of a consumer trans-
4 action, no merchant shall:

5 (1) Exclude, modify or otherwise attempt to limit any
6 warranty, express or implied, including the warranties of
7 merchantability and fitness for a particular purpose; or

8 (2) Exclude, modify or attempt to limit any remedy
9 provided by law, including the measure of damages avail-
10 able, for a breach of warranty, express or implied.

11 Any such exclusion, modification or attempted limita-
12 tion shall be void.

§46A-6-108. Breach of warranty; privity abolished.

1 Notwithstanding any other provision of law to the con-
2 trary, no action by a consumer for breach of warranty or
3 for negligence with respect to goods subject to a consumer
4 transaction shall fail because of a lack of privity between
5 the consumer and the party against whom the claim is
6 made. An action against any person for breach of war-
7 ranty or for negligence with respect to goods subject to a

8 consumer transaction shall not of itself constitute a bar
9 to the bringing of an action against another person.

ARTICLE 7. ADMINISTRATION.

- §46A-7-101. Division of consumer protection created; purpose.
§46A-7-102. Power of attorney general; reliance on rules of commissioner; duty to report.
§46A-7-103. Division of administrative powers; investigation and administration.
§46A-7-104. Investigatory powers.
§46A-7-105. Application of administrative procedures act.
§46A-7-106. Administrative enforcement orders; judicial review.
§46A-7-107. Assurance of discontinuance.
§46A-7-108. Injunctions against violations of chapter.
§46A-7-109. Injunctions against unconscionable agreements and fraudulent or unconscionable conduct.
§46A-7-110. Temporary relief.
§46A-7-111. Civil actions by attorney general.
§46A-7-112. Jury trial.
§46A-7-113. Consumer's remedies not affected.
§46A-7-114. Venue.
§46A-7-115. Notification.
§46A-7-116. Consumer affairs advisory council created; members appointed by governor; qualifications of members; term; organization and meetings of council; duties of council; quorum; filling vacancies; payment of expenses.

§46A-7-101. Division of consumer protection created; purpose.

1 There is hereby created, under the authority of the
2 attorney general of the state of West Virginia, a division
3 of consumer protection for the purposes set forth in this
4 article.

§46A-7-102. Power of attorney general; reliance on rules of commissioner; duty to report.

- 1 (1) In addition to other powers granted by this chap-
2 ter, the attorney general within the limitations provided
3 by law may:
- 4 (a) Receive and act on complaints, take action de-
5 signed to obtain voluntary compliance with this chapter
6 or commence proceedings on his own initiative;
- 7 (b) Counsel persons and groups on their rights and
8 duties under this chapter;
- 9 (c) Establish programs for the education of consumers
10 with respect to credit practices and problems;

11 (d) Make studies appropriate to effectuate the pur-
12 poses and policies of this chapter and make the results
13 available to the public;

14 (e) Adopt, amend and repeal such reasonable rules
15 and regulations, in accordance with the provisions of
16 chapter twenty-nine-a of this code, as are necessary and
17 proper to effectuate the purposes of this chapter and to
18 prevent circumvention or evasion thereof; and

19 (f) Delegate his powers and duties under this chap-
20 ter to qualified personnel in his office, who shall act under
21 the direction and supervision of the attorney general and
22 for whose acts he shall be responsible.

23 (2) Except for refund of an excess charge, no liability
24 is imposed under this chapter for an act done or omitted
25 in conformity with a rule of the attorney general or com-
26 missioner, notwithstanding that after the act or omission
27 the rule may be amended or repealed or be determined by
28 judicial or other authority to be invalid for any reason.
29 Any form or procedure which has been submitted to the
30 commissioner and the attorney general in writing and
31 approved in writing by them shall not be deemed a viola-
32 tion of the penalty provisions of this chapter notwith-
33 standing that such approval may be subsequently amended
34 or rescinded or be determined by judicial or other author-
35 ity to be invalid for any reason.

36 (3) On or before December first of each year, the attor-
37 ney general and commissioner shall jointly or separately
38 submit a report or reports to the governor and to the
39 Legislature on the operation of their offices, on the use
40 of consumer credit and on consumer protection prob-
41 lems in the state, and on the problems of persons of small
42 means obtaining credit from persons regularly engaged
43 in extending sales or loan credit. For the purpose of mak-
44 ing such report or reports, the attorney general and com-
45 missioner are authorized to conduct research and make
46 appropriate studies. The report or reports shall include
47 a description of the examination and investigation pro-
48 cedures and policies of their offices, a statement of poli-
49 cies followed in deciding whether to investigate or exam-
50 ine the offices of credit suppliers subject to this chapter,

51 a statement of the number and percentages of offices
52 which are periodically investigated or examined, a state-
53 ment of the types of consumer credit and consumer pro-
54 tection problems of both creditors and consumers which
55 have come to their attention through their examinations
56 and investigations and the disposition of them under exist-
57 ing law, and a general statement of the activities of their
58 offices and of others to promote the purposes of this chap-
59 ter.

§46A-7-103. Division of administrative powers; investigation and administration.

1 (1) With respect to supervised financial organizations,
2 the powers of examination and investigation and adminis-
3 trative enforcement shall be exercised by the official or
4 agency to whose supervision the organization is subject.
5 All other powers of the attorney general under this chap-
6 ter may be exercised by him with respect to a supervised
7 financial organization. Notwithstanding the first sentence
8 of this subsection and notwithstanding subsection (3)
9 of this section, the attorney general may pursue any
10 investigation, prosecute any suit and take any other pro-
11 per action relating to the enforcement of any consumer
12 protection provision in this chapter.

13 (2) If the attorney general receives a complaint or
14 other information concerning noncompliance with this
15 chapter by a supervised financial organization, he shall
16 inform the official or agency having supervisory authority
17 over the organization concerned. The attorney general
18 may request information about supervised financial organ-
19 izations from the officials or agencies supervising them.

20 (3) The attorney general and any official or agency
21 of this state having supervisory authority over a super-
22 vised financial organization are authorized and directed
23 to consult and assist one another in maintaining compli-
24 ance with this chapter. They may jointly pursue investi-
25 gations, prosecute actions, and take other official actions,
26 as they deem appropriate, if either of them otherwise is
27 empowered to take the action.

§46A-7-104. Investigatory powers.

1 (1) If the attorney general has probable cause to be-
2 lieve that a person has engaged in an act which is sub-
3 ject to action by the attorney general, he may, and shall
4 upon request of the commissioner, make an investigation
5 to determine if the act has been committed and, to the
6 extent necessary for this purpose, may administer oaths
7 or affirmations, and, upon his own motion or upon re-
8 quest of any party, may subpoena witnesses, compel
9 their attendance, adduce evidence, and require the pro-
10 duction of any matter which is relevant to the investiga-
11 tion, including the existence, description, nature, custody,
12 condition and location of any books, records, documents
13 or other tangible things and the identity and location of
14 persons having knowledge of relevant facts, or any other
15 matter reasonably calculated to lead to the discovery of
16 admissible evidence.

17 (2) If the person's records are located outside this
18 state, the person at his option shall either make them
19 available to the attorney general at a convenient location
20 within this state or pay the reasonable and necessary
21 expenses for the attorney general or his representative
22 to examine them at the place where they are maintained.
23 The attorney general may designate representatives, in-
24 cluding comparable officials of the state in which the rec-
25 ords are located, to inspect them on his behalf.

26 (3) Upon failure of a person without lawful excuse to
27 obey a subpoena or to give testimony and upon reasonable
28 notice to all persons affected thereby, the attorney general
29 may apply to the circuit court of the county in which the
30 hearing is to be held for an order compelling compliance.

31 (4) The attorney general shall not make public the
32 name or identity of a person whose acts or conduct he
33 investigates pursuant to this section or the facts disclosed
34 in the investigation, but this subsection does not apply
35 to disclosures in actions or enforcement proceedings pur-
36 suant to this chapter.

§46A-7-105. Application of administrative procedures act.

1 Except as otherwise provided, the provisions of chapter

2 twenty-nine-a of this code apply to and govern all ad-
3 ministrative action taken by the attorney general pur-
4 suant to this chapter.

**§46A-7-106. Administrative enforcement orders; judicial re-
view.**

1 (1) After notice and hearing the attorney general may
2 order a creditor or other person to cease and desist from
3 engaging in violations of this chapter.

4 (2) A respondent aggrieved by an order of the attor-
5 ney general may obtain judicial review of the order in
6 accordance with the provisions of chapter twenty-nine-a
7 of this code, except as herein otherwise provided. The
8 proceeding for review must be initiated by the filing of
9 a petition in the court within thirty days after a copy of
10 the order of the attorney general is received. Copies of
11 the petition shall be served upon all parties of record.

12 (3) Within thirty days after service of the petition
13 for review upon the attorney general, or within any
14 further time the court may allow, the attorney general
15 shall transmit to the court the original or a certified copy
16 of the entire record upon which the order is based, in-
17 cluding any transcript of testimony, which need not be
18 printed. By stipulation of all parties to the review pro-
19 ceeding, the record may be shortened. After hearing,
20 the court may (a) reverse or modify the order if the
21 findings of fact of the attorney general are clearly erro-
22 neous in view of the reliable, probative and substantial
23 evidence on the whole record, (b) grant any temporary
24 relief or restraining order it deems just, or (c) enter an
25 order affirming, enforcing, modifying and enforcing as
26 modified, or setting aside in whole or in part, the order
27 of the attorney general, or remanding the case to the
28 attorney general for further proceedings.

29 (4) An objection not urged at the administrative
30 hearing shall not be considered by the court unless the
31 failure to urge the objection is excused for good cause
32 shown. A party may move the court to remand the case
33 to the attorney general in the interest of justice for the

34 purpose of adducing additional specified and material
35 evidence and seeking findings thereon upon good cause
36 shown for the failure to adduce this evidence before the
37 attorney general.

38 (5) The judgment of the circuit court shall be final
39 unless reversed, vacated or modified on appeal to the
40 supreme court of appeals of this state in accordance with
41 the provisions of section one, article six, chapter twenty-
42 nine-a of this code. The attorney general's copy of the
43 testimony shall be available at reasonable times to all
44 parties for examination without cost.

45 (6) If no proceeding for judicial review is initiated,
46 the attorney general may obtain an order of a circuit
47 court for enforcement of his order upon a showing that
48 the order was issued in compliance with this section, that
49 no proceeding for review was initiated within thirty days
50 after a copy of the order was received and that the re-
51 spondent is subject to the jurisdiction of the court. If
52 no proceeding for judicial review is initiated, the pro-
53 ceeding for enforcement of any order of the attorney
54 general shall be initiated by the filing of a petition in
55 the court. Copies of the petition shall be served upon
56 all parties of record.

57 (7) With respect to unconscionable agreements or
58 fraudulent or unconscionable conduct by the respondent,
59 the attorney general may not issue an order pursuant to
60 this section but may bring a civil action for an injunction.

§46A-7-107. Assurance of discontinuance.

1 If it is claimed that a person has engaged in conduct
2 which could be subject to an order by the attorney general
3 or by a court, the attorney general may accept an assur-
4 ance in writing that the person will not engage in the
5 conduct in the future. Such assurance of voluntary com-
6 pliance shall not be considered an admission of violation
7 for any purpose, except that if a person giving such
8 assurance fails to comply with its terms, the assurance
9 is prima facie evidence that prior to such assurance he
10 engaged in the conduct described in such assurance.

§46A-7-108. Injunctions against violations of chapter.

- 1 The attorney general may bring a civil action to restrain
- 2 a person from violating this chapter and for other appro-
- 3 priate relief.

§46A-7-109. Injunctions against unconscionable agreements and fraudulent or unconscionable conduct.

- 1 (1) The attorney general may bring a civil action to
- 2 restrain a creditor or a person acting in his behalf from
- 3 engaging in a course of:

- 4 (a) Making or enforcing unconscionable terms or pro-
- 5 visions of consumer credit sales or consumer loans;

- 6 (b) Fraudulent or unconscionable conduct in inducing
- 7 consumers to enter into consumer credit sales or con-
- 8 sumer loans; or

- 9 (c) Fraudulent or unconscionable conduct in the col-
- 10 lection of debts arising from consumer credit sales or
- 11 consumer loans.

- 12 (2) In an action brought pursuant to this section the
- 13 court may grant relief only if it finds:

- 14 (a) That the respondent has made unconscionable
- 15 agreements or has engaged or is likely to engage in a
- 16 course of fraudulent or unconscionable conduct;

- 17 (b) That the agreements or conduct of the respon-
- 18 dent have caused or are likely to cause injury to con-
- 19 sumers; and

- 20 (c) That the respondent has been able to cause or will
- 21 be able to cause the injury primarily because the trans-
- 22 actions involved are credit transactions.

- 23 (3) In applying this section, consideration shall be
- 24 given to each of the following factors, among others:

- 25 (a) Belief by the creditor at the time consumer credit
- 26 sales or consumer loans are made that there was no
- 27 reasonable probability of payment in full of the obliga-
- 28 tion by the debtor;

29 (b) In the case of consumer credit sales, knowledge
30 by the seller at the time of the sale of the inability of
31 the buyer to receive substantial benefits from the prop-
32 erty or services sold;

33 (c) In the case of consumer credit sales, gross dis-
34 parity between the price of the property or services sold
35 and the value of the property or services measured by
36 the price at which similar property or services are readily
37 obtainable in credit transactions by like buyers;

38 (d) The fact that the creditor contracted for or re-
39 ceived separate charges for insurance with respect to
40 consumer credit sales or consumer loans with the effect
41 of making the sales or loans, considered as a whole, un-
42 conscionable; and

43 (e) The fact that the respondent has knowingly taken
44 advantage of the inability of the debtor reasonably to
45 protect his interests by reason of physical or mental in-
46 firmities, ignorance, illiteracy or inability to understand
47 the language of the agreement, or similar factors.

48 (4) In an action brought pursuant to this chapter, a
49 charge or practice expressly permitted by this chapter is
50 not unconscionable.

§46A-7-110. Temporary relief.

1 With respect to an action brought to enjoin violations
2 of this chapter or unconscionable agreements or frau-
3 dulent or unconscionable conduct, the attorney general
4 may apply to the court for appropriate temporary relief
5 against a respondent, pending final determination of the
6 proceedings. If the court finds after a hearing held upon
7 notice to the respondent that there is reasonable cause
8 to believe that the respondent is engaging in or is likely to
9 engage in conduct sought to be restrained, it may grant
10 any temporary relief or restraining order it deems ap-
11 propriate.

§46A-7-111. Civil actions by attorney general.

1 (1) After demand, the attorney general may bring a
2 civil action against a creditor for making or collecting

3 charges in excess of those permitted by this chapter. If
4 it is found that an excess charge has been made, the court
5 shall order the respondent to refund to the consumer the
6 amount of the excess charge. If a creditor has made an
7 excess charge in a deliberate violation of or in reckless
8 disregard for this chapter, or if a creditor has refused
9 to refund an excess charge within a reasonable time after
10 demand by the consumer or the attorney general, the
11 court may also order the respondent to pay to the con-
12 sumer a civil penalty in an amount determined by the
13 court not in excess of the greater of either the amount
14 of the sales finance charge or loan finance charge or ten
15 times the amount of the excess charge. Refunds and
16 penalties to which the consumer is entitled pursuant to
17 this subsection may be set off against the consumer's
18 obligation. If a consumer brings an action against a cred-
19 itor to recover an excess charge or civil penalty, an action
20 by the attorney general to recover for the same excess
21 charge shall be stayed while the consumer's action is
22 pending and shall be dismissed if the consumer's action
23 is dismissed with prejudice or results in a final judgment
24 granting or denying the consumer's claim. With respect
25 to excess charges arising from consumer credit sales made
26 pursuant to revolving charge accounts or from consumer
27 loans made pursuant to revolving loan accounts, no action
28 pursuant to this subsection may be brought more than four
29 years after the time the excess charge was made. With
30 respect to excess charges arising from other consumer cre-
31 dit sales or consumer loans, no action pursuant to this sub-
32 section may be brought more than one year after the due
33 date of the last scheduled payment of the agreement pur-
34 suant to which the charge was made. If the creditor estab-
35 lishes by a preponderance of evidence that a violation is
36 unintentional or the result of a bona fide error, no liability
37 to pay a penalty shall be imposed under this subsection.

38 (2) The attorney general may bring a civil action
39 against a creditor or other person to recover a civil pen-
40 alty for willfully violating this chapter, and if the court
41 finds that the defendant has engaged in a course of re-
42 peated and willful violations of this chapter, it may assess

43 a civil penalty of no more than five thousand dollars. No
44 civil penalty pursuant to this subsection may be imposed
45 for violations of this chapter occurring more than
46 four years before the action is brought.

§46A-7-112. Jury trial.

1 In an action brought by the attorney general under
2 this chapter, he has no right to trial by jury.

§46A-7-113. Consumer's remedies not affected.

1 The grant of powers to the attorney general in this
2 chapter does not affect remedies available to consumers
3 under this chapter or under other principles of law or
4 equity.

§46A-7-114. Venue.

1 The attorney general may bring actions or proceed-
2 ings under this chapter in the circuit court of any county
3 in which an act on which the action or proceeding is based
4 occurred, or in any county in which the respondent or
5 defendant resides or transacts business.

§46A-7-115. Notification.

1 (1) Every person engaged in this state in making con-
2 sumer credit sales or consumer loans and every person
3 having an office or place of business in this state who takes
4 assignments of and undertakes direct collection of pay-
5 ments from or enforcement of rights against debtors aris-
6 ing from such sales or loans shall file notification with the
7 state tax department within thirty days after commencing
8 business in this state, and, thereafter, on or before January
9 thirty-first of each year. A notification shall be deemed to
10 be in compliance with this section if the information here-
11 inafter required is given in an application for a business
12 registration certificate provided for in section four, arti-
13 cle twelve, chapter eleven of this code. The state tax
14 commissioner shall make any information required by this
15 section available to the attorney general or commissioner
16 upon request. The notification shall state:

17 (a) Name of the person;

18 (b) Name in which business is transacted if different
19 from (a);

20 (c) Address of principal office, which may be outside
21 this state;

22 (d) Address of all offices or retail stores, if any, in this
23 state at which consumer credit sales or consumer loans
24 are made, or in the case of a person taking assignments
25 of obligations, the offices or places of business within
26 this state at which business is transacted;

27 (e) If consumer credit sales or consumer loans are
28 made otherwise than at a retail store or office in this state,
29 a brief description of the manner in which they are made;

30 (f) Address of designated agent upon whom service
31 of process may be made in this state; and

32 (g) Whether supervised loans are made.

33 (2) If information in a notification becomes inaccurate
34 after filing, accurate information must be filed within
35 thirty days.

36 (3) The provisions of this section are not applicable
37 to a seller whose credit sales consist entirely of sales
38 made pursuant to a seller's credit card so long as the
39 issuer of the card has fully complied with the provisions
40 of this section.

§46A-7-116. Consumer affairs advisory council created; members appointed by governor; qualifications of members; term; organization and meetings of council; duties of council; quorum; filling vacancies; payment of expenses.

1 A consumer affairs advisory council is hereby created.
2 The council shall be composed of nine members who shall
3 be appointed by the governor within thirty days of the
4 date this section becomes operative, which such appoint-
5 ments shall be subject to confirmation by the Senate. The
6 members of the council shall be citizens and residents of
7 this state, who by reason of their training, education or
8 experience are qualified to carry out the functions of the
9 council under this section. Five members shall be repre-

10 representatives of the general public and the other four mem-
11 bers shall be representatives of consumer financing and
12 retailing business in this state.

13 The first term of office for three of the representatives
14 of the general public, who shall be designated by the
15 governor, shall run through the thirtieth day of
16 June, one thousand nine hundred seventy-six. The first
17 term of office for the other two representatives of the
18 general public shall run through the thirtieth day of June,
19 one thousand nine hundred seventy-seven. The first term
20 of office for two of the representatives of consumer financ-
21 ing and retailing business in this state, who shall be desig-
22 nated by the governor, shall run through the thirtieth day
23 of June, one thousand nine hundred seventy-six. The first
24 term of office for the other two representatives of con-
25 sumer financing and retailing business in this state shall
26 run through the thirtieth day of June, one thousand nine
27 hundred seventy-seven. Thereafter, terms of members
28 shall be four years.

29 At its first meeting, the council shall elect a chairman,
30 from among its members, who shall preside over its meet-
31 ings until the second Monday in July of the next year.
32 Thereafter, the council shall elect a chairman on the sec-
33 ond Monday in July of each year.

34 All members shall be eligible for reappointment by the
35 governor. A member shall, unless sooner removed, con-
36 tinue to serve until his term expires and his successor has
37 been appointed and has qualified. A vacancy caused by
38 the death, resignation or removal of a member prior to the
39 expiration of his term shall be filled only for the remain-
40 der of such term.

41 It shall be the duty of the council to advise and consult
42 with the attorney general concerning the exercise of his
43 powers, duties and responsibilities under this article, the
44 problems and practices in consumer transactions, any
45 abuses in the use of consumer credit in this state, the
46 problems relating to the collection of debts, the problems
47 and practices of credit reporting agencies and the prob-
48 lems of persons of limited means in consumer trans-

49 actions and to make recommendations on the need for ad-
50 ditional consumer protection legislation and programs
51 in this state.

52 For the purpose of carrying out its duty, five members
53 of the council shall constitute a quorum so long as at
54 least one of such members is a representative of consumer
55 financing and retailing business in this state. The coun-
56 cil and the attorney general shall meet together at a time
57 and place designated by the chairman at least two times
58 each year. Additional meetings may be held when called
59 by the chairman or when requested by five members of
60 the council or by the attorney general. Members shall be
61 entitled to reasonable and necessary expenses actually
62 incurred while engaged in the performance of their duties
63 under this section.

**ARTICLE 8. OPERATIVE DATE AND PROVISIONS FOR TRANSI-
TION.**

§46A-8-101. Time of becoming operative; provisions for transition;
enforceability of prior transactions.

§46A-8-102. Severability.

**§46A-8-101. Time of becoming operative; provisions for transi-
tion; enforceability of prior transactions.**

1 (1) Except as otherwise provided in this section, this
2 chapter shall become operative at 12:01 A.M. on September
3 first, one thousand nine hundred seventy-four.

4 (2) Notwithstanding the provisions of subsection (1)
5 of this section, in order to allow sufficient time to pre-
6 pare for the implementation and operation of this chapter
7 and to act on applications for licenses to make supervised
8 loans under this chapter prior to the operative date of
9 such chapter, the provisions of article four of this chap-
10 ter, relating to supervised lenders, and the provisions of
11 article seven of this chapter, relating to administration,
12 shall, to the extent necessary, become operative for such
13 purposes at 12:01 A.M. on July first, one thousand nine
14 hundred seventy-four.

15 (3) Transactions entered into before this chapter be-
16 comes operative and the rights, duties and interests flow-
17 ing from them thereafter may be terminated, completed,
18 consummated or enforced as required or permitted by

19 any statute, rule of law or other law amended, repealed
 20 or modified by this chapter as though the repeal, amend-
 21 ment or modification had not occurred, but this chapter
 22 applies to:

23 (a) Refinancings and consolidations made after this
 24 chapter becomes operative of consumer credit sales, con-
 25 sumer leases and consumer loans whenever made;

26 (b) Consumer credit sales or consumer loans made
 27 after this chapter becomes operative pursuant to revolv-
 28 ing charge accounts or revolving loan accounts entered
 29 into, arranged or contracted for before this chapter be-
 30 comes operative; and

31 (c) All consumer credit transactions made before this
 32 chapter becomes operative insofar as this chapter limits
 33 the remedies of creditors.

§46A-8-102. Severability.

1 If, for any reason, any article, section, sentence, clause,
 2 phrase or provision of this chapter or the application there-
 3 of to any person or circumstance is held unconstitutional
 4 or invalid, such unconstitutionality or invalidity shall not
 5 affect other articles, sections, sentences, clauses, phrases
 6 or provisions or their application to any other person or
 7 circumstance, and to this end each and every article, sec-
 8 tion, sentence, clause, phrase or provision of this chapter
 9 is hereby declared to be severable.

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 6. MONEY AND INTEREST.

§47-6-5. Legal rate of interest; agreements in writing fixing rate of interest.

§47-6-5a. Interest charges on loans repayable in installments.

§47-6-5. Legal rate of interest; agreements in writing fixing rate of interest.

1 Except in cases where it is otherwise specially provided
 2 by law, legal interest shall continue to be at the rate of
 3 six dollars upon one hundred dollars for a year, and pro-
 4 portionately for a greater or less sum, or for a longer
 5 or shorter time, and no person upon any contract other

6 than a contract in writing shall take for the loan or for-
7 bearance of money, or other thing, above the value of
8 such rate: *Provided*, That a charge of one dollar may be
9 made for any loan or forbearance of money or other
10 thing, where the interest at the rate aforesaid would not
11 amount to that sum, and the same shall not be a usurious
12 charge or rate of interest.

13 Parties may contract in writing for the payment of
14 interest for the loan or forbearance of money at a rate
15 not to exceed eight dollars upon one hundred dollars for
16 a year, and proportionately for a greater or less sum or
17 for a longer or shorter time, including points expressed
18 as a percentage of the loan divided by the number of
19 years of the loan contract. For the purpose of this sec-
20 tion the term points is defined as the amount of money,
21 or other consideration, received by the lender, from what-
22 ever source, as a consideration for making the loan and
23 not otherwise expressly permitted by statute.

§47-6-5a. Interest charges on loans repayable in installments.

1 Except in cases where it is otherwise specially pro-
2 vided by law, parties may contract for and charge interest
3 for a secured or unsecured loan, repayable in install-
4 ments at a rate not in excess of: (a) Six percent per
5 annum upon the principal amount of the loan, for the
6 entire period of the loan, and add such charge to the
7 principal amount of the loan; or (b) six percent per an-
8 num upon the face amount of the instruments evidencing
9 the obligation to repay the loan, for the entire period
10 of the loan and deduct such charge in advance but in
11 no case shall the interest on such a discount loan exceed
12 an annual percentage rate of fifteen percent per annum
13 calculated according to the actuarial method: *Provided*,
14 That upon prepayment in full of a precomputed loan,
15 the lender shall rebate that portion of such charge at-
16 tributable to the prepaid periodic installment periods.
17 When the total amount is payable in substantially equal
18 consecutive monthly installments, the portion of such
19 charge attributable to any particular monthly installment
20 period shall be that proportion of the charge originally

21 contracted for, as the balance scheduled to be outstanding
22 on the last day of the monthly installment period before
23 deducting the payment, if any, scheduled to be made on
24 that day bears to the sum of all the monthly installment
25 balances under the original schedule of payments. (This
26 method of allocation is the sum of the digits method,
27 commonly referred to as the "Rule of 78.") If prepayment
28 in full of an obligation payable in monthly installments
29 is made on other than an installment due date, the rebate
30 shall be calculated as of the nearest installment due date.
31 For the purpose of determining the installment due date
32 nearest the date of any prepayment in full, any prepay-
33 ment in full of an obligation payable in monthly install-
34 ments made on or before the fifteenth day following an
35 installment due date shall be determined to have been
36 made as of such installment date, and any prepayment in
37 full made on or after the sixteenth day shall be deemed
38 to have been made on the next succeeding installment
39 due date. The commissioner of banking shall prescribe
40 by rule the method or procedure for the allocation of
41 charges and the calculation of rebates consistent with
42 the sum of the digits method where the precomputed loan
43 is payable in unequal or irregular or in other than sub-
44 stantially equal consecutive monthly installments. Any
45 note evidencing any such installment loan may provide
46 that the entire unpaid balance thereof at the option of
47 the holder shall become due and payable upon default
48 in the payment of any stipulated installment without
49 impairing the negotiability of such note if otherwise
50 negotiable. Nothing herein contained shall affect or re-
51 strict the right of parties under section five of this article
52 to contract in writing for the payment of interest for the
53 loan or forbearance of money at a rate not to exceed eight
54 dollars upon one hundred dollars a year, and propor-
55 tionately for a greater or less sum, or for a longer or
56 shorter time, including points expressed as a percentage
57 of the loan divided by the number of years of the loan
58 contract.

CHAPTER 13

(S. B. 107—By Mr. Moreland and Mr. Poffenbarger)

[Passed March 9, 1974; in effect July 1, 1975. Approved by the Governor.]

AN ACT to amend and reenact article one, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections seventy-seven through ninety, inclusive, article twelve, chapter eleven of said code; and to amend and reenact section two, article one, chapter fifty-nine of said code, all relating to corporations generally, including business and nonprofit corporations; providing a short title and provisions relating to rules of construction, application and severability; defining terms; relating to the purposes for which corporations may be organized and the general powers of any such corporations; prohibiting corporate existence to churches and religious denominations; permitting the indemnification of corporate officers, directors, employees and agents in certain cases; limiting the defense of ultra vires; establishing requirements with respect to corporate names, including prohibition as to the use of certain names and words with respect thereto, and procedures for reserving and registering corporate names with the office of the secretary of state; designating the secretary of state as the attorney-in-fact for all business and nonprofit corporations; setting forth the procedures for the service of notice and process upon the secretary of state and the acceptance of such service by him and defining acts which constitute the conducting of affairs or the doing or transacting of business for the purpose of service of notice or process; relating to the venue of actions involving certain foreign corporations; adoption of corporate bylaws and amendments thereto; the meetings of shareholders or members and the notices required therefor; procedures for the closing of transfer books for the purpose of establishing voting rights; establishing the rules for a quorum and majority with respect to shareholders' or members' meetings; permitting cumulative voting by shareholders or members and voting by proxy

or voting trusts; establishing boards of directors and their powers; providing for the number and election of directors, their classification and removal; relating to the manner of filling vacancies; the right of a director to transact business with corporations of which he is a director and requiring disclosures in such cases; permitting boards of directors to conduct their affairs through committees; providing for meetings of board of directors; relating to the number of persons required as incorporators; articles of incorporation, the contents thereof, filing with the secretary of state and other requirements with respect thereto; issuance of certificate of incorporation, the recordation thereof and the effect of such issuance; organizational meetings of corporations and the notice required to be given of such meetings and the waiver thereof; the right to amend articles of incorporation and the procedures relating thereto; the contents required to be included in articles of amendment and the filing, recordation and admission in evidence of such amendments and the effect thereof; restated articles of incorporation, the procedures, contents and filing thereof, the issuance of certificate of a restated certificate of incorporation and the recordation and admission in evidence thereof; procedures with respect to the merger or consolidation of corporations and the requirements for the approval thereof; articles of merger or consolidation and the contents and filing thereof, the issuance of certificates of merger or consolidation and the recordation and admission in evidence thereof; establishing special provisions relating to the merger of subsidiary business corporations; relating to the effect of mergers or consolidations and requirements for the conveyance of title to real estate in such cases; the merger or consolidation of domestic and foreign corporations and the effect thereof; procedures with respect to the voluntary dissolution of corporations and the revocation or abandonment thereof; the issuance of articles of dissolution by the secretary of state and the recordation thereof; procedures and methods for the distribution of assets in cases of dissolution; the rights of certain shareholders in cases of dissolution; the survival of certain corporate powers following dissolution; the jurisdiction and power of courts

to liquidate corporations and the procedures relating thereto; providing for the appointment and qualification of receivers and the filing of claims in liquidation proceedings; providing for the deposit of corporate assets in the state treasury in certain cases following liquidation; relating to the admission and qualification of foreign corporations to transact business in this state and provisions with respect to the powers of such foreign corporations; application for certificate of authority to transact business by foreign corporations and its contents; issuance of certificates of authority in such cases, the recordation of such certificates and the effect thereof; procedures for change of location of principal office of certain corporations; procedures with respect to amendments of articles of incorporation of foreign corporation and the filing of such amendments in the office of the secretary of state; procedures required when one or more foreign corporations merge when such corporations are authorized to transact business in this state, amended certificates of authority in such cases and their recordation; procedures for the withdrawal of foreign corporations and the publication of notice and other requirements relating to such withdrawal; requiring a certificate of payment of certain taxes as a prerequisite for corporate dissolution, withdrawal, consolidation, merger or expiration; relating to grounds for which the secretary of state may revoke the certificate of authority of foreign corporations to transact business in this state, the issuance of orders in connection therewith and appeals in such cases; conditions for expiration of corporate existence; inability of foreign corporations to maintain actions or proceedings until qualified; the liability of foreign corporations doing business without authority for certain taxes and fees; the powers and duties of the secretary of state with respect to corporations generally and authority of the secretary of state to promulgate rules and regulations with respect thereto; providing for appeal from ruling or decision of the secretary of state and courts to which appeals lie; requiring that certificates and certified copies of documents issued by secretary of state be admitted in evidence; relating to the weight to be given such evidence; requiring certain forms

to be furnished by secretary of state; permitting greater voter requirements than are required by law; authorizing the waiver of notice by shareholders, members or directors of corporations in certain cases and setting forth the procedures to follow in such cases; permitting a certain action by corporate members or directors without a meeting and prescribing procedures therefor; requiring corporate acknowledgment or other acknowledgment on forms filed with secretary of state and in other instances; prescribing penalties for failure to record certain documents issued by the secretary of state in the office of the appropriate clerk of the county court; exempting intangible property of corporations not doing business in this state from taxation; relating to the authorization and issuance of shares by business corporations and permitting such shares to be issued in differing classes and preference; the right of business corporations to acquire and dispose of their own shares; the rights of the board of directors of any corporation to divide its shares into classes and series and the procedures to be followed with respect thereto prior to issuance of such shares; the subscription, consideration and payment for corporate shares; establishing certain stock rights and options for the purchase of business corporation stock; establishing the manner of determining the amount of stated capital of a business corporation; establishing the requirements for issuance of stock certificates and issuance of fractional shares; relating to the extent of liability of subscribers and shareholders; shareholders' preemptive rights; establishing procedures for the payment of dividends and distribution of capital surplus; permitting corporations to lend money to their employees and directors in certain instances; providing for the liability of directors in certain cases of improper payment of dividends, purchase of corporate shares or distribution of corporate assets; establishing the rights of shareholders to institute actions against a corporation in certain instances; relating to corporate officers, their authority and the removal of such officers; the requirement of corporations to keep books and records of account and minutes of their proceedings and the rights of shareholders and members to examine such books, records and minutes;

providing for certain penalties against any officer or agent who refuses to permit such examination; relating to the power of courts to compel production of such books, records and minutes for examination; redemption, purchase and cancellation of redeemable and other reacquired shares of business corporations and procedures and restrictions relating thereto; establishing procedures relating to the reduction of stated capital by business corporations and provisions relating to surplus and reserves in such cases; relating to the sale or encumbrance of corporate assets; the right of shareholders or members of a corporation to dissent from corporate action in certain cases, the rights of such shareholders and members with respect thereto, procedures for determining the value of such dissenting shareholders' or members' interests and the payment therefor by the corporation; requiring certain annual reports to be filed by domestic and foreign nonprofit corporations and extending authority to the secretary of state to dissolve or revoke the authority of such corporations for failure to file such reports; providing for certain fees to be charged by the secretary of state with respect to acts performed; transferring the powers, duties and authority of the state auditor with respect to the collection and assessment of the annual corporate license tax to the state tax commissioner; transferring the powers, duties and authority of the state auditor to serve as attorney-in-fact for all foreign and domestic corporations to the secretary of state; and providing criminal offenses and penalties.

Be it enacted by the Legislature of West Virginia:

That article one, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections seventy-seven through ninety, inclusive, article twelve, chapter eleven of said code be amended and reenacted; and that section two, article one, chapter fifty-nine of said code be amended and reenacted, all to read as follows:

Chapter

- 11. Taxation.**
- 31. Corporations.**
- 59. Fees, Allowances and Costs.**

CHAPTER 31. CORPORATIONS.**ARTICLE 1. BUSINESS AND NONPROFIT CORPORATIONS.****PART I. SHORT TITLE, CONSTRUCTION AND APPLICATION OF ARTICLE, EFFECT OF REPEAL, AND SEVERABILITY.**

- §31-1-1. Short title.
- §31-1-2. Construction of article.
- §31-1-3. Application of article; application to foreign and interstate commerce.
- §31-1-4. Effect of repeal of prior acts.
- §31-1-5. Severability.

PART II. CORPORATIONS GENERALLY.

- §31-1-6. Definitions.
- §31-1-7. Purposes of incorporation.
- §31-1-8. General powers of corporations.
- §31-1-9. Indemnification of officers, directors, employees and agents.
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- §31-1-12. Reserved name.
- §31-1-13. Registered name.
- §31-1-14. Renewal of registered name.
- §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.
- §31-1-16. Venue of actions involving foreign corporations.
- §31-1-17. Bylaws.
- §31-1-18. Meetings of shareholders or members.
- §31-1-19. Notice of shareholders' or members' meetings.
- §31-1-20. Quorum of shareholders or members.
- §31-1-21. Number and election of directors; classification of directors.
- §31-1-22. Vacancies in board of directors; manner of filling.
- §31-1-23. Quorum of directors.
- §31-1-24. Place and notice of directors' meetings.
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- §31-1-26. Incorporators.
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- §31-1-32. Effect of certificate of amendment.
- §31-1-33. Filing of restated articles of incorporation; recordation; admission in evidence.
- §31-1-34. Procedure for merger.
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- §31-1-36. Articles of merger or consolidation; filing; issuance of certificate; recordation; admission in evidence.
- §31-1-37. Effect of merger or consolidation; conveyance of title to real estate in state to surviving or new corporation.
- §31-1-38. Merger or consolidation of domestic and foreign corporations; effect; abandonment; confirmation of title to real estate required.
- §31-1-39. Articles of dissolution; contents.
- §31-1-40. Articles of dissolution, filing, issuance of certificate of dissolution by secretary of state; recordation.
- §31-1-41. Jurisdiction of court to liquidate assets and business or affairs of corporation; when such actions may be brought; venue; parties.
- §31-1-42. Procedure in liquidation of corporation by court; appointment and powers of receivers.
- §31-1-43. Qualifications of receivers.
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- §31-1-46. Order of involuntary dissolution; filing with the secretary of state.
- §31-1-47. Deposits with state treasurer of amounts due certain persons.
- §31-1-48. Survival of remedy after dissolution; effect of dissolution.
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- §31-1-53. Application for certificate of authority by foreign corporation; contents; churches or religious denominations in corporate capacity prohibited.
- §31-1-54. Application for certificate of authority; filing; issuance of certificate; recordation; penalty for failure to record.
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- §31-1-58. Merger of foreign corporation authorized to conduct affairs or do or transact business in this state; filing of articles of merger; recordation; penalty for failure to record.
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- §31-1-62. Conditions for revocation of certificate of authority.
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- §31-1-65. Application to corporations heretofore authorized to conduct affairs or do or transact business in this state.
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- §31-1-67. Powers of secretary of state; rules and regulations.
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- §31-1-77. Use of term "corporation."
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- §31-1-89. Liability of subscribers and shareholders.
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- §31-1-96. Removal of directors.
- §31-1-97. Director conflicts of interest.
- §31-1-98. Executive and other committees.
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- §31-1-102. Liability of directors in certain cases.
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- §31-1-106. Right to amend articles of incorporation.
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- §31-1-108. Class voting on amendments.
- §31-1-109. Articles of amendment.
- §31-1-110. Restated articles of incorporation; procedures for adoption; contents.
- §31-1-111. Amendment of articles of incorporation in reorganization proceedings; contents; purposes; procedure for filing; issuance; recordation; admission in evidence.
- §31-1-112. Restriction on redemption or purchase of redeemable shares.
- §31-1-113. Cancellation of redeemable shares by redemption or purchase; statement of cancellation; contents; filing.
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- §31-1-115. Reduction of stated capital without amendment of articles or cancellation of shares; statement required to be filed and its contents; limitations.
- §31-1-116. Special provisions relating to surplus and reserves.
- §31-1-117. Merger or consolidation; approval by shareholders; abandonment.
- §31-1-118. Contents required in articles of merger or consolidation.
- §31-1-119. Merger of subsidiary corporation; procedures; articles of merger; recordation; admission in evidence.
- §31-1-120. Sale of assets in regular course of business and mortgage or pledge of assets.
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- §31-1-122. Right of shareholders to dissent.
- §31-1-123. Rights of dissenting shareholders; procedure for purchasing of dissenting shareholders' shares; civil action for determining value of shares; procedure for transferring of such shares to corporation and payment therefor.
- §31-1-124. Voluntary dissolution by incorporators.
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- §31-1-126. Voluntary dissolution by act of corporation.
- §31-1-127. Filing of statement of intent to dissolve.
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- §31-1-130. Revocation of voluntary dissolution proceedings by consent of shareholders.
- §31-1-131. Revocation of voluntary dissolution proceedings by act of corporation.
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- §31-1-134. Actions for dissolution by shareholders; right of majority shareholders to purchase plaintiffs' shares; appeal.
- §31-1-135. Application of assets in liquidation of corporation by court.

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- §31-1-139. Board of directors.
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- §31-1-144. Shares of stock permitted; dividends prohibited.
- §31-1-145. Loans to directors and officers prohibited.
- §31-1-146. Right to amend articles of incorporation.
- §31-1-147. Procedure to amend articles of incorporation.
- §31-1-148. Articles of amendment.
- §31-1-149. Restated articles of incorporation; procedures for adoption; contents.
- §31-1-150. Approval of merger or consolidation; abandonment.
- §31-1-151. Contents required in articles of merger or consolidation.
- §31-1-152. Sale, lease, exchange or mortgage of assets.
- §31-1-153. Right of members to dissent; procedures for determining value of dissenting members' interests.
- §31-1-154. Voluntary dissolution.
- §31-1-155. Distribution of assets.
- §31-1-156. Plan of distribution.
- §31-1-157. Revocation of voluntary dissolution proceedings.
- §31-1-158. Application of assets in liquidation of corporation by court.
- §31-1-159. Annual report of domestic and foreign corporations; filing.
- §31-1-160. Penalties imposed for failure to file annual report; notice; hearings conducted by secretary of state; appeal.

**PART I. SHORT TITLE, CONSTRUCTION AND APPLICATION OF
ARTICLE, EFFECT OF REPEAL, AND SEVERABILITY.**

§31-1-1. Short title.

- 1 This article shall be known and may be cited as the
- 2 "West Virginia Corporation Act."

§31-1-2. Construction of article.

- 1 (a) The provisions of Part II of this article shall have
- 2 general application to all corporations. The provisions of
- 3 Part III of this article shall relate solely to business cor-
- 4 porations. The provisions of Part IV of this article shall
- 5 relate solely to nonprofit corporations. In the event of
- 6 any inconsistency between any of the provisions of Part II
- 7 of this article and the provisions of either Part III or
- 8 Part IV of this article, the provisions contained in either
- 9 Part III or Part IV shall prevail to the extent of such in-
- 10 consistency.

- 11 (b) In the event of any inconsistency between any of
- 12 the provisions of this article and the provisions made for

13 particular classes of corporations by either the subsequent
14 articles of this chapter or the provisions of chapter thirty-
15 one-a or chapter thirty-three of this code, the provisions
16 contained in such subsequent articles of this chapter or
17 in chapter thirty-one-a or chapter thirty-three of this code
18 shall prevail to the extent of such inconsistency.

§31-1-3. Application of article; application to foreign and interstate commerce.

1 Except as may be otherwise provided by the provisions
2 of this article, this article shall become and be oper-
3 ative as of the effective date hereof, and the provi-
4 sions thereof shall apply to and govern all corporations
5 then existing or thereafter formed, and all corporate
6 acts thereafter done: *Provided*, That nothing contained
7 in this article shall be construed to affect the existence
8 of any then existing corporation or to impair the
9 validity of any corporate act done and performed in
10 accordance with the preexisting law. In the event of
11 any inconsistency between any of the provisions of this
12 article and the rights conferred by any special act of
13 the Legislature of the state of Virginia before the forma-
14 tion of the state of West Virginia, or the Legislature of the
15 state of West Virginia subsequent to such date, the pro-
16 visions of such special act shall prevail to the extent of
17 such inconsistency.

18 The provisions of this article shall apply to commerce
19 with foreign nations and among the several states only in-
20 sofar as the same may be permitted under the provisions
21 of the constitution of the United States.

§31-1-4. Effect of repeal of prior acts.

1 The repeal of any prior act by the adoption of this
2 article shall not affect any right accrued or established,
3 or any liability or penalty incurred, under the provisions
4 of such act, prior to the repeal thereof.

§31-1-5. Severability.

1 If any section, subsection, subdivision, subparagraph,
2 sentence or clause of this article is adjudged to be un-
3 constitutional or invalid, such invalidation shall not affect

4 the validity of the remaining portions of this article, and,
5 to this end, the provisions of this article are hereby de-
6 clared to be severable.

PART II. CORPORATIONS GENERALLY.

§31-1-6. Definitions.

1 As used in this article, unless the context otherwise
2 requires a different meaning, the term:

3 (a) "Articles of incorporation" means the original or
4 restated articles of incorporation or articles of consolida-
5 tion and all amendments thereto including articles of
6 merger.

7 (b) "Authorized shares" means the shares of all classes
8 which a business corporation is authorized to issue.

9 (c) "Business corporation" means a corporation orga-
10 nized for profit.

11 (d) "Bylaws" means the code or codes of rules adopted
12 for the regulation or management of the affairs of the
13 corporation, irrespective of the name or names by which
14 such rules are designated.

15 (e) "Capital surplus" means the entire surplus of a
16 business corporation other than its earned surplus.

17 (f) "Corporation" or "domestic corporation" means a
18 business corporation or a nonprofit corporation, subject to
19 the provisions of this article, except a foreign corporation.

20 (g) "Director or directors" or "board of directors"
21 shall include those who are vested with the management
22 of the affairs of the corporation, by whatever name they
23 may be called.

24 (h) "Earned surplus" means the portion of the surplus
25 of a business corporation equal to the balance of its net
26 profits, income, gains and losses from the date of incor-
27 poration, or from the latest date when a deficit was
28 eliminated by an application of its capital surplus or
29 stated capital or otherwise, after deducting subsequent
30 distributions to shareholders and transfers to stated
31 capital and capital surplus to the extent such distributions

32 and transfers are made out of earned surplus. Earned
33 surplus shall include also any portions of surplus allocated
34 to earn surplus in mergers, consolidations or acquisitions
35 of all or substantially all of the outstanding shares or of
36 the property and assets of another corporation, domestic
37 or foreign.

38 (i) "Employee" includes officers but not directors. A
39 director may accept duties which make him also an em-
40 ployee.

41 (j) "Foreign corporation" means a business corporation
42 or nonprofit corporation organized under laws other than
43 the laws of this state for a purpose or purposes for which
44 a corporation may be organized under this article.

45 (k) "Insolvent" means inability of a corporation to pay
46 its debts as they become due in the usual course of its
47 business.

48 (l) "Member" means one having membership in a
49 nonprofit corporation in accordance with the provisions
50 of its articles of incorporation or bylaws and shall include
51 shareholders where such corporation issues shares.

52 (m) "Net assets" means the amount by which the total
53 assets of a corporation exceed the total debt of the cor-
54 poration.

55 (n) "Nonprofit corporation" means a corporation no
56 part of the income or profit of which is distributable to its
57 shareholders, members, directors or officers.

58 (o) "Shareholder" means one who is a holder of record
59 of shares in a corporation and may include the term
60 "member."

61 (p) "Shares" means the units into which the propri-
62 etary interests in a corporation are divided.

63 (q) "Stated capital" means, at any particular time, the
64 sum of (1) the par value of all shares of a business
65 corporation having a par value that have been issued, (2)
66 the amount of the consideration received by a business
67 corporation for all shares of such corporation without par
68 value that have been issued, except such part of the

69 consideration therefor as may have been allocated to
70 capital surplus in a manner permitted by law, and (3)
71 such amounts not included in clauses (1) and (2) of this
72 subdivision as have been transferred to stated capital of
73 such corporation, whether upon the issue of shares as a
74 share dividend or otherwise, minus all reductions from
75 such sums as have been effected in a manner permitted
76 by law. Irrespective of the manner of designation thereof
77 by the laws under which a foreign corporation is orga-
78 nized, the stated capital of a foreign corporation shall be
79 determined on the same basis and in the same manner as
80 the stated capital of a domestic corporation, for the pur-
81 pose of computing fees, franchise taxes and other charges
82 prescribed by law.

83 (r) "Subscriber" means one who subscribes for shares
84 in a corporation, whether before or after incorporation.

85 (s) "Surplus" means the excess of the net assets of a
86 business corporation over its stated capital.

87 (t) "Treasury shares" means shares of a business
88 corporation which have been issued and have been subse-
89 quently acquired by and belong to such corporation, and
90 have not, either by reason of the acquisition or thereafter,
91 been cancelled or restored to the status of authorized but
92 unissued shares. Treasury shares shall be deemed to be
93 issued shares, but not outstanding shares.

§31-1-7. Purposes of incorporation.

1 (a) Business corporations may be organized under this
2 article for any lawful purpose or purposes.

3 (b) Nonprofit corporations may be organized under this
4 article for any lawful purpose or purposes, including,
5 without being limited to, any one or more of the following
6 purposes: Charitable; benevolent; eleemosynary; educa-
7 tional; civic; patriotic; political; social; fraternal; literary;
8 cultural; athletic; scientific; agricultural; horticultural;
9 animal husbandry; and professional, commercial, indus-
10 trial or trade association.

11 (c) No charters or certificates of incorporation shall
12 be granted or issued to any church or religious denomi-
13 nation.

§31-1-8. General powers of corporations.

1 Every corporation shall have the power:

2 (a) To have perpetual succession by its corporate name
3 unless a limited period of duration is stated in its articles
4 of incorporation. Any corporation chartered heretofore
5 and still in existence, which under its agreement of in-
6 corporation, had less than perpetual existence, is hereby
7 granted perpetual existence, provided all license fees and
8 taxes due the state of West Virginia shall have been paid.

9 (b) To sue and be sued, complain and defend, in its
10 corporate name.

11 (c) To have a corporate seal which may be altered at
12 pleasure, and to use the same by causing it, or a facsimile
13 thereof, to be impressed or affixed or in any other manner
14 reproduced.

15 (d) To purchase, take, receive, lease, take by gift,
16 devise or bequest, or otherwise acquire, own, hold, im-
17 prove, use and otherwise deal in and with real or personal
18 property, or any interest therein, wherever situated.

19 (e) To sell, convey, mortgage, pledge, lease, exchange,
20 transfer and otherwise dispose of all or any part of its
21 property and assets.

22 (f) To lend money and use its credit to assist its em-
23 ployees.

24 (g) To purchase, take, receive, subscribe for, or other-
25 wise acquire, own, hold, vote, use, employ, sell, mortgage,
26 lend, pledge, or otherwise dispose of, and otherwise use
27 and deal in and with, shares or other interests in, or obli-
28 gations of, other domestic or foreign corporations, associa-
29 tions, partnerships, joint partnerships or individuals, or
30 direct or indirect obligations of the United States or of
31 any other government, state, territory, governmental dis-
32 trict or municipality or of any instrumentality thereof.

33 (h) To make contracts and guarantees and incur
34 liabilities, borrow money at such rates of interest as the
35 corporation may determine, issue its notes, bonds and
36 other obligations, and secure any of its obligations by

37 mortgage, deed of trust or pledge of all or any of its prop-
38 erty, franchises and income.

39 (i) To lend money for its corporate purposes, invest
40 and reinvest its funds, and take and hold real and personal
41 property as security for the payment of funds so loaned
42 or invested.

43 (j) To conduct its business and affairs, carry on its
44 operations and have offices and exercise the powers
45 granted by this article, within or without this state.

46 (k) To elect or appoint officers and agents of the
47 corporation, and define their duties and fix their com-
48 pensation.

49 (l) To make and alter bylaws, not inconsistent with its
50 articles of incorporation or with the laws of this state,
51 for the administration and regulation of the business and
52 affairs of the corporation.

53 (m) To make donations for the public welfare or for
54 charitable, scientific or educational purposes.

55 (n) To transact any lawful business which the board
56 of directors shall find will be in the aid of governmental
57 policy.

58 (o) To pay pensions and establish pension plans or
59 pension trusts for any or all of its directors, officers and
60 employees, and in the case of business corporations, to
61 establish profit sharing plans, stock bonus plans, stock
62 option plans and other incentive plans for any or all of its
63 directors, officers and employees.

64 (p) To be a promoter, partner, member, associate, or
65 manager of any partnership, joint partnership, joint ven-
66 ture, trust or other enterprise.

67 (q) To cease its corporate activities and surrender its
68 corporate franchise in accordance with the provisions of
69 this article.

70 (r) To have and exercise all powers necessary or con-
71 venient to effect its purposes.

§31-1-9. Indemnification of officers, directors, employees and agents.

1 (a) A corporation shall have power to indemnify any
2 person who was or is a party or is threatened to be made a
3 party to any threatened, pending or completed action or
4 proceeding, whether civil, criminal, administrative or in-
5 vestigative (other than an action by or in the right of the
6 corporation) by reason of the fact that he is or was a
7 director, officer, employee or agent of the corporation, or
8 is or was of another corporation, partnership, joint part-
9 nership, joint venture, trust or other enterprise, against
10 expenses (including attorneys' fees), judgments, fines,
11 taxes and penalties and interest thereon, and amounts
12 paid in settlement actually and reasonably incurred by
13 him in connection with such action or proceeding if he
14 acted in good faith and in a manner he reasonably believed
15 to be in or not opposed to the best interests of the cor-
16 poration, and, with respect to any criminal action or pro-
17 ceeding, had no reasonable cause to believe his conduct
18 was unlawful. The termination of any action or proceed-
19 ing by judgment, order, settlement, conviction, or upon a
20 plea of nolo contendere or its equivalent, shall not, of
21 itself, create a presumption that the person did not act in
22 good faith and in a manner which he reasonably believed
23 to be in or not opposed to the best interest of the corpora-
24 tion, and, with respect to any criminal action or proceed-
25 ing, that such person did have reasonable cause to be-
26 lieve that his conduct was unlawful.

27 (b) A corporation shall have power to indemnify any
28 person who was or is a party or is threatened to be made a
29 party to any threatened, pending or completed action or
30 proceeding by or in the right of the corporation to procure
31 judgment in its favor by reason of the fact that he is or
32 was a director, officer, employee or agent of the corpora-
33 tion, or is or was serving at the request of the corporation
34 as a director, officer, employee or agent of another cor-
35 poration, partnership, joint partnership, joint venture,
36 trust or other enterprise against expenses (including at-
37 torneys' fees) actually and reasonably incurred by him
38 in connection with the defense or settlement of such action

39 or proceeding if he acted in good faith and in a manner
40 he reasonably believed to be in or not opposed to the best
41 interests of the corporation, except that no indemnifica-
42 tion shall be made in respect of any claim, issue or mat-
43 ter, including, but not limited to, taxes or any interest or
44 penalties thereon, as to which such person shall have been
45 adjudged to be liable for negligence or misconduct in the
46 performance of his duty to the corporation unless and only
47 to the extent that the court in which such action or pro-
48 ceeding was brought shall determine upon application
49 that, despite the adjudication of liability but in view of
50 all circumstances of the case, such person is fairly and
51 reasonably entitled to indemnity for such expenses which
52 such court shall deem proper.

53 (c) To the extent that a director, officer, employee or
54 agent of a corporation has been successful on the merits or
55 otherwise in defense of any action or proceeding referred
56 to in subsection (a) or (b), or in defense of any claim,
57 issue or matter therein, he shall be indemnified against
58 expenses (including attorneys' fees) actually and reason-
59 ably incurred by him in connection therewith.

60 (d) Any indemnification under subsection (a) or (b)
61 (unless ordered by a court) shall be made by the corpora-
62 tion only as authorized in the specific case upon a deter-
63 mination that indemnification of the director, officer, em-
64 ployee or agent is proper in the circumstances because he
65 has met the applicable standard of conduct set forth in
66 subsection (a) or (b). Such determination shall be made
67 (1) by the board of directors by a majority vote of a quo-
68 rum consisting of directors who were not parties to such
69 action or proceeding, or (2) if such a quorum is not obtain-
70 able, or even if obtainable a quorum of disinterested direc-
71 tors so directs, by independent legal counsel in a written
72 opinion, or (3) by the shareholders or members.

73 (e) Expenses (including attorneys' fees) incurred in
74 defending a civil or criminal action or proceeding may be
75 paid by the corporation in advance of the final disposition
76 of such action or proceeding as authorized in the manner
77 provided in subsection (d) upon receipt of an undertaking
78 by or on behalf of the director, officer, employee or agent

79 to repay such amount unless it shall ultimately be de-
80 termined that he is entitled to be indemnified by the cor-
81 poration as authorized in this section.

82 (f) The indemnification provided by this section shall
83 not be deemed exclusive of any other rights to which any
84 shareholder or member may be entitled under any bylaw,
85 agreement, vote of shareholders, members or disinterested
86 directors or otherwise, both as to action in his official
87 capacity and as to action in another capacity while holding
88 such office, and shall continue as to a person who has
89 ceased to be a director, officer, employee or agent and
90 shall inure to the benefit of the heirs, executors and ad-
91 ministrators of such a person.

92 (g) A corporation shall have power to purchase and
93 maintain insurance on behalf of any person who is or was
94 a director, officer, employee or agent of the corporation, or
95 is or was serving at the request of the corporation as a
96 director, officer, employee or agent of another corporation,
97 partnership, joint partnership, joint venture, trust or other
98 enterprise against any liability asserted against him and
99 incurred by him in any such capacity or arising out of his
100 status as such, whether or not the corporation would have
101 the power to indemnify him against such liability under
102 the provisions of this section.

§31-1-10. Defense of ultra vires.

1 No act of a corporation and no conveyance or transfer
2 of real or personal property to or by a corporation shall be
3 invalid by reason of the fact that the corporation was
4 without capacity or power to do such act or to make or
5 receive such conveyance or transfer, but such lack of
6 capacity or power may be asserted:

7 (a) In a proceeding by a shareholder, member or
8 director against the corporation to enjoin the doing of any
9 act or the continuation of unauthorized acts or the transfer
10 of real or personal property by or to the corporation. If
11 the unauthorized act or transfer sought to be enjoined is
12 being, or is to be, performed or made pursuant to a con-
13 tract to which the corporation is a party, the court may, if
14 all of the parties to the contract are parties to the proceed-

15 ing and if it deems the same to be equitable, set aside and
16 enjoin the performance of such contract, and in so doing
17 may allow to the corporation or to the other parties to the
18 contract, as the case may be, compensation for the loss or
19 damage sustained by either of them which may result
20 from the action of the court in setting aside and enjoining
21 the performance of such contract, but anticipated profits
22 to be derived from the performance of the contract shall
23 not be awarded by the court as a loss or damage sus-
24 tained.

25 (b) In a proceeding by the corporation, whether acting
26 directly or through a receiver, trustee or other legal
27 representative, or through shareholders or members in a
28 representative action, against the incumbent or former
29 officers or directors of the corporation.

30 (c) In any proceeding by the state, or by any of its
31 agencies or departments or by the attorney general, as
32 provided in this article, or as provided or authorized by
33 any other provisions of this code, to dissolve the corpora-
34 tion, or in a proceeding by the attorney general to enjoin
35 the corporation from performing unauthorized acts or
36 transacting unauthorized business or in any other pro-
37 ceeding brought by or in the name of or for the benefit
38 of the state.

**§31-1-11. Corporate name; requirements; certain names pro-
hibited.**

1 (a) Except for corporations in existence prior to the
2 effective date of this article, the corporate name:

3 (1) Shall contain the word "corporation," "company,"
4 "incorporated" or "limited," or shall contain an abbre-
5 viation of one of such words.

6 (2) Shall not contain any word or phrase which
7 indicates or implies that it is organized for any purpose
8 other than one or more of the purposes contained in its
9 articles of incorporation.

10 (3) Shall not be the same as, or deceptively similar
11 to, the name of any domestic corporation, whether stock or
12 nonstock and whether or not organized for profit, existing

13 under the laws of this state or of any foreign corporation,
14 whether stock or nonstock and whether or not organized
15 for profit, authorized to conduct affairs or do or trans-
16 act business in this state, or a name the exclusive right to
17 which is, at the time, reserved in the manner provided in
18 this article, or the name of a corporation which has in
19 effect a registration of its corporate name as provided in
20 this article, except that this provision shall not apply if
21 the applicant files with the secretary of state either (i)
22 the written consent of such other corporation or holder of
23 a reserved or registered name to use the same or decep-
24 tively similar name and one or more words are added to
25 make such name distinguishable from such other name,
26 or (ii) a certified copy of a final order of a court of com-
27 petent jurisdiction establishing the prior right of the
28 applicant to the use of such name in this state.

29 (4) Shall be transliterated into letters of the English
30 alphabet, if it is not in English.

31 (b) A corporation with which another corporation,
32 domestic or foreign, is merged, or which is formed by the
33 reorganization or consolidation of one or more domestic or
34 foreign corporations or upon a sale, lease or other dispo-
35 sition to or exchange with, a domestic corporation of all
36 or substantially all the assets of another corporation, do-
37 mestic or foreign, including its name, may have the same
38 name as that used in this state by any of such corpora-
39 tions if such other corporation was organized under the
40 laws of, or is authorized to conduct affairs or do or trans-
41 act business in this state.

42 (c) After the effective date of this section, no corpora-
43 tion shall be chartered in this state under any name
44 which includes the word "engineer," "engineers," "engi-
45 neering" or any combination of same unless the purpose
46 of the corporation is to practice professional engineering
47 as defined in article thirteen, chapter thirty of this code,
48 as amended, and one or more of the incorporators is a
49 registered professional engineer as therein defined.

§31-1-12. Reserved name.

1 The exclusive right to the use of a corporate name may
2 be reserved by:

3 (a) Any person intending to organize a corporation
4 under this article.

5 (b) Any domestic corporation intending to change its
6 name.

7 (c) Any foreign corporation intending to make appli-
8 cation for a certificate of authority to conduct affairs or
9 do or transact business in this state.

10 (d) Any foreign corporation authorized to conduct
11 affairs or do or transact business in this state and intend-
12 ing to change its name.

13 (e) Any person intending to organize a foreign cor-
14 poration and intending to have such corporation make
15 application for a certificate of authority to conduct affairs
16 or do or transact business.

17 The reservation shall be made by filing with the secre-
18 tary of state an application to reserve a specified corporate
19 name, executed by the applicant. If the secretary of state
20 finds that the name is available for corporate use, he
21 shall reserve the name for the exclusive use of the appli-
22 cant for a period of one hundred twenty days.

23 The right to the exclusive use of a specified corporate
24 name so reserved may be transferred to any other person
25 or corporation by filing in the office of the secretary of
26 state a notice of such transfer, executed by the applicant
27 for whom the name was reserved, and specifying the
28 name and address of the transferee.

§31-1-13. Registered name.

1 Any corporation organized and existing under the laws
2 of any state or territory of the United States may register
3 its corporate name under this article, provided its corpor-
4 ate name is not the same as, or deceptively similar to,
5 the name of any domestic corporation existing under the
6 laws of this state, or the name of any foreign corporation
7 authorized to conduct affairs or do or transact business
8 in this state, or any corporate name reserved or registered
9 under this article.

10 Such registration shall be made by:

11 (a) Filing with the secretary of state (1) an applica-
12 tion for registration executed by the corporation by an
13 officer thereof, setting forth the name of the corporation,
14 the state or territory under the laws of which it is incor-
15 porated, the date of its incorporation, a statement that it
16 is carrying on or doing business, and a brief statement
17 of the business in which it is engaged, and (2) a certifi-
18 cate setting forth that such corporation is in good standing
19 under the laws of the state or territory wherein it is
20 organized, executed by the secretary of state of such state
21 or territory or by such other official as may have custody
22 of the records pertaining to corporations, and

23 (b) Paying to the secretary of state a registration fee
24 in the amount of fifty cents for each month, or a fraction
25 thereof, between the date of filing such application and
26 June thirtieth of the fiscal year in which such applica-
27 tion is filed.

28 Such registration shall be effective until the close of
29 the fiscal year in which the application for registration is
30 filed.

§31-1-14. Renewal of registered name.

1 A corporation which has in effect a registration of its
2 corporate name may renew such registration from year to
3 year by annually filing an application for renewal setting
4 forth the facts required to be set forth in an original
5 application for registration and a certificate of good stand-
6 ing as required for the original registration and by paying
7 a fee of five dollars. A renewal application may be filed
8 between the first day of April and the thirtieth day of
9 June in each year, and shall extend the registration for
10 the following fiscal year.

§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.

1 The secretary of state of this state is hereby constituted
2 the attorney-in-fact for and on behalf of every corpora-

3 tion created by virtue of the laws of this state and every
4 foreign corporation authorized to conduct affairs or do
5 or transact business herein pursuant to the provisions of
6 this article, with authority to accept service of notice and
7 process on behalf of every such corporation and upon
8 whom service of notice and process may be made in this
9 state for and upon every such corporation. No act of such
10 corporation appointing the secretary of state such attor-
11 ney-in-fact shall be necessary. Immediately after being
12 served with or accepting any such process or notice, of
13 which process or notice two copies for each defendant
14 shall be furnished the secretary of state with the original
15 notice of process, the secretary of state shall file in his of-
16 fice a copy of such process or notice, with a note thereon
17 endorsed of the time of service, or acceptance, as the case
18 may be, and transmit one copy of such process or notice by
19 registered or certified mail, return receipt requested, to
20 such corporation at the address last furnished by it, as
21 required by law. No process or notice shall be served on
22 the secretary of state or accepted by him less than ten
23 days before the return day thereof. Such corporation shall
24 pay the annual fee prescribed in article twelve, chapter
25 eleven of this code for the services of the secretary of state
26 as its attorney-in-fact.

27 Any foreign corporation which shall conduct affairs or
28 do or transact business in this state without having been
29 authorized so to do pursuant to the provisions of this
30 article shall be conclusively presumed to have appointed
31 the secretary of state as its attorney-in-fact with authority
32 to accept service of notice and process on behalf of such
33 corporation and upon whom service of notice and process
34 may be made in this state for and upon every such cor-
35 poration in any action or proceeding described in the next
36 following paragraph of this section. No act of such cor-
37 poration appointing the secretary of state such attorney-
38 in-fact shall be necessary. Immediately after being served
39 with or accepting any such process or notice, of which
40 process or notice two copies for each defendant shall be
41 furnished the secretary of state with the original notice or
42 process, together with a fee of two dollars, the secretary

43 of state shall file in his office a copy of such process or
44 notice, with a note thereon endorsed of the time of service
45 or acceptance, as the case may be, and transmit one copy
46 of such process or notice by registered or certified mail,
47 return receipt requested, to such corporation at the address
48 of its principal office, which address shall be stated in such
49 process or notice. Such service or acceptance of such
50 process or notice shall be sufficient if such return receipt
51 shall be signed by an agent or employee of such corpora-
52 tion, or the registered or certified mail so sent by the
53 secretary of state is refused by the addressee and the
54 registered or certified mail is returned to the secretary
55 of state, or to his office, showing thereon the stamp of the
56 United States postal service that delivery thereof has been
57 refused, and such return receipt or registered or certified
58 mail is appended to the original process or notice and filed
59 therewith in the clerk's office of the court from which
60 such process or notice was issued. No process or notice
61 shall be served on the secretary of state or accepted by
62 him less than ten days before the return date thereof. The
63 court may order such continuances as may be reasonable
64 to afford each defendant opportunity to defend the action
65 or proceedings.

66 For the purpose of this section, a foreign corporation
67 not authorized to conduct affairs or do or transact business
68 in this state pursuant to the provisions of this article
69 shall nevertheless be deemed to be conducting affairs or
70 doing or transacting business herein (a) if such corpora-
71 tion makes a contract to be performed, in whole or in part,
72 by any party thereto, in this state, (b) if such corporation
73 commits a tort in whole or in part in this state, or (c) if
74 such corporation manufactures, sells, offers for sale or
75 supplies any product in a defective condition and such
76 product causes injury to any person or property within
77 this state notwithstanding the fact that such corporation
78 had no agents, servants or employees or contacts within
79 this state at the time of said injury. The making of such
80 contract, the committing of such tort or the manufacture
81 or sale, offer of sale or supply of such defective product as
82 hereinabove described shall be deemed to be the agree-
83 ment of such corporation that any notice or process served

84 upon, or accepted by, the secretary of state pursuant to
85 the next preceding paragraph of this section in any action
86 or proceeding against such corporation arising from, or
87 growing out of, such contract, tort, or manufacture or
88 sale, offer of sale or supply of such defective product shall
89 be of the same legal force and validity as process duly
90 served on such corporation in this state.

§31-1-16. Venue of actions involving foreign corporations.

1 In all cases arising under this chapter wherein the
2 corporations seeking to exercise the rights conferred by
3 this article, or against which any proceeding is instituted
4 thereunder, do not have or maintain any office, own any
5 property or conduct affairs or do or transact any business
6 in this state, the circuit court of the county in which the
7 seat of government is located shall have original juris-
8 diction, except in cases in which jurisdiction is expressly
9 conferred upon some other court by this chapter.

§31-1-17. Bylaws.

1 The initial bylaws of a corporation shall be adopted by
2 its board of directors. The power to alter, amend or repeal
3 the bylaws or adopt new bylaws, subject to repeal or
4 change by action of the shareholders or members, shall
5 be vested in the board of directors unless reserved to the
6 shareholders or members by the articles of incorporation.
7 The bylaws may contain any provisions for the regula-
8 tion and management of the affairs of the corporation
9 not inconsistent with law or the articles of incorporation.

§31-1-18. Meetings of shareholders or members.

1 (a) Meetings of shareholders or members may be held
2 at such place, either within or without this state, as may
3 be stated in or fixed in accordance with the bylaws. If no
4 other place is stated or so fixed, meetings shall be held at
5 the place of the principal office of the corporation.

6 (b) An annual meeting of the shareholders or members
7 shall be held at such time as may be stated in, or fixed in
8 accordance with, the bylaws. Failure to hold the annual
9 meeting at the designated time shall not work a forfei-
10 ture or dissolution of the corporation.

11 (c) In the case of a business corporation, if the annual
12 meeting is not held within any thirteen-month period,
13 the circuit court of the county wherein the place of the
14 principal office of the corporation is located, or the circuit
15 court of Kanawha county in the case of corporations
16 not having a principal office in this state, may, on the
17 application of any shareholder, summarily order a meet-
18 ing to be held.

19 (d) In the case of a business corporation, special
20 meetings of the shareholders may be called by the board
21 of directors, the holders of not less than one tenth of all
22 the shares entitled to vote at the meeting, or such other
23 persons as may be authorized in the articles of incorpora-
24 tion or the bylaws.

25 (e) In the case of a nonprofit corporation, special
26 meetings of the members may be called by the president
27 or by the board of directors. Special meetings of the
28 members may also be called by such other officers or
29 persons or number or proportion of members as may be
30 provided in the provision fixing the number or propor-
31 tion of members entitled to call a meeting. In the absence
32 of a provision fixing the number or proportion of mem-
33 bers entitled to call a meeting, a special meeting of
34 members may be called by members having one twen-
35 tieth of the votes entitled to be cast at such meeting.

§31-1-19. Notice of shareholders' or members' meetings.

1 Written notice stating the place, day and hour of the
2 meeting and, in case of a special meeting, the purpose or
3 purposes for which the meeting is called, shall be deliv-
4 ered not less than ten nor more than fifty days before the
5 date of the meeting, either personally or by mail, by or
6 at the direction of the president, the secretary, or the
7 officer or persons calling the meeting, to each shareholder
8 of record or member entitled to vote at such meeting. If
9 mailed, such notice shall be deemed to be delivered when
10 deposited in the United States mail addressed to the
11 shareholder or member at his address as it appears on the
12 corporate records, with postage thereon prepaid.

§31-1-20. Quorum of shareholders or members.

1 In the case of a business corporation, unless otherwise
2 provided in the articles of incorporation, a majority of the
3 shares entitled to vote, represented in person or by proxy,
4 shall constitute a quorum at a meeting of shareholders, but
5 in no event shall a quorum consist of less than one third
6 of the shares entitled to vote at the meeting.

7 In the case of a nonprofit corporation, the bylaws may
8 provide the number or percentage of members entitled
9 to vote represented in person or by proxy, which shall
10 constitute a quorum at a meeting of members and in
11 the absence of any such provision, members holding
12 one tenth of the votes entitled to be cast on the matter
13 to be voted upon represented in person or by proxy
14 shall constitute a quorum. A majority of the votes
15 entitled to be cast on a matter to be voted upon by
16 the members present or represented by proxy at a meet-
17 ing at which a quorum is present shall be necessary for
18 the adoption thereof unless a greater proportion is re-
19 quired by this article, the articles of incorporation or the
20 bylaws.

21 If a quorum is present, the affirmative vote of the ma-
22 jority of the shares represented or members present at the
23 meeting and entitled to vote on the subject matter shall be
24 the act of the shareholders or members, unless the vote of
25 a greater number or voting by classes is required by this
26 article or the articles of incorporation or bylaws.

§31-1-21. Number and election of directors; classification of directors.

1 (a) The board of directors of a corporation shall con-
2 sist of one or more persons. The number of directors shall
3 be fixed by, or in the manner provided in, the articles of
4 incorporation or the bylaws. The number of directors may
5 be increased or decreased from time to time by amend-
6 ment to, or in the manner provided in, the articles of
7 incorporation or by the bylaws, but no decrease shall have
8 the effect of shortening the term of any incumbent direc-
9 tor. In the absence of a bylaw providing for the number of
10 directors, the number shall be the same as that provided

11 for in the articles of incorporation. Unless the articles of
12 incorporation provide that a change in the number of
13 directors shall be made only by amendment to the articles
14 of incorporation, a change in the number of directors made
15 by amendment to the bylaws shall be controlling. The
16 names and addresses of the members of the first board of
17 directors may be stated in the articles of incorporation.
18 Such persons, if stated, shall hold office until their suc-
19 cessors shall have been elected and qualified. At the first
20 annual meeting of shareholders or members and at each
21 annual meeting thereafter the shareholders or members
22 shall elect directors to hold office until the next succeeding
23 annual meeting, except in case of the classification of di-
24 rectors as permitted by this article. Each director shall
25 hold office for the term for which he is elected and until
26 his successor shall have been elected and qualified.

27 (b) The directors of any corporation may, by the
28 articles of incorporation or any amendment thereto, or by
29 a vote of the shareholders or members, be divided into
30 one, two or three classes; the term of office of those of
31 the first class to expire at the annual meeting next en-
32 suing; of the second class one year thereafter; of the
33 third class two years thereafter; and at each annual
34 election held after such classification and election, direc-
35 tors shall be chosen for a full term, as the case may be,
36 to succeed those whose terms expire.

§31-1-22. Vacancies in board of directors; manner of filling.

1 Any vacancy occurring in the board of directors and any
2 directorship to be filled by reason of an increase in the
3 number of directors may be filled by the affirmative vote
4 of a majority of the remaining directors, though less than
5 a quorum of the board of directors, unless the articles of
6 incorporation or the bylaws provide that a vacancy or
7 directorship so created shall be filled in some other man-
8 ner, in which case such provision shall control.

9 A director elected or appointed, as the case may be, to
10 fill a vacancy shall be elected or appointed for the unex-
11 pired term of his predecessor in office.

12 Any directorship to be filled by reason of an increase

13 in the number of directors may be filled by the board of
14 directors for a term of office continuing only until the
15 next election of directors.

§31-1-23. Quorum of directors.

1 A majority of the number of directors fixed by or in
2 the manner provided in the bylaws, or in the absence of a
3 bylaw fixing or providing for the number of directors,
4 then of the number stated in the articles of incorporation,
5 shall constitute a quorum for the transaction of business
6 unless a greater number is required by the articles of in-
7 corporation or the bylaws. The act of the majority of the
8 directors present at a meeting at which a quorum is pres-
9 ent shall be the act of the board of directors, unless the
10 act of a greater number is required by the articles of
11 incorporation or the bylaws.

§31-1-24. Place and notice of directors' meetings.

1 (a) Meetings of the board of directors, regular or
2 special, may be held either within or without this state.

3 (b) Regular meetings of the board of directors may be
4 held with or without notice as prescribed in the bylaws.
5 Special meetings of the board of directors shall be held
6 upon such notice as is prescribed in the bylaws except
7 that notice shall be required to be given to every director
8 when the meeting is being called for the purpose of
9 amending the bylaws or for the purpose of authorizing
10 the sale of all or substantially all of the assets of the
11 corporation, in which case such notice shall set forth the
12 nature of the business intended to be transacted.

13 (c) Attendance of a director at a meeting shall consti-
14 tute a waiver of notice of such meeting, except where
15 a director attends a meeting for the express purpose of
16 objecting to the transaction of any business because the
17 meeting is not lawfully called or convened. Except as
18 provided in subsection (b) of this section, neither the
19 business to be transacted at, nor the purpose of, any
20 regular or special meeting of the board of directors need
21 be specified in the notice or waiver of notice of such
22 meeting unless required by the bylaws.

§31-1-25. Action by directors without a meeting.

1 Unless otherwise provided by the articles of incorpora-
2 tion or bylaws, any action required by this article to be
3 taken at a meeting of the directors of a corporation, or any
4 action which may be taken at a meeting of the directors
5 or of a committee, may be taken without a meeting if a
6 consent in writing, setting forth the action so taken, shall
7 be signed by all of the directors, or all of the members of
8 the committee, as the case may be. Such consent shall
9 have the same effect as a unanimous vote.

§31-1-26. Incorporators.

1 One or more persons, or a domestic or foreign corpora-
2 tion, may act as incorporator or incorporators of a cor-
3 poration by signing and delivering in duplicate to the
4 secretary of state articles of incorporation for such
5 corporation.

§31-1-27. Articles of incorporation; contents; matters not required to be set forth; inconsistencies with by-laws; acknowledgment.

1 (a) The articles of incorporation shall set forth:

2 (1) The name of the corporation.

3 (2) The period of duration, which may be perpetual.

4 (3) The purpose or purposes for which the corporation
5 is organized.

6 (4) The address of its initial principal office.

7 (5) The name and address of each incorporator.

8 (b) In the case of a business corporation, in addition
9 to those matters required to be set forth by the provisions
10 of subsection (a) of this section, the articles of incorpora-
11 tion shall set forth:

12 (1) The aggregate number of shares which the cor-
13 poration shall have authority to issue; if such shares are
14 to consist of one class only, the par value of each of such
15 shares, or a statement that all of such shares are without
16 par value; or, if such shares are to be divided into classes,

17 the number of shares of each class, and a statement of
18 the par value of the shares of each such class or that such
19 shares are to be without par value.

20 (2) If the shares are to be divided into classes, the
21 designation of each class and a statement of the prefer-
22 ences, limitations and relative rights in respect of the
23 shares of each class.

24 (3) If the corporation is to issue the shares of any
25 preferred or special class in series, the designation of
26 each series and a statement of the variations in the
27 relative rights and preferences as between series insofar
28 as the same are to be fixed in the articles of incorporation,
29 and a statement of any authority to be vested in the board
30 of directors to establish series and fix and determine the
31 variations in the relative rights and preferences as be-
32 tween series.

33 (4) Any provision, not inconsistent with law, which
34 the incorporators elect to set forth in the articles of incor-
35 poration for the regulation of the internal affairs of the
36 corporation, including any provision restricting the trans-
37 fer of shares and any provision which under this article
38 is required or permitted to be set forth in the bylaws.

39 (c) In the case of a nonprofit corporation, in addition
40 to those matters required to be set forth by the provisions
41 of subsection (a) of this section, the articles of incorpora-
42 tion shall set forth any provisions, not inconsistent with
43 law, which the incorporators elect to set forth in such
44 articles of incorporation for the regulation of the internal
45 affairs of the corporation, including any provisions for
46 distribution of assets on dissolution or final liquidation.

47 (d) It shall not be necessary to set forth in the articles
48 of incorporation any of the corporate powers enumerated
49 in this article.

50 (e) Whenever a provision of the articles of incorpora-
51 tion is inconsistent with a bylaw, the provision of the
52 articles of incorporation shall be controlling.

53 (f) The agreement of incorporation shall be acknowl-
54 edged by the incorporators before a notary public and

55 transmitted with the proper fees to, and shall be filed
56 with, the secretary of state.

§31-1-28. Filing of articles of incorporation; issuance of certificate of incorporation; recordation of certificate in county clerk's office.

1 (a) Duplicate originals of the articles of incorporation
2 shall be delivered to the secretary of state. If the secretary
3 of state finds that the articles of incorporation conform to
4 law, he shall, when all fees have been paid as prescribed
5 by law, (i) endorse on each of such duplicate originals
6 the word "Filed," and the month, day and year of the filing
7 thereof; (ii) file one of such duplicate originals in his
8 office; and (iii) issue a certificate of incorporation to
9 which he shall affix the other duplicate original.

10 The certificate of incorporation, together with the dupli-
11 cate original of the articles of incorporation affixed there-
12 to by the secretary of state, shall be returned to the
13 incorporators or their representative.

14 (b) If the corporation has its principal office in this
15 state, it shall cause such certificate, or a duly certified
16 copy thereof, to be recorded in the office of the clerk of
17 the county court of the county in which such principal
18 office is located; if its principal office is not within this
19 state but it conducts affairs or does or transacts business
20 herein, then in the county in which it conducts its affairs
21 or does or transacts its principal business. If its principal
22 office is without the state and it does not conduct affairs
23 or do or transact business within the state, such charter
24 need not be recorded in a county clerk's office. A failure
25 to comply with the foregoing recordation provision within
26 six months from the date of such certificate shall subject
27 the corporation to a fine of not more than one thousand
28 dollars.

§31-1-29. Effect of issuance of certificate of incorporation.

1 Upon the issuance of the certificate of incorporation,
2 the corporate existence shall begin, and such certificate of
3 incorporation shall be conclusive evidence that all con-
4 ditions precedent required to be performed by the incor-
5 porators have been complied with and that the corporation

6 has been incorporated under this article, except as against
7 this state in a proceeding to cancel or revoke the certificate
8 of incorporation or for involuntary dissolution of the cor-
9 poration.

§31-1-30. Organizational meeting; notice, waiver of notice.

1 After the issuance of the certificate of incorporation, an
2 organizational meeting shall be held, either within or
3 without this state, at the call of a majority of the directors,
4 if named in the articles of incorporation, or at the call of a
5 majority of the shareholders, members or incorporators
6 named in the articles of incorporation, for the purpose of
7 adopting bylaws, electing officers and a board of directors,
8 if not named in the articles of incorporation, and for trans-
9 acting such other business as may come before the meet-
10 ing. The shareholders, members, incorporators or direc-
11 tors calling the meeting shall give at least three days'
12 notice thereof by mail to each shareholder, member or
13 incorporator so named in the articles of incorporation,
14 stating the time and place of the meeting, unless such
15 notice is waived in accordance with the provisions of this
16 article.

**§31-1-31. Filing of articles of amendment; recordation; admis-
sion in evidence.**

1 Upon adoption of the articles of amendment, in accord-
2 ance with the provisions of section one hundred seven
3 or section one hundred forty-seven of this article, which-
4 ever is applicable, duplicate originals of such articles of
5 amendment shall be delivered to the secretary of state.
6 If the secretary of state finds that the articles of amend-
7 ment conform to law, he shall, when all fees have been
8 paid as prescribed by law, (i) endorse on each of such
9 duplicate originals the word "Filed," and the month, day
10 and year of such filing thereof; (ii) file one of such dupli-
11 cate originals in his office; and (iii) issue a certificate of
12 amendment to which he shall affix the other duplicate
13 original.

14 The certificate of amendment, together with the dupli-
15 cate original of the articles of amendment affixed thereto

16 by the secretary of state, shall be returned to the cor-
17 poration or its representative.

18 The certificate of amendment, or certified copy thereof,
19 shall be recorded in the office of the appropriate county
20 clerk in the same manner as certificates of incorporation
21 are required to be recorded, in accordance with the pro-
22 visions of subsection (b) of section twenty-eight of this
23 article and received in evidence to the same extent as an
24 original certificate of incorporation or a certified copy of
25 such original.

§31-1-32. Effect of certificate of amendment.

1 Upon the issuance of the certificate of amendment by
2 the secretary of state, the amendment shall become effec-
3 tive and the articles of incorporation shall be deemed to be
4 amended accordingly.

5 No amendment shall affect any existing cause of action
6 in favor of or against such corporation, or any pending
7 action to which such corporation shall be a party, or the
8 existing rights of persons other than shareholders or
9 members, and, in the event the corporate name shall be
10 changed by amendment, no action brought by or against
11 such corporation under its former name shall abate for
12 that reason.

**§31-1-33. Filing of restated articles of incorporation; recorda-
tion; admission in evidence.**

1 Upon adoption of restated articles of incorporation, in
2 accordance with the provisions of section one hundred ten
3 or section one hundred forty-nine of this article, which-
4 ever is applicable, duplicate originals of such restated
5 articles of incorporation shall be delivered to the secretary
6 of state. If the secretary of state finds that such restated
7 articles of incorporation conform to law, he shall, when
8 all fees have been paid as prescribed by law, (i) endorse
9 on each of such duplicate originals the word "Filed," and
10 the month, day and year of the filing thereof; (ii) file one
11 of such duplicate originals in his office; and (iii) issue
12 a restated certificate of incorporation, to which he shall
13 affix the other duplicate original.

14 The restated certificate of incorporation, together with
15 the duplicate original of the restated articles of incorpora-
16 tion affixed thereto by the secretary of state, shall be
17 returned to the corporation or its representative.

18 Upon the issuance of the restated certificate of in-
19 corporation by the secretary of state, the restated articles
20 of incorporation shall become effective and shall super-
21 sede the original articles of incorporation and all amend-
22 ments thereto.

23 The restated certificate of incorporation or certified copy
24 thereof, shall be recorded in the office of the appropriate
25 county clerk in the same manner as original certificates
26 of incorporation are required to be recorded, in accord-
27 ance with the provisions of subsection (b) of section
28 twenty-eight of this article and received in evidence to
29 the same extent as an original certificate of incorporation
30 or a certified copy of such original.

§31-1-34. Procedure for merger.

1 Any two or more domestic corporations, whether stock
2 or nonstock, or whether or not organized for profit, may
3 merge into one of such corporations, irrespective of
4 whether the surviving corporation is a stock or nonstock
5 corporation and irrespective of whether or not it is organ-
6 ized for profit, pursuant to a plan of merger approved in
7 the manner provided in this article.

8 The board of directors of each corporation shall, by
9 resolution adopted by each such board, approve a plan of
10 merger setting forth:

11 (a) The names of the corporations proposing to merge,
12 and the name of the corporation into which they propose
13 to merge.

14 (b) The terms and conditions of the proposed merger.

15 (c) The manner and basis of converting the shares of
16 each corporation into shares, obligations or other securities
17 of the surviving corporation or of any other corporation or,
18 in whole or in part, into cash or other property.

19 (d) A statement of any changes in the articles of in-

20 corporation of the surviving corporation to be effected by
21 such merger.

22 (e) Such other provisions with respect to the proposed
23 merger as are deemed necessary or desirable.

§31-1-35. Procedure for consolidation.

1 Any two or more domestic corporations, whether stock
2 or nonstock, or whether or not organized for profit, may
3 consolidate into a new corporation, irrespective of wheth-
4 er the new corporation is a stock or nonstock corporation
5 and irrespective of whether or not it is organized for
6 profit, pursuant to a plan of consolidation approved in the
7 manner provided in this article.

8 The board of directors of each corporation shall, by
9 resolution adopted by each such board, approve a plan of
10 consolidation setting forth:

11 (a) The names of the corporations proposing to con-
12 solidate, and the name of the new corporation into which
13 they propose to consolidate.

14 (b) The terms and conditions of the proposed consoli-
15 dation.

16 (c) The manner and basis of converting the shares of
17 each corporation into shares, obligations or other securi-
18 ties of the new corporation or of any other corporation
19 or, in whole or in part, into cash or other property.

20 (d) With respect to the new corporation, all of the
21 statements required to be set forth in articles of incor-
22 poration, as required by section twenty-seven of this
23 article for corporations organized under this article.

24 (e) Such other provisions with respect to the proposed
25 consolidation as are deemed necessary or desirable.

**§31-1-36. Articles of merger or consolidation; filing; issuance
of certificate; recordation; admission in evidence.**

1 (a) Upon approval, in accordance with the provisions
2 of section one hundred seventeen or section one hundred
3 fifty of this article, whichever is applicable, the articles of
4 merger or articles of consolidation shall be executed in

5 duplicate by each corporation by its president or a vice
6 president and by its secretary or an assistant secretary,
7 and verified by one of the officers of each corporation
8 signing such articles.

9 (b) Duplicate originals of the articles of merger or
10 articles of consolidation shall be delivered to the secre-
11 tary of state. If the secretary of state finds that such
12 articles conform to law, he shall, when all fees have been
13 paid as prescribed by law, (i) endorse on each of such
14 duplicate originals the word "Filed," and the month, day
15 and year of the filing thereof; (ii) file one of such dupli-
16 cate originals in his office; and (iii) issue a certificate of
17 merger or a certificate of consolidation to which he shall
18 affix the other duplicate original.

19 The certificate of merger or certificate of consolidation,
20 together with the duplicate original of the articles of
21 merger or articles of consolidation affixed thereto by the
22 secretary of state, shall be returned to the surviving or
23 new corporation, as the case may be, or its representative.

24 (c) The certificate of merger or certificate of consoli-
25 dation, or certified copy thereof, shall be recorded in the
26 office of the appropriate county clerk in the same manner
27 as original certificates of incorporation are required to be
28 recorded, in accordance with the provisions of subsection
29 (b) of section twenty-eight of this article and received
30 in evidence to the same extent as an original certificate
31 of incorporation or a certified copy of such original.

**§31-1-37. Effect of merger or consolidation; conveyance of
title to real estate in state to surviving or new
corporation.**

1 (a) Upon the issuance of the certificate of merger or
2 the certificate of consolidation by the secretary of state,
3 the merger or consolidation shall be effected. When such
4 merger or consolidation has been effected:

5 (1) The several corporations parties to the plan of
6 merger or consolidation shall be a single corporation,
7 which, in the case of a merger, shall be that corporation
8 designated in the plan of merger as the surviving corpora-

9 tion, and, in the case of a consolidation, shall be the new
10 corporation provided for in the plan of consolidation.

11 (2) The separate existence of all corporations parties
12 to the plan of merger or consolidation, except the surviv-
13 ing or new corporation, shall cease.

14 (3) Such surviving or new corporation shall have all
15 the rights, privileges, immunities and powers and shall
16 be subject to all the duties and liabilities of a corporation
17 organized under this article.

18 (4) Such surviving or new corporation shall thereupon
19 and thereafter possess all the rights, privileges, immuni-
20 ties and franchises, of a public as well as of a private na-
21 ture, of each of the merging or consolidating corporations;
22 and all property, real, personal and mixed, and all debts
23 due on whatever account, including subscriptions to
24 shares, if any, and all other choses in action, and all and
25 every other interest of or belonging to or due to each of
26 the corporations so merged or consolidated, shall be taken
27 and deemed to be transferred to and vested in such single
28 corporation without further act or deed; and the title to
29 any real estate, or any interest therein, vested in any of
30 such corporations shall not revert or be in any way im-
31 paired by reason of such merger or consolidation.

32 (5) Such surviving or new corporation shall hence-
33 forth be responsible and liable for all the liabilities and
34 obligations of each of the corporations so merged or con-
35 solidated; and any claim existing or action or proceeding
36 pending by or against any of such corporations may be
37 prosecuted as if such merger or consolidation had not
38 taken place, or such surviving or new corporations may
39 be substituted in its place. Neither the rights of creditors
40 nor any liens upon the property of any such corporation
41 shall be impaired by such merger or consolidation.

42 (6) In the case of a merger, the articles of incorpora-
43 tion of the surviving corporation shall be deemed to be
44 amended to the extent, if any, that changes in its articles
45 of incorporation are stated in the plan of merger; and,
46 in the case of a consolidation, the statements set forth in
47 the articles of consolidation and which are required or

48 permitted to be set forth in the articles of incorporation
49 of corporations organized under this article shall be
50 deemed to be the original articles of incorporation of the
51 new corporation.

52 (b) In any merger or consolidation of corporations
53 under the laws of the state of West Virginia, any con-
54 stituent corporation thereof owning or holding real estate
55 in West Virginia shall further evidence the title thereto
56 in the surviving or new corporation by executing and
57 acknowledging for record a confirmatory deed or deeds to
58 the respective parcels of real estate, which deed or deeds
59 shall be recorded in the office of the clerks of the county
60 courts of the respective counties in which such real estate
61 is situated; and such deed or deeds shall recite as the
62 consideration therefor the said merger or consolidation
63 and shall be deemed confirmatory of the title of such real
64 estate in the surviving or new corporation.

**§31-1-38. Merger or consolidation of domestic and foreign
corporations; effect; abandonment; confirmation of
title to real estate required.**

1 (a) One or more domestic corporations, whether
2 stock or nonstock, and whether or not organized for
3 profit, and one or more foreign corporations, whether
4 stock or nonstock, and whether or not organized for
5 profit, may merge or consolidate into one of such cor-
6 porations, irrespective of whether the surviving or new
7 corporation is a stock or nonstock corporation and ir-
8 respective of whether or not it is organized for profit,
9 if such merger or consolidation is permitted by the
10 laws of the state under which each such foreign
11 corporation is organized. Any such merger or con-
12 solidation shall be completed in the following man-
13 ner:

14 (1) Each domestic corporation shall comply with
15 the provisions of this article with respect to the
16 merger or consolidation, as the case may be, of
17 domestic corporations and each foreign corpora-
18 tion shall comply with the applicable provisions

19 of the laws of the state under which it is or-
20 ganized.

21 (2) If the surviving or new corporation, as the case
22 may be, is to be governed by the laws of any state other
23 than this state, it shall comply with the provisions of this
24 article with respect to foreign corporations if it is to
25 conduct its affairs or do or transact business in this state,
26 and in every case it shall file with the secretary of state
27 of this state (i) an agreement that it may be served with
28 process in this state in any proceeding for the enforce-
29 ment of any obligation of any domestic corporation which
30 is a party to such merger or consolidation and in any
31 proceeding for the enforcement of the rights of a dis-
32 senting shareholder or member of any such domestic
33 corporation against the surviving or new corporation; (ii)
34 an irrevocable appointment of the secretary of state of
35 this state as its agent to accept service of process in any
36 such proceeding; and (iii) an agreement that it will
37 promptly pay to the dissenting shareholders or members
38 of any such domestic corporation the amount, if any, to
39 which they shall be entitled under the provisions of this
40 article with respect to the rights of dissenting share-
41 holders.

42 (b) The effect of such merger or consolidation shall be
43 the same as in the case of the merger or consolidation of
44 domestic corporations, if the surviving or new corporation
45 is to be governed by the laws of this state and the pro-
46 visions of section thirty-seven of this article shall apply
47 in every such instance. If the surviving or new corpora-
48 tion is to be governed by the laws of any state other than
49 this state, the effect of such merger or consolidation of
50 domestic corporation shall be the same as in the case of
51 the merger or consolidation of domestic corporations ex-
52 cept insofar as the laws of such other state provide other-
53 wise.

54 (c) At any time prior to the filing of the articles of
55 merger or consolidation, the merger or consolidation may
56 be abandoned pursuant to the provisions therefor, if any,
57 set forth in the plan of merger or consolidation.

58 (d) Irrespective of whether such surviving or new

59 corporation is to be governed by the laws of this state or
60 by the laws of any other state, any constituent corpora-
61 tion thereof owning or holding real estate in West Vir-
62 ginia shall further evidence the title thereto in the
63 surviving or new corporation by executing and acknowl-
64 edging for record a confirmatory deed or deeds to the
65 respective parcels of real estate, which deed or deeds shall
66 be recorded in the office of the clerks of the county courts
67 of the respective counties in which such real estate is
68 situate; and such deed or deeds shall recite as the con-
69 sideration therefor the said merger or consolidation and
70 shall be deemed confirmatory of the title of such real
71 estate in the surviving or new corporation.

§31-1-39. Articles of dissolution; contents.

1 (a) If voluntary dissolution proceedings have not been
2 revoked, then when all debts, liabilities and obligations of
3 the corporation have been paid and discharged, or ade-
4 quate provision has been made therefor, and all of the
5 remaining property and assets of the corporation have
6 been distributed to its shareholders in the case of a busi-
7 ness corporation, or, in the case of a nonprofit corporation,
8 when all of the remaining property and assets of the cor-
9 poration shall have been transferred, conveyed or dis-
10 tributed in accordance with the provisions of sections one
11 hundred fifty-five and one hundred fifty-six of this article,
12 articles of dissolution shall be executed in duplicate by the
13 corporation by its president or a vice president and by its
14 secretary or an assistant secretary, and verified by one of
15 the officers signing such statement, which statement shall
16 set forth:

17 (1) The name of the corporation.

18 (2) That all debts, obligations and liabilities of the
19 corporation have been paid and discharged or that ade-
20 quate provision has been made therefor.

21 (3) That all the remaining property and assets of the
22 corporation have been distributed among its shareholders
23 in accordance with their respective rights and interests, in
24 the case of a business corporation, or, in the case of a
25 nonprofit corporation, that all the remaining property and

26 assets of the corporation have been transferred, conveyed
27 or distributed in accordance with the provisions of sections
28 one hundred fifty-five and one hundred fifty-six of this
29 article.

30 (4) That there are no actions pending against the
31 corporation in any court, or that adequate provision has
32 been made for the satisfaction of any judgment or order
33 which may be entered against it in any pending action.

34 (b) In the case of a business corporation, such state-
35 ment, in addition to the matters required to be set forth
36 under the provisions of subsection (a) of this section, shall
37 contain a statement that the secretary of state has here-
38 tofore filed a statement of intent to dissolve the corpora-
39 tion, and the date on which such statement was filed.

40 (c) In the case of a nonprofit corporation, such state-
41 ment in addition to the matters required to be set forth,
42 under the provisions of subsection (a) of this section, shall
43 set forth:

44 (1) If there are members entitled to vote thereon, a
45 statement setting forth the date of the meeting of mem-
46 bers at which the resolution to dissolve was adopted, that
47 a quorum was present at such meeting and that such reso-
48 lution received the approval of a majority of the votes
49 which members present at such meeting or represented
50 by proxy were entitled to cast, or a statement that such
51 resolution was adopted by a consent in writing signed by
52 all members entitled to vote with respect thereto.

53 (2) If there are no members, or no members entitled to
54 vote thereon, a statement of such fact, the date of the
55 meeting of the board of directors at which the resolution to
56 dissolve was adopted and a statement of the fact that such
57 resolution received the vote of a majority of the directors
58 in office.

59 (3) A copy of the plan of distribution, if any, as
60 adopted by the corporation, or a statement that no plan
61 was so adopted.

**§31-1-40. Articles of dissolution, filing, issuance of certificate
of dissolution by secretary of state; recordation.**

1 (a) Duplicate originals of the articles of dissolution

2 shall be delivered to the secretary of state. If the secre-
3 tary of state finds that such articles of dissolution conform
4 to law and if the provisions of section sixty-one have been
5 fully satisfied, he shall, when all fees have been paid as
6 prescribed by law, (i) endorse on each of such duplicate
7 originals the word "Filed," and the month, day and year
8 of the filing thereof; (ii) file one of such duplicate origi-
9 nals in his office; and (iii) issue a certificate of dissolu-
10 tion to which he shall affix the other duplicate original.

11 (b) In the case of a nonprofit corporation, in addition
12 to the duplicate originals of the articles of dissolution, a
13 copy of the notice required to be published under the
14 provisions of one hundred fifty-four of this article and the
15 publisher's certificate of such publication shall be de-
16 livered to the secretary of state. The secretary of state,
17 prior to endorsing, filing and issuing the certificate of
18 dissolution, shall ascertain that the notice and certificate
19 conform to law.

20 (c) The certificate of dissolution, together with the
21 duplicate original of the articles of dissolution affixed
22 thereto by the secretary of state, shall be returned to the
23 incorporators or to the representatives of the dissolved
24 corporation. If the certificate of incorporation shall have
25 been recorded in the office of the clerk of the county court
26 of any county in this state, the incorporators or their rep-
27 resentative shall record the certificate of dissolution in the
28 office of the clerk of the county court in which the cer-
29 tificate of incorporation is recorded, and the clerk shall
30 note on the margin of the record book in which the
31 certificate of incorporation is engrossed the fact of the
32 dissolution of the corporation, and upon such recordation
33 the existence of the corporation shall cease, except for
34 the purpose of actions, other proceedings and appropriate
35 corporate action by shareholders or members, directors
36 and officers as provided in this article.

**§31-1-41. Jurisdiction of court to liquidate assets and business
or affairs of corporation; when such actions may
be brought; venue; parties.**

1 (a) Any of the circuit courts or inferior courts of
2 record with general civil jurisdiction shall have full power

3 to liquidate the assets and business or affairs of a corpora-
4 tion in an action by a shareholder or member when it is
5 established:

6 (1) That the directors are deadlocked in the man-
7 agement of the corporate affairs and that irreparable in-
8 jury to the corporation is being suffered or is threatened
9 by reason thereof, and either that the shareholders or
10 members are unable to break the deadlock or there are
11 no shareholders or members having voting rights; or

12 (2) That the acts of the directors or those in control
13 of the corporation are illegal, oppressive or fraudulent;
14 or

15 (3) That the shareholders or members entitled to vote
16 in the election of directors, are deadlocked in voting
17 power, and have failed for a period which includes at least
18 two consecutive annual meeting dates, to elect successors
19 to directors whose terms have expired or would have ex-
20 pired upon the election of their successors; or

21 (4) That the corporate assets are being misapplied or
22 wasted; or,

23 (5) In addition, in the case of a nonprofit corporation,
24 that such corporation is unable to carry out its purposes.

25 (b) Such courts shall also have full power to liquidate
26 the assets and business or affairs of a corporation in an
27 action by a creditor:

28 (1) When the claim of the creditor has been reduced
29 to judgment and an execution thereon has been returned
30 unsatisfied and it is established that the corporation is
31 insolvent; or

32 (2) When the corporation has admitted in writing that
33 the claim of the creditor is due and owing and it is estab-
34 lished that the corporation is insolvent.

35 (c) Such courts shall also have full power to liquidate
36 the assets or business or affairs of the corporation:

37 (1) Upon application by a corporation which has filed
38 a statement of intent to dissolve, as provided in this
39 article, to have its liquidation continued under the super-
40 vision of the court; or

41 (2) In the case of a business corporation, when an
42 action has been filed pursuant to the provisions of section
43 eighty-six, article twelve, chapter eleven of this code, to
44 dissolve a corporation and it is established that liquidation
45 of its assets and business or affairs should precede the
46 entry of an order of dissolution.

47 (d) Actions or proceedings brought under subsection
48 (a) or (b), or under subdivision (1) of subsection (c) of
49 this section, shall be brought in the county in which the
50 principal office of the corporation is situated, or if there
51 be no such office in this state, in the county in which any
52 one or more of its shareholders or members reside or are
53 found or in which the property of such corporation, or any
54 part of it, may be.

55 (e) It shall not be necessary to make shareholders or
56 members parties to any such action or proceedings unless
57 relief is sought against them personally.

**§31-1-42. Procedure in liquidation of corporation by court;
appointment and powers of receivers.**

1 In proceedings to liquidate the assets and business or
2 affairs of a corporation the court shall have power to
3 issue injunctions, to appoint a receiver or receivers pen-
4 dente lite, with such powers and duties as the court, from
5 time to time, may direct, and to take such other action
6 as may be requisite to preserve the corporate assets
7 wherever situated, and carry on the business or affairs
8 of the corporation until a full hearing can be had.

9 After a hearing had upon such notice as the court may
10 direct to be given to all parties to the proceedings and to
11 any other parties in interest designated by the court, the
12 court may appoint a liquidating receiver or receivers with
13 authority to collect the assets of the corporation, including
14 all amounts owing to the corporation by subscribers, if
15 any. Such liquidating receiver or receivers shall have
16 authority, subject to the order of the court, to sell, convey
17 and dispose of all or any part of the assets of the corpora-
18 tion wherever situated, either at public or private sale.
19 The order appointing such liquidating receiver or re-
20 ceivers shall state their powers and duties. Such powers

21 and duties may be increased or diminished at any time
22 during the proceedings.

23 The court shall have power to allow from time to time,
24 as expenses of the liquidation, compensation to the re-
25 ceiver or receivers and to attorneys in the proceeding,
26 and to direct the payment thereof out of the assets of the
27 corporation or the proceeds of any sale or disposition of
28 such assets.

29 A receiver of a corporation appointed under the provi-
30 sions of this section shall have authority to sue and defend
31 in all courts in his own name as receiver of such corpora-
32 tion. The court appointing such receiver shall have ex-
33 clusive jurisdiction of the corporation and its property,
34 wherever situated.

§31-1-43. Qualifications of receivers.

1 A receiver appointed pursuant to the provisions of
2 section forty-two of this article shall in all cases be a
3 natural person who is a citizen of the United States or a
4 corporation authorized to act as receiver, which corpora-
5 tion may be a domestic corporation or a foreign corpora-
6 tion authorized to conduct affairs or do or transact busi-
7 ness in this state, and shall in all cases give such bond
8 as the court may direct with such sureties as the court
9 may require.

§31-1-44. Filing of claims in liquidation proceedings.

1 In proceedings to liquidate the assets and business or
2 affairs of a corporation the court may require all creditors
3 of the corporation to file with the clerk of the court or
4 with the receiver, in such form as the court may pre-
5 scribe, proofs under oath of their respective claims. If
6 the court requires the filing of claims it shall fix a date,
7 which shall be not less than four months from the date
8 of the order, as the last day for the filing of claims, and
9 shall prescribe the notice that shall be given to creditors
10 and claimants of the date so fixed. Prior to the date so
11 fixed, the courts may extend the time for filing of claims.
12 Creditors and claimants failing to file proofs of claim
13 on or before the date so fixed may be barred, by order

14 of the court, from participating in the distribution of
15 the assets of the corporation.

§31-1-45. Discontinuance of liquidation proceedings.

1 The liquidation of the assets and business or affairs
2 of a corporation may be discontinued at any time during
3 the liquidation proceedings when it is established that
4 cause for liquidation no longer exists. In such event the
5 court shall dismiss the proceedings and direct the re-
6 ceiver to deliver to the corporation all its remaining
7 property and assets.

§31-1-46. Order of involuntary dissolution; filing with the secretary of state.

1 In proceedings to liquidate the assets and business or
2 affairs of a corporation, when the costs and expenses of
3 such proceedings and all debts, obligations and liabilities
4 of the corporation shall have been paid and discharged
5 and all of its remaining property and assets distributed
6 to its shareholders, or in the case of a nonprofit corpora-
7 tion, in accordance with the provisions of sections one
8 hundred fifty-five and one hundred fifty-six of this article,
9 the court shall enter an order dissolving the corporation,
10 whereupon the existence of the corporation shall cease.
11 In case its property and assets are not sufficient to satisfy
12 and discharge such costs, expenses, debts and obligations
13 and all the property and assets have been applied so far as
14 they will go to their payment, the court shall likewise
15 enter an order dissolving the corporation, whereupon the
16 existence of the corporation shall cease.

17 If the court shall enter an order dissolving a corpora-
18 tion, it shall be the duty of the clerk of such court to
19 cause a certified copy of the order to be filed with the
20 secretary of state. No fee shall be charged by the secre-
21 tary of state for the filing thereof.

§31-1-47. Deposits with state treasurer of amounts due certain persons.

1 Upon the voluntary or involuntary dissolution of a
2 corporation, the portion of the assets distributable to
3 any creditor, shareholder, member or person who is

4 unknown or who cannot be found, or who is under dis-
5 ability and for whom there is no person legally competent
6 to receive such distributive portion, shall be reduced
7 to cash and deposited with the state treasurer in accor-
8 dance with the provisions of article eight, chapter thirty-
9 six of this code, and shall be paid over to such creditor,
10 shareholder, member or person or to his legal represen-
11 tative upon proof satisfactory to the state treasurer of
12 his right thereto, in accordance with the provisions of
13 said article eight, chapter thirty-six.

**§31-1-48. Survival of remedy after dissolution; effect of dis-
solution.**

1 The dissolution of a corporation either (1) by the
2 issuance of a certificate of dissolution by the secretary
3 of state, or (2) by an order of court when the court has
4 not liquidated the assets and business or affairs of the
5 corporation as provided in this article, or (3) by expira-
6 tion of its period of duration, shall not take away or
7 impair any remedy available to or against such corpora-
8 tion, its shareholders or members, directors and officers,
9 for any right or claim existing, or any liability incurred,
10 prior to such dissolution if action or other proceeding
11 thereon is commenced within two years after the date
12 of such dissolution. Any such action or proceeding by
13 or against the corporation may be prosecuted or defended
14 by the corporation in its corporate name. The share-
15 holders or members, directors and officers shall have
16 power to take such corporate or other action as shall
17 be appropriate to protect such remedy, right or claim.
18 If such corporation was dissolved by the expiration of
19 its period of duration, such corporation may amend its
20 articles of incorporation at any time during such period
21 of two years so as to extend its period of duration.

22 The board of directors and the executive officers in
23 office at the date of such expiration or dissolution, and
24 their successors in office, shall have the right to fill any
25 vacancy in any executive office and of the board of direc-
26 tors by appointment; and they and their successors in
27 office may cause actions or proceedings to be brought,

28 conducted, prosecuted or defended, the real and personal
29 property of the corporation to be conveyed or transferred
30 under the common seal or otherwise, further assurances
31 of previous conveyances to be made, and all lawful acts
32 to be done, in the corporate name, in like manner and
33 with like effect as before such dissolution or expiration;
34 but so far only as shall be necessary or proper to do and
35 perform every act and thing which should have been
36 or should be done and performed by the corporation,
37 and for collecting the debts and claims due to the cor-
38 poration, converting its property and assets into money,
39 prosecuting, defending and protecting its rights, enforc-
40 ing all claims in its favor, and paying over and distrib-
41 uting its property and assets, or the proceeds thereof, to
42 those entitled thereto.

**§31-1-49. Admission of foreign corporation; acts permitted to
be done without certificate of authority.**

1 (a) No foreign corporation shall have the right to
2 conduct affairs or do or transact business in this state
3 until it shall have procured a certificate of authority so
4 to do from the secretary of state. No foreign corporation
5 shall be entitled to procure a certificate of authority
6 under this article to conduct affairs or do or transact
7 any business in this state which would not be permitted
8 to be conducted, done or transacted by a corporation
9 organized under this article. A foreign corporation shall
10 not be denied a certificate of authority by reason of the
11 fact that the laws of the state or country under which
12 such corporation is organized governing its organization
13 and internal affairs differ from the laws of this state,
14 and nothing in this article contained shall be construed
15 to authorize this state to regulate the organization or the
16 internal affairs of such corporation.

17 (b) Without excluding other activities which may
18 not constitute conducting affairs or doing or transacting
19 business in this state, a foreign corporation shall not be
20 considered to be conducting affairs or doing or transacting
21 business in this state, for the purposes of this article, by
22 reason of carrying on in this state any one or more of
23 the following activities:

24 (1) Maintaining or defending any legal action or pro-
25 ceeding or any administrative or arbitration proceeding,
26 or effecting the settlement thereof or the settlement of
27 claims or disputes;

28 (2) Holding meetings of its directors, shareholders
29 or members or carrying on other activities concerning
30 its internal affairs;

31 (3) Maintaining bank accounts;

32 (4) Creating evidences of debt, mortgages or liens
33 on real or personal property;

34 (5) Securing or collecting debts or enforcing any
35 rights in property securing the same;

36 (6) Conducting its affairs or doing or transacting
37 business in interstate commerce;

38 (7) Granting funds or other gifts;

39 (8) Distributing information to its shareholders or
40 members; or

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

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

50 (1) Maintaining offices or agencies for the transfer,
51 exchange and registration of its securities, or appointing
52 and maintaining trustees or depositaries with relation
53 to its securities;

54 (2) Effecting sales through independent contractors;
55 or

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

§31-1-50. Powers of foreign corporation.

1 A foreign corporation which shall have received a
2 certificate of authority under this article shall enjoy the
3 same, but no greater, rights and privileges as a domestic
4 corporation organized for the purposes set forth in the
5 application pursuant to which such certificate of au-
6 thority is issued, until a certificate of revocation or of
7 withdrawal shall have been issued as provided in this
8 article; and except as in this article otherwise provided,
9 shall be subject to the same duties, restrictions, penalties
10 and liabilities now or hereafter imposed upon a domestic
11 corporation of like character.

§31-1-51. Corporate name of foreign corporation; when certificate of authority shall not be issued.

1 (a) No certificate of authority shall be issued to a
2 foreign corporation unless the corporate name of such
3 corporation:

4 (1) Shall contain the word "corporation," "company,"
5 "incorporated" or "limited," or shall contain an abbrevia-
6 tion of one of such words, or such corporation shall, for
7 use in this state, add at the end of its name one of such
8 words or an abbreviation thereof.

9 (2) Shall not contain any word or phrase which
10 indicates or implies that it is organized for any purpose
11 other than one or more of the purposes in its articles of
12 incorporation, or if the corporate name of such corporation
13 indicates or implies that it is authorized or empowered
14 to conduct the business of banking or insurance unless
15 such corporation is so authorized or empowered under
16 the laws of this state.

17 (3) Shall not be the same as, or deceptively similar
18 to, the name of any corporation existing under the laws
19 of this state, whether stock or nonstock and whether or not
20 organized for profit, or any foreign corporation, authorized
21 to conduct affairs or do or transact business in this state,
22 whether stock or nonstock and whether or not organized
23 for profit, or a corporate name reserved or registered as
24 permitted by the laws of this state.

25 (4) Shall be transliterated into letters of the English
26 alphabet, if it is not in English.

27 (b) The provisions of subdivision (3), subsection (a) of
28 this section shall not apply if the foreign corporation ap-
29 plying for a certificate of authority files with the secretary
30 of state any one of the following:

31 (1) A resolution of its board of directors adopting a
32 fictitious name for use in conducting affairs or doing or
33 transacting business in this state, which fictitious name is
34 not deceptively similar to the name of any domestic cor-
35 poration or of any foreign corporation authorized to con-
36 duct affairs or do or transact business in this state or to any
37 name reserved or registered as provided in this article, or

38 (2) The written consent of such other corporation
39 or holder of a reserved or registered name to use the
40 same or deceptively similar name and one or more words
41 are added to make such name distinguishable from such
42 other name, or

43 (3) A certified copy of a final order of a court of
44 competent jurisdiction establishing the prior right of such
45 foreign corporation to the use of such name in this state.

§31-1-52. Change of name by foreign corporation.

1 Whenever a foreign corporation which is authorized
2 to conduct affairs or do or transact business in this state
3 shall change its name to one under which a certificate
4 of authority would not be granted to it on application
5 therefor, the certificate of authority of such corporation
6 shall be suspended and it shall not thereafter conduct
7 any affairs or do or transact any business in this state
8 until it has changed its name to a name which is avail-
9 able to it under the laws of this state or has otherwise
10 complied with the provisions of this article.

§31-1-53. Application for certificate of authority by foreign corporation; contents; churches or religious denominations in corporate capacity prohibited.

1 (a) A foreign corporation, in order to procure a
2 certificate of authority to conduct affairs, or do or trans-

3 act business in this state, shall make application therefor
4 to the secretary of state, which application shall set
5 forth:

6 (1) The name of the corporation and the state or
7 country under the laws of which it is incorporated.

8 (2) If the name of the corporation does not contain
9 the word "corporation," "company," "incorporated" or
10 "limited," or does not contain an abbreviation of one of
11 such words, then the name of the corporation with the
12 word or abbreviation which it elects to add thereto for
13 use in this state.

14 (3) The date of incorporation and the period of dura-
15 tion of the corporation.

16 (4) The address of the principal office of the cor-
17 poration in the state or country under the laws of which
18 it is incorporated.

19 (5) The address of the principal office of the cor-
20 poration in this state if such corporation has or intends
21 to have a principal office located in this state.

22 (6) The purpose or purposes of the corporation which
23 it proposes to pursue in conducting its affairs or doing
24 or transacting its business in this state.

25 (7) The names and respective addresses of the direc-
26 tors and officers of the corporation.

27 (8) Such additional information as may be neces-
28 sary or appropriate in order to enable the secretary of
29 state to determine whether such corporation is entitled
30 to a certificate of authority to conduct its affairs or do
31 or transact business in this state and to determine and
32 assess the fees payable as prescribed by law.

33 (9) The county wherein the corporation intends to
34 record its articles of incorporation, amendments or re-
35 statement of such articles of incorporation, pursuant to
36 the provisions of subsection (c) of section fifty-four of
37 this article.

38 (b) In the case of a business corporation, in addition

39 to those matters required to be set forth under the pro-
40 visions of subsection (a) of this section, such application
41 shall set forth:

42 (1) A statement of the aggregate number of shares
43 which the corporation has authority to issue, itemized
44 by classes, par value of shares, shares without par value,
45 and series, if any, within a class.

46 (2) A statement of the aggregate number of issued
47 shares itemized by classes, par value of shares, shares
48 without par value, and series, if any, within a class.

49 (3) A statement, expressed in dollars, of the amount
50 of stated capital of the corporation, as defined in this
51 article.

52 (4) An estimate, expressed in dollars, of the value
53 of all property to be owned by the corporation, for the
54 following year, wherever located, and an estimate of the
55 value of the property of the corporation to be located
56 within this state during such year, and an estimate, ex-
57 pressed in dollars, of the gross amount of business which
58 will be done or transacted by the corporation during
59 such year, and an estimate of the gross amount thereof
60 which will be done or transacted by the corporation at
61 or from places of business in this state during such
62 year.

63 (c) Such application shall be made on forms pre-
64 scribed and furnished by the secretary of state and shall
65 be executed in duplicate by the corporation by its presi-
66 dent or vice president and by its secretary or an assistant
67 secretary, and verified by one of the officers signing such
68 application.

69 (d) No church, religious sect or denomination incor-
70 porated by the laws of any other state or territory of
71 the United States, the District of Columbia or of any
72 foreign country shall be qualified to conduct affairs or
73 do or transact business in this state in a corporate
74 capacity.

§31-1-54. Application for certificate of authority; filing; issuance of certificate; recordation; penalty for failure to record.

1 (a) Duplicate originals of the application of a for-
2 eign corporation for a certificate of authority shall be
3 delivered to the secretary of state, together with a copy
4 of its articles of incorporation and all amendments
5 thereto, or a proper restatement thereto, duly certified
6 by the proper officer of the state or country under the
7 laws of which it is incorporated, and a statement or
8 certificate from such officer that the corporation is in
9 good standing with the state or country under the laws
10 of which it is incorporated.

11 If the secretary of state finds that such application
12 conforms to law, he shall, when all fees have been paid
13 as prescribed by law, (i) endorse on each of such origi-
14 nals the word "Filed," and the month, day and year of
15 the filing thereof; (ii) file one of such duplicate originals
16 of the application and the copy of the articles of incor-
17 poration and amendments thereto; and (iii) issue a
18 certificate of authority to conduct affairs or to do or
19 transact business in this state, to which he shall affix
20 the other duplicate original application.

21 (b) The certificate of authority, together with the
22 duplicate original of the application affixed thereto by
23 the secretary of state, shall be returned to the corpora-
24 tion or its representative.

25 (c) The certificate of authority, together with a copy
26 of the articles of incorporation and all amendments
27 thereto, or a proper restatement thereof, shall be recorded
28 in the office of the county court of the county where the
29 principal office of the corporation in this state is located.
30 If such corporation does not maintain a principal office
31 in this state, such recordation may be completed in any
32 county in which it is conducting its affairs or doing or
33 transacting business. A failure to comply with the provi-
34 sions of this subsection within six months from the date
35 of issuance of a certificate of authority shall subject such
36 corporation to a fine of not more than one thousand
37 dollars.

§31-1-55. Effect of certificate of authority.

1 Upon the issuance of a certificate of authority by the
2 secretary of state and upon the proper recordation of
3 such certificate in accordance with the provisions of
4 subsection (c) of section fifty-four of this article, the
5 corporation shall be authorized to conduct affairs or do
6 or transact business in this state for those purposes
7 set forth in its application, subject, however, to the right
8 of this state to suspend or to revoke such authority
9 as provided in this article.

**§31-1-56. Change of principal office of foreign corporation;
statement required to be filed.**

1 (a) A foreign corporation authorized to conduct affairs
2 or do or transact business in this state may change the
3 place of its principal office in this state upon filing in
4 the office of the secretary of state a statement setting
5 forth:

6 (1) The name of the corporation.

7 (2) The address of its then principal office.

8 (3) The address to which the principal office is to
9 be changed.

10 (4) That such change was authorized by resolution
11 duly adopted by its board of directors.

12 (b) Such statement shall be executed by the corpora-
13 tion by its president or a vice president, and verified
14 by him and delivered to the secretary of state. If the
15 secretary of state finds that such statement conforms to
16 the provisions of this article, he shall file such statement
17 in his office, and upon such filing the change of address
18 of the principal office shall become effective. If such
19 foreign corporation maintains a principal office in this
20 state and changes the place of such principal office or
21 moves its principal office out of this state, or if such
22 corporation does not maintain a principal office in this
23 state and moves or changes the place of its principal
24 office, the statement required by this section to be filed
25 with the secretary of state shall be filed within ten days
26 after such move, and no such move or change of the

27 place of its principal office shall be deemed to be com-
28 pleted until such statement is so filed with the secretary
29 of state.

§31-1-57. Amendment to articles of incorporation of foreign corporation; filing; recordation; penalty for failure to record.

1 (a) Whenever the articles of incorporation of a for-
2 eign corporation authorized to conduct affairs or do or
3 transact business in this state are amended, such foreign
4 corporation shall, within thirty days after such amend-
5 ment becomes effective, file in the office of the secretary
6 of state a copy of such amendment duly authenticated
7 by the proper officer of the state or country under the
8 laws of which it is incorporated; but the filing thereof
9 shall not of itself enlarge or alter the purpose or pur-
10 poses which such corporation is authorized to pursue
11 in conducting its affairs or in doing or transacting its
12 business in this state, nor authorize such corporation
13 to conduct affairs or do or transact business in this state
14 under any other name than the name set forth in its
15 certificate of authority.

16 (b) The secretary of state shall issue to such cor-
17 poration a certificate showing the filing of such amend-
18 ment and collect a fee of five dollars for such certificate.
19 The certificate so issued by the secretary of state, to-
20 gether with a true copy of the amendment, shall be
21 recorded in the office of the clerk of the county court
22 of the county in which its original certificate of authority
23 was recorded, pursuant to the provisions of subsection
24 (c) of section fifty-four of this article.

25 A failure to comply with the provisions of this sub-
26 section within six months from the date of such amend-
27 ment shall subject such corporation to a fine of not more
28 than one thousand dollars.

§31-1-58. Merger of foreign corporation authorized to conduct affairs or do or transact business in this state; filing of articles of merger; recordation; penalty for failure to record.

1 (a) Whenever a foreign corporation authorized to

2 conduct affairs or do or transact business in this state
3 shall be a party to a merger permitted by the laws of the
4 state or country under the laws of which it is incor-
5 porated, and such corporation shall be the surviving cor-
6 poration, it shall, within thirty days after such merger
7 becomes effective, file with the secretary of state a copy
8 of the articles of merger duly authenticated by the proper
9 officer of the state or country under the laws of which
10 such merger was effected; and it shall not be necessary
11 for such corporation to procure either a new or amended
12 certificate of authority to conduct affairs or do or trans-
13 act business in this state unless the name of such cor-
14 poration be changed thereby or unless the corporation
15 desires to pursue in this state other or additional purposes
16 than those which it is then authorized to pursue in this
17 state.

18 (b) The secretary of state shall issue to such sur-
19 viving corporation a certificate showing the filing of a
20 copy of the articles of merger and collect a fee of five
21 dollars for such certificate. The certificate so issued by
22 the secretary of state, together with a true copy of the
23 articles of merger, shall be recorded in the office of the
24 clerk of the county court of the county in which its
25 original certificate of authority was recorded, pursuant
26 to the provisions of subsection (c) of section fifty-four
27 of this article.

28 A failure to comply with the provisions of this sub-
29 section within six months from the date of such merger
30 shall subject such corporation to a fine of not more than
31 one thousand dollars.

**§31-1-59. Amended certificate of authority; requirements; re-
cordation; penalty for failure to record.**

1 A foreign corporation authorized to conduct affairs or
2 do or transact business in this state shall procure an
3 amended certificate of authority in the event it changes
4 its corporate name, or desires to pursue in this state
5 purposes other than or in addition to those purposes
6 set forth in its prior application for a certificate of au-

7 thority, by making application therefor to the secretary
8 of state.

9 The requirements in respect to the form and contents
10 of such application, the manner of its execution, the
11 filing of duplicate originals thereof with the secretary
12 of state, the issuance of an amended certificate of au-
13 thority and the effect thereof, and the recordation require-
14 ments for such amended certificate of authority shall
15 be the same as in the case of an original application for
16 a certificate of authority.

17 A failure to comply with the provisions of this section
18 within six months from the date of such change of cor-
19 porate name or purposes shall subject such corporation
20 to a fine of not more than one thousand dollars.

**§31-1-60. Procedure for withdrawal of foreign corporation;
publication required; application for certificate of
withdrawal; contents; filing; issuance of certifi-
cate; recordation.**

1 (a) A foreign corporation authorized to conduct
2 affairs or do or transact business in this state may with-
3 draw from this state upon procuring from the secretary
4 of state a certificate of withdrawal. In order to procure
5 such certificate of withdrawal, such foreign corporation
6 shall publish a notice of its intention to withdraw from
7 the state, such notice to be published as a Class II legal
8 advertisement in compliance with the provisions of article
9 three, chapter fifty-nine of this code, and the publica-
10 tion area for such publication shall be the county in which
11 its principal office in this state is situated, or if there be
12 no such office in this state, then any county in this state
13 where it conducts its affairs or transacts its business.

14 (b) After publication of the notice required by the
15 provisions of subsection (a) of this section, such foreign
16 corporation shall make application to the secretary of
17 state for a certificate of withdrawal, which application
18 shall set forth:

19 (1) The name of the corporation and the state or
20 country under the laws of which it is incorporated.

21 (2) That the corporation has ceased conducting affairs
22 or has ceased doing or transacting business in this state.

23 (3) That the corporation surrenders its authority to
24 conduct affairs or do or transact business in this state.

25 (4) A post-office address to which the secretary of
26 state may mail a copy of any process against the cor-
27 poration that may be served on him.

28 (5) Such additional information as may be necessary
29 or appropriate in order to enable the secretary of state
30 to determine and assess any unpaid fees payable by
31 such foreign corporation as may be prescribed by
32 law.

33 (c) In the case of a business corporation, in addition
34 to those matters required to be set forth under the pro-
35 visions of subsection (b) of this section, such application
36 shall set forth:

37 (1) A statement of the aggregate number of shares
38 which the corporation has authority to issue, itemized
39 by classes, par value of shares, shares without par value,
40 and series, if any, within a class, as of the date of such
41 application.

42 (2) A statement of the aggregate number of issued
43 shares, itemized by classes, par value of shares, shares
44 without par value, and series, if any, within a class, as
45 of the date of such application.

46 (3) A statement, expressed in dollars, of the amount
47 of stated capital of the corporation, as of the date of
48 such application.

49 (d) The application for a certificate of withdrawal shall
50 be made on forms prescribed and furnished by the sec-
51 retary of state and shall be executed by the corporation
52 by its president or a vice president and by its secretary
53 or an assistant secretary, and verified by one of the
54 officers signing the application, or, if the corporation is
55 in the hands of a receiver or trustee, shall be executed
56 on behalf of the corporation by such receiver or trustee
57 and verified by him. Such application shall be accom-

58 panied by a copy of the notice required to be published
59 under the provisions of subsection (a) of this section
60 and the publisher's certificate of such publication.

61 (e) Duplicate originals of such application for a
62 certificate of withdrawal shall be delivered to the secre-
63 tary of state. If the secretary of state finds that such
64 application conforms to law, he shall, when all fees have
65 been paid, as prescribed by law, (i) endorse on each of
66 such duplicate originals the word "Filed," and the month,
67 day and year of the filing thereof; (ii) file one of such
68 duplicate originals in his office; and (iii) subject to the
69 provisions of section sixty-one of this article, issue a
70 certificate of withdrawal to which he shall affix the other
71 duplicate original.

72 (f) The certificate of withdrawal, together with the
73 duplicate original of the application for withdrawal
74 affixed thereto by the secretary of state, shall be returned
75 to the corporation or its representative. The corporation
76 or its representative shall record the certificate of with-
77 drawal in the office of the clerk of the county court in
78 which the corporation's certificate of authority is re-
79 corded, and the clerk shall note on the margin of the
80 record book in which such certificate of authority is en-
81 grossed the fact of the withdrawal of the corporation,
82 and upon the recordation of such certificate of with-
83 drawal, the authority of the corporation to conduct affairs
84 or do or transact business in this state shall cease.

**§31-1-61. Certificate as to taxes prerequisite for issuance of
dissolution, withdrawal, consolidation or merger,
or expiration.**

1 The secretary of state shall withhold the issuance of
2 any certificate of dissolution or withdrawal, or certificate
3 of consolidation or merger in the case where the new
4 or surviving corporation will be a foreign corporation
5 which has not qualified to conduct affairs or do or trans-
6 act business or hold property in this state, nor shall any
7 corporation expire by virtue of its articles of incor-
8 poration or amendment thereto, until the receipt by the
9 secretary of state of a notice from the tax commissioner

10 and department of employment security to the effect
11 that all taxes due from said corporation under the pro-
12 visions of chapter eleven of this code, including, but not
13 limited to, taxes withheld under the provisions of section
14 seventy-one, article twenty-one of said chapter eleven,
15 all business and occupation taxes, motor carrier and
16 transportation privilege taxes, gasoline taxes, consumer
17 sales taxes and any and all license, franchise or other
18 excise taxes and corporate net income taxes, and em-
19 ployment security payments levied or assessed against
20 the corporation seeking to withdraw, dissolve, consolidate,
21 merge or expire have been paid or that such payment
22 has been provided for, or until the secretary of state
23 receives a notice from the tax commissioner or depart-
24 ment of employment security, as the case may be, stating
25 that the corporation in question is not subject to payment
26 of any such taxes or to the making of any employment
27 security payments or assessments.

§31-1-62. Conditions for revocation of certificate of authority.

1 (a) Subject to the provisions of section sixty-eight of
2 this article, the certificate of authority of a foreign cor-
3 poration to conduct affairs or do or transact business
4 in this state may be revoked by the secretary of state
5 upon the conditions prescribed in this section when:

6 (1) The corporation has failed, after change of its
7 principal office to file in the office of the secretary of
8 state a statement of such change as required by section
9 fifty-six of this article, or

10 (2) The corporation has failed to file in the office
11 of the secretary of state any amendment to its articles
12 of incorporation as required by the provisions of section
13 fifty-seven of this article, or

14 (3) The corporation has failed to file in the office
15 of the secretary of state any articles of merger, as re-
16 quired by the provisions of section fifty-eight of this
17 article, or

18 (4) A misrepresentation has been made of any ma-
19 terial matter in any application, report, affidavit or other

20 document submitted by such corporation pursuant to the
21 provisions of this article.

22 (b) No certificate of authority of a foreign corpora-
23 tion shall be revoked by the secretary of state un-
24 less:

25 (1) He shall have given the corporation not less than
26 sixty days' notice thereof by registered or certified mail,
27 return receipt requested, addressed to its principal office
28 in this state, or if the corporation has no such principal
29 office in this state, then to its principal office outside
30 this state, and

31 (2) The corporation shall fail, prior to revocation,
32 to file the required statement of change of principal
33 office or shall fail to file any amendment to its articles
34 of incorporation or shall fail to file any articles of merger
35 or shall fail to correct any such misrepresentation.

§31-1-63. Issuance of order of revocation; period of appeal.

1 (a) Upon revoking any certificate of authority, the
2 secretary of state shall issue an order of revocation in
3 duplicate, one of which shall be filed in his office and
4 the other shall be mailed by registered or certified
5 mail, return receipt requested, to the corporation at
6 its principal office in this state, or if the corporation
7 has no such principal office in this state, then to its
8 principal office outside this state, and a copy of the
9 notice required by the provisions of subsection (b) of
10 section sixty-two of this article shall be attached
11 thereto.

12 (b) Such corporation shall have thirty days from
13 the date of receipt of such order of revocation to appeal
14 the action of the secretary of state in accordance with
15 the provisions of section sixty-eight of this article, and
16 if such appeal be not taken within such thirty-day period,
17 then the order of the secretary of state revoking the
18 certificate of authority of such corporation shall be final
19 and the authority of the corporation to conduct affairs
20 or do or transact business in this state shall cease.

§31-1-64. Conditions of expiration of corporate existence.

1 Irrespective of any provisions of any articles of in-
2 corporation or amendment thereto, no corporation shall
3 expire by virtue of its own articles of incorporation or
4 amendment thereto until such time as such corporation
5 has fully complied with all of the provisions of this
6 article relating to the voluntary dissolution of corpora-
7 tions, and the existence of any such corporation shall
8 continue beyond the expiration date established in its
9 charter or amendment thereto for all intents and pur-
10 poses until such corporation shall have been dissolved in
11 accordance with the provisions of this article.

12 When any such corporation has fully complied with
13 the provisions of this article relating to the voluntary
14 dissolution of corporations, the secretary of state shall
15 issue a certificate of dissolution which shall be recorded
16 in the same county and in the same manner as would
17 be the case for other certificates of dissolution.

§31-1-65. Application to corporations heretofore authorized to conduct affairs or do or transact business in this state.

1 Subject to the limitations set forth in their respective
2 certificates of authority, foreign corporations which are
3 duly authorized to conduct affairs or do or transact busi-
4 ness in this state at the time this article takes effect, for
5 a purpose or purposes for which a corporation might
6 secure such authority under this article, shall be en-
7 titled to all the rights and privileges applicable to foreign
8 corporations procuring certificates of authority to con-
9 duct affairs or do or transact business in this state under
10 this article, and shall not be required to make reapplica-
11 tion for authority to conduct affairs or do or transact
12 business in this state by reason of the adoption of this
13 article. From the time this article takes effect such cor-
14 porations shall be subject to all the limitations, restric-
15 tions, liabilities and duties prescribed herein for foreign
16 corporations procuring certificates of authority to con-
17 duct affairs or do or transact business in this state.

§31-1-66. Conducting affairs or doing or transacting business without certificate of authority.

1 No foreign corporation which is conducting affairs or
2 doing or transacting business in this state without a
3 certificate of authority shall be permitted to maintain
4 any action or proceeding in any court of this state until
5 such corporation shall have obtained a certificate of
6 authority. Nor shall any action or proceeding be main-
7 tained in any court of this state by any successor or
8 assignee of such corporation on any right, claim or de-
9 mand arising out of the conducting of affairs or the
10 doing or transacting of business by such corporation in
11 this state, until a certificate of authority shall have been
12 obtained by such corporation or by a corporation which
13 has acquired all or substantially all of its assets.

14 The failure of a foreign corporation to obtain a cer-
15 tificate of authority to conduct affairs or do or transact
16 business in this state shall not impair the validity of
17 any contract or act of such corporation, and shall not
18 prevent such corporation from defending any action
19 or proceeding in any court of this state.

20 A foreign corporation which conducts affairs or does
21 or transacts business in this state without a certificate of
22 authority shall be liable to this state, for the years or
23 parts thereof during which it conducted affairs or did
24 or transacted business in this state without a certificate
25 of authority, in an amount equal to all fees and taxes
26 which would have been imposed by this article, or by
27 any other provisions of this code, upon such corporation
28 had it duly applied for and received a certificate of au-
29 thority to conduct affairs or do or transact business in
30 this state as required by this article and thereafter filed
31 all reports, statements or returns required by this article
32 or by any other provisions of this code, plus all penalties
33 imposed for failure to pay any such fees and taxes.

§31-1-67. Powers of secretary of state; rules and regulations.

1 The secretary of state shall have the power and author-
2 ity reasonably necessary to enable him to administer

3 this article efficiently and to perform the duties therein
4 imposed upon him.

5 The secretary of state may, from time to time, as he
6 deems necessary, promulgate rules and regulations in
7 accordance with the provisions of chapter twenty-nine-a
8 of this code in order to implement and make effective
9 the powers and duties vested in him by the provisions
10 of this article.

§31-1-68. Appeal from secretary of state.

1 (a) If the secretary of state shall fail to approve
2 any articles of incorporation, amendment, merger, consoli-
3 dation or dissolution, or shall fail to issue any certificate
4 of authority to any foreign corporation seeking to con-
5 duct affairs or do or transact business in this state, or
6 shall fail to issue any certificate of withdrawal to any
7 foreign corporation, or shall revoke any such certificate
8 of authority, or shall fail to permit the expiration of any
9 corporation, or shall fail to approve any other document
10 required by this article to be approved by the secretary
11 of state before the same shall be filed in his office, he
12 shall, within ten days after the delivery thereof to him,
13 give written notice of his ruling, disapproval or decision
14 to the person or corporation, domestic or foreign, deliv-
15 ering or desiring the same, specifying the reasons there-
16 for. Such notice shall be given by registered or certified
17 mail, return receipt requested, to the principal office
18 of the corporation or to the address where such prin-
19 cipal office is proposed to be situated.

20 (b) Any person or corporation aggrieved by any such
21 ruling, disapproval or decision may appeal to the cir-
22 cuit court of the county in which the principal office
23 of such corporation is situated, or is proposed to be situ-
24 ated, or if such principal office is to be located outside
25 this state, then such appeal will be to the circuit court
26 of Kanawha county. Such appeal shall be taken within
27 thirty days from the date of receipt of the notice of the
28 ruling, disapproval or decision of the secretary of state
29 by filing a petition for a writ of certiorari in the appro-
30 priate court, together with a copy of the notice of the
31 secretary of state and such other matters as may be

32 deemed appropriate. Upon any such appeal, such court
33 shall either sustain the action of the secretary of state
34 or direct him to take such action as the court may deem
35 proper.

36 Appeals from all final orders and judgments entered
37 by the court under this section in review of any ruling,
38 disapproval or decision of the secretary of state may be
39 taken as in other civil actions.

§31-1-69. Certificates and certified copies to be received in evidence.

1 All certificates issued by the secretary of state in
2 accordance with the provisions of this article, and all
3 copies of documents filed in his office in accordance with
4 the provisions of this article when certified by him, shall
5 be taken and received in all courts, public offices and
6 official bodies as prima facie evidence of the facts therein
7 stated. A certificate by the secretary of state under the
8 great seal of this state, as to the existence or nonexistence
9 of the facts relating to corporations shall be taken and
10 received in all courts, public offices, and official bodies
11 as prima facie evidence of the existence or nonexistence
12 of the facts therein stated.

§31-1-70. Forms to be furnished by secretary of state.

1 All reports required by this article to be filed in the
2 office of the secretary of state shall be made on forms
3 which shall be prescribed and furnished by the secretary
4 of state. Forms for all other documents to be filed in
5 the office of the secretary of state shall be furnished
6 by the secretary of state on request therefor, but the
7 use thereof, unless otherwise specifically prescribed in
8 this article, shall not be mandatory.

§31-1-71. Greater voting requirements.

1 Whenever, with respect to any action to be taken by
2 the directors, members or shareholders of a corpora-
3 tion, the articles of incorporation or bylaws require the
4 vote or concurrence of a greater proportion of the direc-
5 tors or members or any class of members or of the
6 holders of the shares, or of any class or series of shares,

7 than required by this article with respect to such action,
8 the provisions of the articles of incorporation or bylaws
9 shall control.

§31-1-72. Waiver of notice.

1 Whenever any notice is required to be given to any
2 shareholder, member or director of a corporation under
3 the provisions of this article or under the provisions of
4 the articles of incorporation or bylaws of the corpora-
5 tion, a waiver thereof in writing signed by the person
6 or persons entitled to such notice, filed with the records
7 of the meeting, whether before or after the time stated
8 therein, shall be equivalent to the giving of such notice.
9 Further, notice of the time, place or purpose of any meet-
10 ing of shareholders, members or directors, whether re-
11 quired by the provisions of this article or by the bylaws
12 of the corporation may be dispensed with if every share-
13 holder or member shall attend either in person or by
14 proxy, or if every director shall attend in person.

**§31-1-73. Action by shareholders, members or directors with-
out a meeting.**

1 (a) Whenever the vote of shareholders or members
2 at a meeting thereof is required or permitted to be
3 taken in connection with any corporate action, the meet-
4 ing and vote of such shareholders or members may be
5 dispensed with if all of the shareholders or members
6 who would have been entitled to vote upon the action,
7 if such meeting were held, shall agree in writing to such
8 corporate action being taken, and such agreement shall
9 have like effect and validity as though the action were
10 duly taken by the unanimous action of all shareholders
11 or members entitled to vote at a meeting of such share-
12 holders or members duly called and legally held.

13 (b) Whenever the vote of directors at a meeting there-
14 of is required or permitted to be taken in connection with
15 any corporate action, the meeting and vote of such direc-
16 tors may be dispensed with if all the directors shall agree
17 in writing to such corporate action being taken, and such
18 agreement shall have like effect and validity as though the
19 action were duly taken by the unanimous action of all di-

20 rectors at a meeting of such directors duly called and
21 legally held.

22 (c) In the event that the action which is agreed to,
23 as provided for in subsection (a) or (b) of this section,
24 is such as would have required the filing of any articles,
25 document or certificate with the secretary of state under
26 any provision of this article, if such action had been
27 voted upon by the shareholders or members or by the
28 directors at a meeting, the articles, document or certifi-
29 cate so filed shall state that written agreement has been
30 executed in lieu of stating that the shareholders, mem-
31 bers or directors voted upon the corporate action in
32 question and such articles, document or certificate shall
33 have the same force and effect under all provisions of
34 law as if the action had been taken by the unanimous
35 vote of all shareholders or members entitled to vote,
36 or of all the directors, at a meeting duly called and legally
37 held.

§31-1-74. Corporate acknowledgments.

1 A corporation may acknowledge any instrument re-
2 quired by law to be acknowledged by its attorney
3 appointed under seal, and such appointment may be
4 embodied in the deed or instrument to be acknowledged,
5 or be made by a separate instrument; or such deed or
6 other instrument may be acknowledged by the presi-
7 dent or any vice president of such corporation without
8 such appointment.

**§31-1-75. Exemption of intangible property of corporations
not conducting affairs or doing business in state
from taxes.**

1 No state or local taxes shall be imposed upon the
2 stocks, bonds, investments, credits or other intangible
3 property owned by any corporation organized under the
4 laws of this state which conducts no affairs or which
5 does or transacts no part of its business in this state.

**§31-1-76. Fees and charges to be collected by secretary of
state.**

1 Except as otherwise specifically provided in this article,

2 all fees required to be charged and collected by the secre-
3 tary of state by the provisions of this article shall be
4 charged and collected in accordance with the provisions
5 of section two, article one, chapter fifty-nine of this code.

PART III. BUSINESS CORPORATIONS.

§31-1-77. Use of term "corporation."

1 As used in Part III of this article, the term "corpora-
2 tion" shall refer exclusively to business corporations.

§31-1-78. Authorized shares.

1 Each corporation shall have power to create and issue
2 the number of shares stated in its articles of incorpora-
3 tion. Such shares may be divided into one or more
4 classes, any or all of which classes may consist of shares
5 with par value or shares without par value, with such
6 designations, preferences, limitations and relative rights
7 as shall be stated in the articles of incorporation. The
8 articles of incorporation may limit or deny the voting
9 rights of or provide special voting rights for the shares
10 of any class to the extent not inconsistent with the provi-
11 sions of this article.

12 Without limiting the authority herein contained, a
13 corporation, when so provided in its articles of incor-
14 poration, may issue shares of preferred or special
15 classes:

16 (a) Subject to the right of the corporation to redeem
17 any of such shares at the price fixed by the articles of
18 incorporation for the redemption thereof.

19 (b) Entitling the holders thereof to cumulative, non-
20 cumulative or partially cumulative dividends.

21 (c) Having preference over any other class or classes
22 of shares as to the payment of dividends.

23 (d) Having preference in the assets of the corpora-
24 tion over any other class or classes of shares upon the
25 voluntary or involuntary liquidation of the corporation.

26 (e) Convertible into shares of any other class or into
27 shares of any series of the same or any other class, except

28 a class having prior or superior rights and preferences
29 as to dividends or distribution of assets upon liquida-
30 tion, but shares without par value shall not be converted
31 into shares with par value unless that part of the stated
32 capital of the corporation represented by such shares
33 without par value is, at the time of conversion, at least
34 equal to the aggregate par value of the shares into which
35 the shares without par value are to be converted or the
36 amount of any such deficiency is transferred from surplus
37 to stated capital.

§31-1-79. Issuance of shares of preferred or special classes in series; manner and procedures of issuance; filing of statement and effect thereof.

1 (a) If the articles of incorporation so provide, the
2 shares of any preferred or special class may be divided
3 into and issued in series. If the shares of any such class
4 are to be issued in series, then each series shall be so
5 designed as to distinguish the shares thereof from the
6 shares of all other series and classes. Any or all of the
7 series of any such class and the variations in the rela-
8 tive rights and preferences as between different series
9 may be fixed and determined by the articles of incor-
10 poration, but all shares of the same class shall be iden-
11 tical except as to the following relative rights and pref-
12 erences, as to which there may be variations between
13 different series:

14 (1) The rate of dividend.

15 (2) Whether shares may be redeemed and, if so, the
16 redemption price and the terms and conditions of re-
17 demption.

18 (3) The amount payable upon shares in event of
19 voluntary and involuntary liquidation.

20 (4) Sinking fund provisions, if any, for the redemp-
21 tion or purchase of shares.

22 (5) The terms and conditions, if any, on which shares
23 may be converted.

24 (6) Voting rights if any.

25 (b) If the articles of incorporation shall expressly vest

26 authority in the board of directors, then, to the extent
27 that the articles of incorporation shall not have estab-
28 lished series and fixed and determined the variations
29 in the relative rights and preferences as between series,
30 the board of directors shall have authority to divide
31 any or all of such classes into series and, within the
32 limitations set forth in this section and in the articles
33 of incorporation, fix and determine the relative rights
34 and preferences of the shares of any series so established.

35 In order for the board of directors to establish a series,
36 where authority so to do is contained in the articles of
37 incorporation, the board of directors shall adopt a resolu-
38 tion setting forth the designation of the series and fixing
39 and determining the relative rights and preferences
40 thereof, or so much thereof as shall not be fixed and
41 determined by the articles of incorporation.

42 Prior to the issue of any shares of a series established
43 by resolution adopted by the board of directors, the
44 corporation shall file in the office of the secretary of
45 state a statement setting forth:

46 (1) The name of the corporation.

47 (2) A copy of the resolution establishing and desig-
48 nating the series, and fixing and determining the rela-
49 tive rights and preferences thereof.

50 (3) The date of adoption of such resolution.

51 (4) That such resolution was duly adopted by the
52 board of directors.

53 (c) Such statement shall be executed in duplicate
54 by the corporation by its president or a vice president
55 and by its secretary or an assistant secretary, and veri-
56 fied by one of the officers signing such statement, and
57 shall be delivered to the secretary of state. If the secre-
58 tary of state finds that such statement conforms to law,
59 he shall, when all fees have been paid as prescribed by
60 law, (i) endorse on each of such duplicate originals
61 the word "Filed," and the month, day and year of the
62 filing thereof; (ii) file one of such duplicate originals
63 in his office; and (iii) return the other duplicate origi-
64 nal to the corporation or its representative.

65 (d) Upon the filing of such statement by the secre-
66 tary of state, the resolution establishing and designating
67 the series and fixing and determining the relative rights
68 and preferences thereof shall become effective and shall
69 constitute an amendment of the articles of incorporation.

§31-1-80. Subscription for shares.

1 A subscription for shares of a corporation to be organ-
2 ized shall be irrevocable for a period of six months,
3 unless otherwise provided by the terms of the subscrip-
4 tion agreement or unless all of the subscribers consent
5 to the revocation of such subscription.

6 Unless otherwise provided in the subscription agree-
7 ment, subscriptions for shares, whether made before or
8 after the organization of a corporation, shall be paid in
9 full at such time, or in such installments and at such
10 times, as shall be determined by the board of directors.
11 Any call made by the board of directors for payment
12 on subscriptions shall be uniform as to all shares of
13 the same class or as to all shares of the same series, as
14 the case may be. In case of default in the payment of
15 any installment or call when such payment is due, the
16 corporation may proceed to collect the amount due in
17 the same manner as any debt due the corporation. The
18 bylaws may prescribe other penalties for failure to pay
19 installments or calls that may become due, but no pen-
20 alty working a forfeiture of a subscription, or of the
21 amounts paid thereon, shall be declared as against any
22 subscriber unless the amount due thereon shall remain
23 unpaid for a period of twenty days after written de-
24 mand has been made therefor. If mailed, such written
25 demand shall be deemed to be made when deposited
26 in the United States mail in a sealed envelope addressed
27 to the subscriber at his last post-office address known
28 to the corporation, with postage thereon prepaid. In
29 the event of the sale of any shares by reason of any
30 forfeiture, the excess of proceeds realized over the amount
31 due and unpaid on such shares shall be paid to the
32 delinquent subscriber or to his legal representative.

§31-1-81. Consideration for shares.

1 Shares having a par value may be issued for such

2 consideration expressed in dollars, not less than the par
3 value thereof, as shall be fixed from time to time by
4 the board of directors.

5 Shares without par value may be issued for such
6 consideration expressed in dollars as may be fixed from
7 time to time by the board of directors unless the articles
8 of incorporation reserve to the shareholders the right
9 to fix the consideration. In the event that such right
10 be reserved as to any shares, the shareholders shall,
11 prior to the issuance of such shares, fix the consideration
12 to be received for such shares, by a vote of the holders
13 of a majority of all shares entitled to vote thereon.

14 Treasury shares may be disposed of by the corpora-
15 tion for such consideration expressed in dollars as may
16 be fixed from time to time by the board of directors.

17 That part of the surplus of a corporation which is
18 transferred to stated capital upon the issuance of shares
19 as a share dividend shall be deemed to be the consider-
20 ation for the issuance of such shares.

21 In the event of the issuance of shares upon the conver-
22 sion or exchange of indebtedness or shares, the consider-
23 ation for the shares so issued shall be (1) the principal
24 sum of, and accrued interest on, the indebtedness so
25 exchanged or converted, or the stated capital then repre-
26 sented by the shares so exchanged or converted, and
27 (2) that part of surplus, if any, transferred to stated
28 capital upon the issuance of shares for the shares so
29 exchanged or converted, and (3) any additional consid-
30 eration paid to the corporation upon the issuance of shares
31 for the indebtedness or shares so exchanged or converted.

§31-1-82. Payment for shares.

1 The consideration for the issuance of shares may be
2 paid, in whole or in part, in cash, in other property,
3 tangible or intangible, or in labor or services actually
4 performed for the corporation. When payment of the
5 consideration for which shares are to be issued shall have
6 been received by the corporation, such shares shall be
7 deemed to be fully paid and nonassessable.

8 Neither promissory notes nor future services shall
9 constitute payment or part payment for the issuance of
10 shares of a corporation.

11 In the absence of fraud in the transaction, the judg-
12 ment of the board of directors or the shareholders, as
13 the case may be, as to the value of the consideration
14 received for shares shall be conclusive.

§31-1-83. Rights of corporation to acquire and dispose of its own shares.

1 Subject to the provisions of chapter thirty-one-a of this
2 code and unless otherwise prohibited by law, a corpora-
3 tion shall have the right to purchase, take, receive or
4 otherwise acquire, hold, own, pledge, transfer or other-
5 wise dispose of its own shares, but purchases of its
6 own shares, whether direct or indirect, shall be made
7 only to the extent of unreserved and unrestricted earned
8 surplus available therefor, and, if the articles of incor-
9 poration so permit or with the affirmative vote of the
10 holders of a majority of all shares entitled to vote
11 thereon, to the extent of unreserved and unrestricted
12 capital surplus available therefor.

13 To the extent that earned surplus or capital surplus
14 is used as the measure of the corporation's right to pur-
15 chase its own shares, such surplus shall be restricted
16 so long as such shares are held as treasury shares, and
17 upon the disposition or cancellation of any such shares
18 the restriction shall be removed pro tanto.

19 Notwithstanding the foregoing limitation, a corpora-
20 tion may purchase or otherwise acquire its own shares
21 for the purpose of:

22 (a) Eliminating fractional shares.

23 (b) Collecting or compromising indebtedness to the
24 corporation.

25 (c) Paying dissenting shareholders entitled to pay-
26 ment for their shares under the provisions of this article.

27 (d) Effecting, subject to the other provisions of this
28 article, the retirement of its redeemable shares by re-

29 demption or by purchase at not to exceed the redemp-
30 tion price.

31 No purchase of or payment for its own shares shall be
32 made at a time when the corporation is insolvent or when
33 such purchase or payment would make it insolvent.

§31-1-84. Stock rights and options.

1 Subject to the provisions of section ninety of this
2 article and further subject to any provisions in respect
3 thereof set forth in its articles of incorporation, a corpo-
4 ration may create and issue, whether or not in connec-
5 tion with the issuance and sale of any of its shares or
6 other securities, rights or options entitling the holders
7 thereof to purchase from the corporation shares of any
8 class or classes. Such rights or options shall be evi-
9 denced in such manner as the board of directors shall
10 approve and, subject to the provisions of the articles
11 of incorporation, shall set forth the terms upon which,
12 the time or times within which and the price or prices
13 at which such shares may be purchased from the corpo-
14 ration upon the exercise of any such right or option.
15 If such rights or options are to be issued to directors,
16 officers or employees as such of the corporation or of
17 any subsidiary thereof, and not to the shareholders
18 generally, their issuance shall be approved by the affirma-
19 tive vote of the holders of a majority of the shares
20 entitled to vote such a vote of shareholders. In the
21 absence of fraud in the transaction, the judgment of
22 the board of directors as to the adequacy of the consid-
23 eration received for such rights or options shall be
24 conclusive. The price or prices to be received for any
25 shares having a par value, other than treasury shares
26 to be issued upon the exercise of such rights or options,
27 shall not be less than the par value thereof.

§31-1-85. Determination of amount of stated capital.

1 In case of the issuance by a corporation of shares hav-
2 ing a par value, the consideration received therefor
3 shall constitute stated capital to the extent of the par
4 value of such shares, and the excess, if any, of such
5 consideration shall constitute capital surplus.

6 In case of the issuance by a corporation of shares with-
7 out par value, the entire consideration received therefor
8 shall constitute stated capital unless the corporation shall
9 determine as provided in this section that only a part
10 thereof shall be stated capital. Within a period of sixty
11 days after the issuance of any shares without par value,
12 the board of directors may allocate to capital surplus
13 any portion of the consideration received for the issuance
14 of such shares. No such allocation shall be made of any
15 portion of the consideration received for shares without
16 par value having a preference in the assets of the corpo-
17 ration in the event of involuntary liquidation except
18 the amount, if any, of such consideration in excess of such
19 preference.

20 If shares have been or shall be issued by a corporation
21 in merger or consolidation or in acquisition of all or
22 substantially all of the outstanding shares or of the
23 property and assets of another corporation, whether
24 domestic or foreign, any amount that would otherwise
25 constitute capital surplus under the foregoing provi-
26 sions of this section may instead be allocated to earned
27 surplus by the board of directors of the issuing corpo-
28 ration except that its aggregate earned surplus shall not
29 exceed the sum of the earned surpluses as defined in this
30 article of the issuing corporation and all other corpora-
31 tions, domestic or foreign, which were merged or consoli-
32 dated or of which the shares or assets were acquired.

33 The stated capital of a corporation may be increased
34 from time to time by resolution of the board of directors
35 directing that all or a part of the surplus of the corpo-
36 ration be transferred to stated capital. The board of
37 directors may direct that the amount of the surplus so
38 transferred shall be deemed to be stated capital in respect
39 of any designated class of shares.

**§31-1-86. Expenses of organization, reorganization and financ-
ing.**

1 The reasonable charges and expenses of organization
2 or reorganization of a corporation, and the reasonable
3 expenses of and compensation for the sale or underwrit-

4 ing of its shares, may be paid or allowed by such corpo-
5 ration out of the consideration received by it in pay-
6 ment for its shares without thereby rendering such
7 shares not fully paid or accessible.

§31-1-87. Certificates representing shares.

1 The shares of a corporation shall be represented by
2 certificates signed by the president or a vice president
3 and the secretary or an assistant secretary of the cor-
4 poration, and may be sealed with the seal of the cor-
5 poration or a facsimile thereof. The signatures of the
6 president or vice president and the secretary or assistant
7 secretary upon a certificate may be facsimiles if the
8 certificate is manually signed on behalf of a transfer
9 agent or a registrar, other than the corporation itself or
10 an employee of the corporation. In case any officer who
11 has signed or whose facsimile signature has been placed
12 upon such certificate shall have ceased to be such officer
13 before such certificate is issued, it may be issued by the
14 corporation with the same effect as if he were such
15 officer at the date of its issue.

16 Every certificate representing shares issued by a cor-
17 poration which is authorized to issue shares of more
18 than one class shall set forth upon the face or back of
19 the certificate, or shall state that the corporation will
20 furnish to any shareholder upon request and without
21 charge, a full statement of the designations, preferences,
22 limitations, and relative rights of the shares of each class
23 authorized to be issued, and if the corporation is autho-
24 rized to issue any preferred or special class in series, the
25 variations in the relative rights and preferences between
26 the shares of each such series so far as the same have
27 been fixed and determined and the authority of the
28 board of directors to fix and determine the relative
29 rights and preferences of subsequent series.

30 Each certificate representing shares shall state upon
31 the face thereof:

32 (a) That the corporation is organized under the laws
33 of this state.

34 (b) The name of the person to whom issued.

35 (c) The number and class of shares, and the desig-
36 nation of the series, if any, which such certificate repre-
37 sents.

38 (d) The par value of each share represented by such
39 certificate, or a statement that the shares are without
40 par value.

41 No certificate shall be issued for any share until such
42 share is fully paid.

§31-1-88. Fractional shares.

1 A corporation may (1) issue fractions of a share, (2)
2 arrange for the disposition of fractional interests by those
3 entitled thereto, (3) pay in cash the fair value of frac-
4 tions of a share as of the time when those entitled to
5 receive such fractions are determined, or (4) issue scrip
6 in registered or bearer form which shall entitle the
7 holder to receive a certificate for a full share upon the
8 surrender of such scrip aggregating a full share. A cer-
9 tificate for a fractional share shall, but scrip shall not
10 unless otherwise provided therein, entitle the holder to
11 exercise voting rights, to receive dividends thereon, and
12 to participate in any of the assets of the corporation in
13 the event of liquidation. The board of directors may
14 cause scrip to be issued subject to the condition that it
15 shall become void if not exchanged for certificates rep-
16 resenting full shares before a specified date, or subject
17 to the condition that the shares for which scrip is ex-
18 changable may be sold by the corporation and the pro-
19 ceeds thereof distributed to the holders of scrip, or sub-
20 ject to any other conditions which the board of directors
21 may deem advisable.

§31-1-89. Liability of subscribers and shareholders.

1 A holder of or subscriber to shares of a corporation
2 shall be under no obligation to the corporation or its
3 creditors with respect to such shares other than the
4 obligation to pay to the corporation the full consideration
5 for which such shares were issued or to be issued.

6 Any person becoming an assignee or transferee of
7 shares or of a subscription for shares in good faith and

8 without knowledge or notice that the full consideration
9 therefor has not been paid shall not be personally liable
10 to the corporation or its creditors for any unpaid portion
11 of such consideration.

12 An executor, administrator, conservator, guardian,
13 trustee, assignee for the benefit of creditors, or receiver
14 shall not be personally liable to the corporation as a
15 holder of or subscriber to shares of a corporation but
16 the estate and funds in his hands shall be so liable.

17 No pledgee or other holder of shares as collateral se-
18 curity shall be personally liable as a shareholder.

§31-1-90. Shareholders' preemptive rights.

1 The articles of incorporation may contain such provi-
2 sions as may be desired limiting or denying to the share-
3 holders of a corporation the preemptive right to acquire
4 unissued or treasury shares of any or all classes or securi-
5 ties convertible into such shares or carrying a right to
6 subscribe to or acquire such shares.

§31-1-91. Closing of transfer books and fixing record date.

1 For the purpose of determining shareholders entitled
2 to notice of or to vote at any meeting of shareholders or
3 any adjournment thereof, or entitled to receive payment
4 of any dividend, or in order to make a determination of
5 shareholders for any other proper purpose, the board
6 of directors of a corporation may provide that the stock
7 transfer books shall be closed for a stated period but
8 not to exceed, in any case, fifty days. If the stock trans-
9 fer books shall be closed for the purpose of determining
10 shareholders entitled to notice of or to vote at a meeting
11 of shareholders, such books shall be closed for at least
12 ten days immediately preceding such meeting. In lieu
13 of closing the stock transfer books, the bylaws, or in the
14 absence of an applicable bylaw the board of directors,
15 may fix in advance a date as the record date for any
16 such determination of shareholders, such date in any
17 case to be not more than fifty days and, in case of a meet-
18 ing of shareholders, not less than ten days prior to the
19 date on which the particular action, requiring such de-

20 termination of shareholders, is to be taken. If the stock
21 transfer books are not closed and no record date is fixed
22 for the determination of shareholders entitled to notice
23 of or to vote at a meeting of shareholders, or shareholders
24 entitled to receive payment of a dividend, the date on
25 which notice of the meeting is mailed or the date on
26 which the resolution of the board of directors declaring
27 such dividend is adopted, as the case may be, shall be
28 the record date for such determination of shareholders.
29 When a determination of shareholders entitled to vote
30 at any meeting of shareholders has been made as pro-
31 vided in this section, such determination shall apply to
32 any adjournment thereof.

§31-1-92. Voting record.

1 The officer or agent having charge of the stock trans-
2 fer books for shares of a corporation shall make a com-
3 plete record of the shareholders entitled to vote at such
4 meeting or any adjournment thereof, arranged in alpha-
5 betical order, with the address of and the number of
6 shares held by each. Such record shall be produced and
7 kept open at the time and place of the meeting and shall
8 be subject to the inspection of any shareholder during
9 the whole time of the meeting for the purposes thereof.

10 Failure to comply with the requirements of this
11 section shall not affect the validity of any action taken
12 at such meeting.

13 An officer or agent having charge of the stock transfer
14 books who shall fail to prepare the record of share-
15 holders, or produce and keep it open for inspection at the
16 meeting, as provided in this section, shall be liable to
17 any shareholder suffering damage on account of such
18 failure, to the extent of such damage.

§31-1-93. Voting of shares.

1 Each outstanding share, regardless of class, shall be
2 entitled to one vote on each matter submitted to a vote
3 at a meeting of shareholders except as may be otherwise
4 provided in the articles of incorporation. If the articles
5 of incorporation provide for more or less than one vote

6 for any share, on any matter, every reference in this
7 article to a majority or other proportion of shares shall
8 refer to such a majority or other proportion of votes
9 entitled to be cast.

10 Neither treasury shares, nor shares held by another
11 corporation if a majority of the shares entitled to vote
12 for the election of directors of such other corporation is
13 held by the corporation, shall be voted at any meeting
14 or counted in determining the total number of outstanding
15 shares at any given time.

16 A shareholder may vote either in person or by proxy
17 executed in writing by the shareholder or by his duly
18 authorized attorney-in-fact. No proxy shall be valid
19 after eleven months from the date of its execution, unless
20 otherwise provided in the proxy.

21 At each election for directors every shareholder entitled
22 to vote at such election shall have the right to vote, in
23 person or by proxy, the number of shares owned by
24 him for as many persons as there are directors to be
25 elected and for whose election he has a right to vote,
26 or to cumulate his votes by giving one candidate as many
27 votes as the number of such directors multiplied by the
28 number of his shares shall equal, or by distributing such
29 votes on the same principle among any number of such
30 candidates.

31 Shares standing in the name of another corporation,
32 domestic or foreign, may be voted by such officer, agent
33 or proxy as the bylaws of such other corporation may
34 prescribe, or, in the absence of such provision, as the
35 board of directors of such other corporation may deter-
36 mine.

37 Shares held by an administrator, executor, guardian,
38 committee, curator or conservator may be voted by him,
39 either in person or by proxy, without a transfer of such
40 shares into his name. Shares standing in the name of
41 a trustee may be voted by him, either in person or by
42 proxy, but no trustee shall be entitled to vote shares
43 held by him without a transfer of such shares into his
44 name.

45 Shares standing in the name of a receiver may be
46 voted by such receiver, and shares held by or under the
47 control of a receiver may be voted by such receiver
48 without the transfer thereof into his name if authority
49 so to do be contained in an appropriate order of the court
50 by which such receiver was appointed.

51 A shareholder whose shares are pledged shall be en-
52 titled to vote such shares until the shares have been
53 transferred into the name of the pledgee, and thereafter
54 the pledgee shall be entitled to vote the shares so trans-
55 ferred.

56 On and after the date on which written notice of re-
57 demption of redeemable shares has been mailed to the
58 holders thereof and a sum sufficient to redeem such
59 shares has been deposited with a bank or trust company
60 with irrevocable instruction and authority to pay the
61 redemption price to the holders thereof upon surrender
62 of certificates therefor, such shares shall not be entitled
63 to vote on any matter and shall not be deemed to be
64 outstanding shares.

§31-1-94. Voting trusts and agreements among shareholders.

1 Any number of shareholders of a corporation may
2 create a voting trust for the purpose of conferring upon
3 a trustee or trustees the right to vote or otherwise rep-
4 resent their shares, for a period of not to exceed ten
5 years, by entering into a written voting trust agreement
6 specifying the terms and conditions of the voting trust,
7 by depositing a counterpart of the agreement with the
8 corporation at its principal office, and by transferring
9 their shares to such trustee or trustees for the purposes
10 of the agreement. Such trustee or trustees shall keep
11 a record of the holders of voting trust certificates evi-
12 dencing a beneficial interest in the voting trust, giving
13 the names and addresses of all such holders and the
14 number and class of the shares in respect of which the
15 voting trust certificates held by each are issued, and
16 shall deposit a copy of such record with the corporation
17 at its principal office. The counterpart of the voting
18 trust agreement and the copy of such record so deposited

19 with the corporation shall be subject to the same right
20 of examination by a shareholder of the corporation, in
21 person or by agent or attorney, as are the books and
22 records of the corporation, and such counterpart and
23 such copy of such record shall be subject to examination
24 by any holder of record of a voting trust certificate, either
25 in person or by agent or attorney, at any reasonable
26 time for any proper purpose.

27 Agreements among shareholders regarding the voting
28 of their shares shall be valid and enforceable in accor-
29 dance with their terms. Such agreements shall not be
30 subject to the provisions of this section regarding voting
31 trusts.

§31-1-95. Board of directors; powers; when vote recorded.

1 The business and affairs of a corporation shall be man-
2 aged by a board of directors except as may be otherwise
3 provided in the articles of incorporation. If any such
4 provision is made in the articles of incorporation, the
5 powers and duties conferred or imposed upon the board
6 of directors by this article shall be exercised or per-
7 formed to such extent and by such person or persons as
8 shall be provided in the articles of incorporation. Direc-
9 tors need not be residents of this state or shareholders
10 of the corporation unless the articles of incorporation
11 or bylaws so require. The articles of incorporation or
12 bylaws may prescribe other qualifications for directors.
13 The board of directors shall have authority to fix the
14 compensation of directors unless otherwise provided in
15 the articles of incorporation.

16 Any member of a board of directors, at his request,
17 shall have the right to have his vote recorded in the
18 minutes of such board of directors on any question com-
19 ing before the board.

§31-1-96. Removal of directors.

1 At a meeting of shareholders called expressly for that
2 purpose, directors may be removed in the manner pro-
3 vided in this section. Any director or the entire board
4 of directors may be removed, with or without cause,

5 by a vote of the holders of a majority of the shares then
6 entitled to vote at an election of directors.

7 If less than the entire board is to be removed, no one
8 of the directors may be removed if the votes cast against
9 his removal would be sufficient to elect him.

10 Whenever the holders of the shares of any class are
11 entitled to elect one or more directors by the provisions
12 of the articles of incorporation, the provisions of this
13 section shall apply, in respect to the removal of a direc-
14 tor or directors so elected, to the vote of the holders of
15 the outstanding shares of that class and not to the vote
16 of the outstanding shares as a whole.

§31-1-97. Director conflicts of interest.

1 (a) No contract or other transaction between a cor-
2 poration and one or more of its directors or any other
3 corporation, firm, association or entity in which one or
4 more of its directors are directors or officers or are finan-
5 cially interested, shall be either void or voidable because
6 of such relationship or interest or because such director
7 or directors are present at the meeting of the board of
8 directors or a committee thereof which authorizes, ap-
9 proves or ratifies such contract or transaction or because
10 his or their votes are counted for such purpose, if:

11 (1) The fact of such relationship or interest is dis-
12 closed or known to the board of directors or committee
13 which authorizes, approves or ratifies the contract or
14 transaction by a vote or consent sufficient for the purpose
15 without counting the votes or consents of such interested
16 directors; or

17 (2) The fact of such relationship or interest is dis-
18 closed or known to the shareholders entitled to vote and
19 they authorize, approve or ratify such contract or trans-
20 action by vote or written consent; or

21 (3) The contract or transaction is fair and reasonable
22 to the corporation.

23 (b) Common or interested directors may be counted
24 in determining the presence of a quorum at a meeting

25 of the board of directors or a committee thereof which
26 authorizes, approves or ratifies such contract or trans-
27 action.

28 (c) On any question involving the authorization,
29 approval or ratification of any such contract or trans-
30 action, the names of those voting each way shall be
31 entered on the record of their proceedings.

§31-1-98. Executive and other committees.

1 If the articles of incorporation or the bylaws so provide,
2 the board of directors, by resolution adopted by a ma-
3 jority of the full board of directors, may designate from
4 among its members an executive committee and one or
5 more other committees each of which, to the extent
6 provided in such resolution or in the articles of incor-
7 poration or the bylaws of the corporation, shall have and
8 may exercise all the authority of the board of directors,
9 but no such committee shall have the authority of the
10 board of directors in reference to amending the articles
11 of incorporation, adopting a plan of merger or consoli-
12 dation, recommending to the shareholders the sale, lease,
13 exchange or other disposition of all or substantially all
14 the property and assets of the corporation otherwise
15 than in the usual and regular course of its business,
16 recommending to the shareholders a voluntary dissolu-
17 tion of the corporation or a revocation thereof, or amend-
18 ing the bylaws of the corporation. The designation of
19 any such committee and the delegation thereto of au-
20 thority shall not operate to relieve the board of directors,
21 or any member thereof, of any responsibility imposed
22 by law.

§31-1-99. Dividends.

1 The board of directors of a corporation may, from time
2 to time, declare and the corporation may pay dividends
3 in cash, property, or its own shares, except when the
4 corporation is insolvent or when the payment thereof
5 would render the corporation insolvent or when the
6 declaration or payment thereof would be contrary to any
7 restriction contained in the articles of incorporation, sub-
8 ject to the following provisions:

9 (a) Dividends may be declared and paid in cash or
10 property only out of the unreserved and unrestricted
11 earned surplus of the corporation, except as otherwise
12 provided in this section.

13 (b) If the articles of incorporation of a corporation
14 engaged in the business of exploiting natural resources
15 so provide, dividends may be declared and paid in cash
16 out of the depletion reserves, but each such dividend
17 shall be identified as a distribution of such reserves and
18 the amount per share paid from such reserves shall be
19 disclosed to the shareholders receiving the same con-
20 currently with the distribution thereof.

21 (c) Dividends may be declared and paid in its own
22 treasury shares.

23 (d) Dividends may be declared and paid in its own
24 authorized but unissued shares out of any unreserved
25 and unrestricted surplus of the corporation upon the
26 following conditions:

27 (1) If a dividend is payable in its own shares having
28 a par value, such shares shall be issued at not less than
29 the par value thereof and there shall be transferred to
30 stated capital at the time such dividend is paid an amount
31 of surplus equal to the aggregate par value of the shares
32 to be issued as a dividend.

33 (2) If a dividend is payable in its own shares without
34 par value, such shares shall be issued at such stated value
35 as shall be fixed by the board of directors by resolution
36 adopted at the time such dividend is declared, and there
37 shall be transferred to stated capital at the time such
38 dividend is paid an amount of surplus equal to the aggre-
39 gate stated value so fixed in respect of such shares; and
40 the amount per share so transferred to stated capital
41 shall be disclosed to the shareholders receiving such
42 dividend concurrently with the payment thereof.

43 (e) No dividend payable in shares of any class shall
44 be paid to the holders of shares of any other class unless
45 the articles of incorporation so provide or such payment
46 is authorized by the affirmative vote or the written con-

47 sent of the holders of at least a majority of the outstand-
48 ing shares of the class in which the payment is to be
49 made.

50 A split-up or division of the issued shares of any class
51 into a greater number of shares of the same class without
52 increasing the stated capital of the corporation shall
53 not be construed to be a share dividend within the mean-
54 ing of this section.

§31-1-100. Distribution from capital surplus.

1 The board of directors of a corporation may, from time
2 to time, distribute to its shareholders out of capital sur-
3 plus of the corporation a portion of its assets, in cash or
4 property, subject to the following provisions:

5 (a) No such distribution shall be made at a time when
6 the corporation is insolvent or when such distribution
7 would render the corporation insolvent.

8 (b) No such distribution shall be made unless the
9 articles of incorporation so provide or such distribution
10 is authorized by the affirmative vote of the holders of
11 a majority of the outstanding shares of each class whether
12 or not entitled to vote thereon by the provisions of the
13 articles of incorporation of the corporation.

14 (c) No such distribution shall be made to the holders
15 of any class of shares unless all cumulative dividends
16 accrued on all preferred or special classes of shares
17 entitled to preferential dividends shall have been fully
18 paid.

19 (d) No such distribution shall be made to the holders
20 of any class of shares which would reduce the remaining
21 net assets of the corporation below the aggregate prefer-
22 ential amount payable in event of involuntary liquidation
23 to the holders of shares having preferential rights to the
24 assets of the corporation in the event of liquidation.

25 (e) Each such distribution, when made, shall be iden-
26 tified as a distribution from capital surplus and the
27 amount per share disclosed to the shareholders receiving
28 the same concurrently with the distribution thereof.

29 The board of directors of a corporation may also, from
30 time to time, distribute to the holders of its outstanding
31 shares having a cumulative preferential right to receive
32 dividends, in discharge of their cumulative dividend
33 rights, dividends payable in cash out of the capital sur-
34 plus of the corporation, if at the time the corporation
35 has no earned surplus and is not insolvent and would
36 not thereby be rendered insolvent. Each such distribu-
37 tion when made, shall be identified as a payment of
38 cumulative dividends out of capital surplus.

§31-1-101. Loans to employees and directors.

1 A corporation shall not lend money to or use its credit
2 to assist its directors without authorization in the partic-
3 ular case by its shareholders, but may lend money to
4 and use its credit to assist any employee of the corpora-
5 tion or of a subsidiary, including any such employee
6 who is a director of the corporation, if the board of
7 directors decides that such loan or assistance may benefit
8 the corporation.

§31-1-102. Liability of directors in certain cases.

1 In addition to any other liabilities imposed by law
2 upon directors of a corporation:

3 (a) Directors of a corporation who vote for or assent
4 to the declaration of any dividend or other distribution
5 of the assets of a corporation to its shareholders contrary
6 to the provisions of this article or contrary to any re-
7 strictions contained in the articles of incorporation, shall
8 be jointly and severally liable to the corporation for the
9 amount of such dividend which is paid or the value of
10 such assets which are distributed in excess of the amount
11 of such dividend or distribution which could have been
12 paid or distributed without a violation of the provisions
13 of this article or the restrictions in the articles of incor-
14 poration.

15 (b) Directors of a corporation who vote for or assent
16 to the purchase of its own shares contrary to the pro-
17 visions of this article shall be jointly and severally liable
18 to the corporation for the amount of consideration paid

19 for such shares which is in excess of the maximum
20 amount which could have been paid therefor without
21 a violation of the provisions of this article.

22 (c) The directors of a corporation who vote for or
23 assent to any distribution of assets of a corporation to
24 its shareholders during the liquidation of the corporation
25 without the payment and discharge of, or making ade-
26 quate provision for, all known debts, obligations and
27 liabilities of the corporation shall be jointly and severally
28 liable to the corporation for the value of such assets
29 which are distributed, to the extent that such debts,
30 obligations and liabilities of the corporation are not
31 thereafter paid and discharged.

32 A director of a corporation who is present at a meeting
33 of its board of directors at which action on any corporate
34 matter is taken shall be presumed to have assented to the
35 action taken unless his dissent shall be entered in the
36 minutes of the meeting or unless he shall file his written
37 dissent to such action with the secretary of the meeting
38 before the adjournment thereof or shall forward such
39 dissent by registered or certified mail, return receipt
40 requested, to the secretary of the corporation immediately
41 after the adjournment of the meeting. Such right to
42 dissent shall not apply to a director who voted in favor
43 of such action.

44 A director shall not be liable under subdivision (a), (b)
45 or (c) of this section if he relied and acted in good faith
46 upon financial statements of the corporation represented
47 to him to be correct by the president or the officer of such
48 corporation having charge of its books of account, or
49 stated in a written report by an independent public or
50 certified public accountant or firm of such accountants
51 fairly to reflect the financial condition of such corpora-
52 tion, nor shall he be so liable if in good faith in determin-
53 ing the amount available for any such dividend or distri-
54 bution he considered the assets to be of their book value.

55 Any director against whom a claim shall be asserted
56 under or pursuant to this section for the payment of a
57 dividend or other distribution of assets of a corporation

58 and who shall be held liable thereon, shall be entitled
59 to contribution from the shareholders who accepted or
60 received any such dividend or assets, knowing such divi-
61 dend or distribution to have been made in violation of
62 this article, in proportion to the amounts received by
63 them.

64 Any director against whom a claim shall be asserted
65 under or pursuant to this section shall be entitled to
66 contribution from the other directors who voted for or
67 assented to the action upon which the claim is asserted.

§31-1-103. Provisions relating to actions by shareholders.

1 No action shall be brought in this state by a share-
2 holder in the right of a domestic or foreign corporation
3 unless the plaintiff was a holder of record of shares or
4 of voting trust certificates therefor at the time of the
5 transaction of which he complains, or his shares or voting
6 trust certificates thereafter devolved upon him by opera-
7 tion of law from a person who was a holder of record
8 at such time.

9 In any action hereafter instituted in the right of any
10 domestic or foreign corporation by the holder or holders
11 of record of shares of such corporation or of voting trust
12 certificates therefor, the court having jurisdiction, upon
13 final judgment and a finding that the action was brought
14 without reasonable cause, may require the plaintiff or
15 plaintiffs to pay to the parties named as defendant the
16 reasonable expenses, including fees of attorneys, incurred
17 by them in the defense of such action.

18 In any action now pending or hereafter instituted or
19 maintained in the right of any domestic or foreign
20 corporation by the holder or holders of record of less
21 than five percent of the outstanding shares of any class
22 of such corporation or of voting trust certificates therefor,
23 unless the shares or voting trust certificates so held have
24 a market value in excess of twenty-five thousand dollars,
25 the corporation in whose right such action is brought
26 shall be entitled at any time before final judgment to
27 require the plaintiff or plaintiffs to give security for the
28 reasonable expenses, including fees of attorneys, that

29 may be incurred by it in connection with such action or
30 may be incurred by other parties named as defendant
31 for which it may become legally liable. Market value
32 shall be determined as of the date that the plaintiff
33 institutes the action or, in the case of an intervenor, as
34 of the date that he becomes a party to the action. The
35 amount of such security may from time to time be in-
36 creased or decreased, in the discretion of the court, upon
37 showing that the security provided has or may become
38 inadequate or is excessive. The corporation shall have
39 recourse to such security in such amount as the court
40 having jurisdiction shall determine upon the termination
41 of such action, whether or not the court finds the action
42 was brought without reasonable cause.

§31-1-104. Officers; removal of officers.

1 (a) The officers of a corporation shall consist of a
2 president, one or more vice presidents as may be pre-
3 scribed by the bylaws, a secretary, and a treasurer, each
4 of whom shall be elected by the board of directors at
5 such time and in such manner as may be prescribed by
6 the bylaws. Such other officers and assistant officers
7 and agents as may be deemed necessary may be elected
8 or appointed by the board of directors or chosen in such
9 other manner as may be prescribed by the bylaws. Any
10 two or more offices may be held by the same person,
11 except the offices of president and secretary.

12 All officers and agents of the corporation, as between
13 themselves and the corporation, shall have such au-
14 thority and perform such duties in the management of the
15 corporation as may be provided in the bylaws, or as may
16 be determined by resolution of the board of directors
17 not inconsistent with the bylaws.

18 (b) Any officer or agent may be removed by the board
19 of directors whenever in its judgment the best interests
20 of the corporation will be served thereby, but such re-
21 moval shall be without prejudice to the contract rights,
22 if any, of the person so removed. Election or appoint-
23 ment of an officer or agent shall not of itself create con-
24 tract rights.

§31-1-105. Books and records.

1 Each corporation shall keep correct and complete books
2 and records of account and shall keep minutes of the
3 proceedings of its shareholders and board of directors
4 and shall keep at its principal office, or at the office
5 of its transfer agent or registrar, a record of its share-
6 holders, giving the names and addresses of all share-
7 holders and the number and class of the shares held by
8 each. Any books, records and minutes may be in writ-
9 ten form or in any other form capable of being converted
10 into written form within a reasonable time.

11 Any person who shall have been a holder of record
12 of shares or of voting trust certificates therefor at least
13 six months immediately preceding his demand or shall
14 be the holder of record of, or the holder of record of
15 voting trust certificates for, at least five percent of all
16 the outstanding shares of the corporation, upon written
17 demand stating the purpose thereof, shall have the right
18 to examine, in person, or by agent or attorney, at any
19 reasonable time or times, for any proper purpose, its
20 relevant books and records of accounts, minutes, and
21 record of shareholders and to make extracts therefrom.

22 Any officer or agent who, or a corporation which, shall
23 refuse to allow any such shareholder or holder of voting
24 trust certificates, or his agent or attorney, so to examine
25 and make extracts from its books and records of account,
26 minutes and record of shareholders, for any proper pur-
27 pose, shall be liable to such shareholder or holder of
28 voting trust certificates in a penalty of ten percent of
29 the value of the shares owned by such shareholder, or
30 in respect of which such voting trust certificates are
31 issued, in addition to any other damages or remedy
32 afforded him by law. It shall be a defense to any
33 action for penalties under this section that the per-
34 son suing therefor has within two years sold or offered
35 for sale any list of shareholders or of holders of voting
36 trust certificates for shares of such corporation or any
37 other corporation or has aided or abetted any person
38 in procuring any list of shareholders or of holders of
39 voting trust certificates for any such purpose, or has

40 improperly used any information secured through any
41 prior examination of the books and records of account,
42 or minutes, or record of shareholders or of holders of
43 voting trust certificates for shares of such corporation
44 or any other corporation, or was not acting in good faith
45 or for a proper purpose in making his demand.

46 Nothing herein contained shall impair the power of
47 any court of competent jurisdiction, upon proof by a
48 shareholder or holder of voting trust certificates of proper
49 purpose, irrespective of the period of time during which
50 such shareholder or holder of voting trust certificates
51 shall have been a shareholder of record or a holder of
52 record of voting trust certificates, and irrespective of
53 the number of shares held by him or represented by vot-
54 ing trust certificates held by him, to compel the production
55 for examination by such shareholder or holder of voting
56 trust certificates of the books and records of account,
57 minutes and record of shareholders of a corporation.

58 Upon the written request of any shareholder or holder
59 of voting trust certificates for shares of a corporation,
60 the corporation shall mail to such shareholder or holder
61 of voting trust certificates its most recent financial state-
62 ments showing in reasonable detail its assets and liabili-
63 ties and the results of its operations.

§31-1-106. Right to amend articles of incorporation.

1 A corporation may amend its articles of incorpora-
2 tion, from time to time, in any and as many respects
3 as may be desired, so long as its articles of incorporation
4 as amended contain only such provisions as might be
5 lawfully contained in original articles of incorporation
6 at the time of making such amendment, and, if a change
7 in shares or the rights of shareholders, or an exchange,
8 reclassification or cancellation of shares or rights of share-
9 holders is to be made, such provisions as may be neces-
10 sary to effect such change, exchange, reclassification or
11 cancellation.

12 In particular, and without limitation upon such
13 general power of amendment, a corporation may

14 amend its articles of incorporation from time to
15 time, so as:

16 (a) To change its corporate name.

17 (b) To change its period of duration.

18 (c) To change, enlarge or diminish its corporate pur-
19 poses.

20 (d) To increase or decrease the aggregate number
21 of shares, or shares of any class, which the corporation
22 has authority to issue.

23 (e) To increase or decrease the par value of the
24 authorized shares of any class having a par value, whether
25 issued or unissued.

26 (f) To exchange, classify, reclassify or cancel all
27 or any part of its shares, whether issued or un-
28 issued.

29 (g) To change the designation of all or any part of
30 its shares, whether issued or unissued, and to change
31 the preferences, limitations, and the relative rights in
32 respect of all or any part of its shares, whether issued
33 or unissued.

34 (h) To change shares having par value, whether
35 issued or unissued, into the same or a different number
36 of shares without par value, and to change shares with-
37 out par value, whether issued or unissued, into the same
38 or a different number of shares having a par value.

39 (i) To change the shares of any class, whether issued
40 or unissued, and whether with or without par value,
41 into a different number of shares of the same class or
42 into the same or a different number of shares, either
43 with or without par value, of other classes.

44 (j) To create new classes of shares having rights and
45 preferences either prior and superior or subordinate
46 and inferior to the shares of any class then authorized,
47 whether issued or unissued.

48 (k) To cancel or otherwise affect the right of the
49 holders of the shares of any class to receive dividends
50 which have accrued but have not been declared.

51 (l) To divide any preferred or special class of shares,
52 whether issued or unissued, into series and fix and de-
53 termine the designation of such series and the variations
54 in the relative rights and preferences as between the
55 shares of such series.

56 (m) To authorize the board of directors to establish,
57 out of authorized but unissued shares, series of any
58 preferred or special class of shares and fix and determine
59 the relative rights and preferences of the shares of any
60 series so established.

61 (n) To authorize the board of directors to fix and
62 determine the relative rights and preferences of the
63 authorized but unissued shares of series theretofore
64 established in respect of which either the relative rights
65 and preferences have not been fixed and determined or
66 the relative rights and preferences theretofore fixed and
67 determined are to be changed.

68 (o) To revoke, diminish, or enlarge the authority of
69 the board of directors to establish series out of authorized
70 but unissued shares of any preferred or special class and
71 fix and determine the relative rights and preferences of
72 the shares of any series so established.

§31-1-107. Procedure to amend articles of incorporation.

1 Amendments to the articles of incorporation shall be
2 made in the following manner:

3 (a) The board of directors shall adopt a resolution
4 setting forth the proposed amendment and, if shares
5 have been issued, directing that it be submitted to a
6 vote at a meeting of shareholders, which may be either
7 the annual or a special meeting. If no shares have been
8 issued, the amendment shall be adopted by resolution
9 of the board of directors and the provisions for adop-
10 tion by shareholders shall not apply. The resolu-
11 tion may incorporate the proposed amendment in re-
12 stated articles of incorporation which contain a state-
13 ment that except for the designated amendment the
14 restated articles of incorporation correctly set forth with-
15 out change the corresponding provisions of the articles
16 of incorporation as theretofore amended, and that the re-

17 stated articles of incorporation together with the desig-
18 nated amendment supersede the original articles of incor-
19 poration and all amendments thereto.

20 (b) Written notice setting forth the proposed amend-
21 ment or a summary of the changes to be effected there-
22 by shall be given to each shareholder of record entitled
23 to vote thereon within the time and in the manner
24 provided in this article for the giving of notice of meet-
25 ings of shareholders. If the meeting be an annual meet-
26 ing, the proposed amendment or such summary may be
27 included in the notice of such annual meeting.

28 (c) At such meeting a vote of the shareholders enti-
29 tled to vote thereon shall be taken on the proposed
30 amendment. The proposed amendment shall be adopted
31 upon receiving the affirmative vote of the holders of a
32 majority of the shares entitled to vote thereon, unless
33 any class of shares is entitled to vote thereon as a class,
34 in which event the proposed amendment shall be adopted
35 upon receiving the affirmative vote of the holders of a
36 majority of the shares of each class of shares entitled to
37 vote thereon as a class and of the total shares entitled
38 to vote thereon.

39 Any number of amendments may be submitted to the
40 shareholders, and voted upon by them, at one meeting.

§31-1-108. Class voting on amendments.

1 The holders of the outstanding shares of a class shall
2 be entitled to vote as a class upon a proposed amend-
3 ment, whether or not entitled to vote thereon by the
4 provisions of the articles of incorporation, if the amend-
5 ment would:

6 (a) Increase or decrease the aggregate number of
7 authorized shares of such class.

8 (b) Increase or decrease the par value of the shares
9 of such class.

10 (c) Effect an exchange, reclassification or cancella-
11 tion of all or part of the shares of such class.

12 (d) Effect an exchange, or create a right of exchange,

13 of all or any part of the shares of another class into the
14 shares of such class.

15 (e) Change the designations, preferences, limitations
16 or relative rights of the shares of such class.

17 (f) Change the shares of such class, whether with or
18 without par value, into the same or a different num-
19 ber of shares, either with or without par value, of the
20 same class or another class or classes.

21 (g) Create a new class of shares having rights and
22 preferences prior and superior to the shares of such class,
23 or increase the rights and preferences or the number of
24 authorized shares, of any class having rights and pref-
25 erences prior or superior to the shares of such class.

26 (h) In the case of a preferred or special class of shares,
27 divide the shares of such class into series and fix and
28 determine the designation of such series and the varia-
29 tions in the relative rights and preferences between the
30 shares of such series, or authorize the board of directors
31 to do so.

32 (i) Cancel or otherwise affect dividends on the shares
33 of such class which have accrued but have not been
34 declared.

§31-1-109. Articles of amendment.

1 The articles of amendment shall be executed in dupli-
2 cate by the corporation by its president or a vice presi-
3 dent and by its secretary or an assistant secretary and
4 verified by one of the officers signing such articles, and
5 shall set forth:

6 (a) The name of the corporation.

7 (b) The amendments so adopted.

8 (c) The date of the adoption of the amendment by
9 the shareholders, or by the board of directors where no
10 shares have been issued.

11 (d) The number of shares outstanding, and the num-
12 ber of shares entitled to vote thereon, and if the shares of
13 any class are entitled to vote thereon as a class, the desig-
14 nation and number of outstanding shares entitled to vote
15 thereon of each such class.

16 (e) The number of shares voted for and against such
17 amendment, respectively, and, if the shares of any class
18 are entitled to vote thereon as a class, the number of
19 shares of each such class voted for and against such
20 amendment, respectively, or if no shares have been issued,
21 a statement to that effect.

22 (f) If such amendment provides for an exchange,
23 reclassification or cancellation of issued shares, and if
24 the manner in which the same shall be effected is not set
25 forth in the amendment, then a statement of the manner
26 in which the same shall be effected.

27 (g) If such amendment effects a change in the amount
28 of stated capital, then a statement of the manner in
29 which the same is effected and a statement, expressed in
30 dollars, of the amount of stated capital as changed by
31 such amendment.

§31-1-110. Restated articles of incorporation; procedures for adoption; contents.

1 A domestic corporation may at any time restate its
2 articles of incorporation as theretofore amended, by a
3 resolution adopted by the board of directors.

4 Upon the adoption of such resolution, restated articles
5 of incorporation shall be executed in duplicate by the
6 corporation by its president or a vice president and by
7 its secretary or assistant secretary and verified by one
8 of the officers signing such articles and shall set forth
9 all of the operative provisions of the articles of incor-
10 poration as theretofore amended together with a state-
11 ment that the restated articles of incorporation correctly
12 set forth without change the corresponding provisions
13 of the articles of incorporation as theretofore amended
14 and that the restated articles of incorporation supersede
15 the original articles of incorporation and all amendments
16 thereto.

§31-1-111. Amendment of articles of incorporation in reorganization proceedings; contents; purposes; procedure for filing; issuance; recordation; admission in evidence.

1 (a) Whenever a plan of reorganization of a corpora-

2 tion has been confirmed by order of a court of competent
3 jurisdiction in proceedings for the reorganization of such
4 corporations, pursuant to the provisions of any applicable
5 statute of the United States relating to reorganizations
6 of corporations, the articles of incorporation of the cor-
7 poration may be amended, in the manner provided in
8 this section, in as many respects as may be necessary
9 to carry out the plan and put it into effect, so long as the
10 articles of incorporation as amended contain only such
11 provisions as might be lawfully contained in original
12 articles of incorporation at the time of making such
13 amendment.

14 (b) In particular and without limitation upon such
15 general power of amendment, the articles of incorpora-
16 tion may be amended for such purpose so as to:

17 (1) Change the corporate name, period of duration
18 or corporate purposes of the corporation;

19 (2) Repeal, alter or amend the bylaws of the corpora-
20 tion;

21 (3) Change the aggregate number of shares or shares
22 of any class which the corporation has authority to
23 issue;

24 (4) Change the preferences, limitations and relative
25 rights in respect of all or any part of the shares of the
26 corporation, and classify, reclassify or cancel all or any
27 part thereof, whether issued or unissued;

28 (5) Authorize the issuance of bonds, debentures or
29 other obligations of the corporation, whether or not con-
30 vertible into shares of any class or bearing warrants or
31 other evidences of optional rights to purchase or sub-
32 scribe for shares of any class, and fix the terms and con-
33 ditions thereof; and

34 (6) Constitute or reconstitute and classify or reclas-
35 sify the board of directors of the corporation, and
36 appoint directors and officers in place of or in addi-
37 tion to all or any of the directors or officers then in
38 office.

39 (c) Amendments to the articles of incorporation
40 pursuant to this section shall be made in the following
41 manner:

42 (1) Articles of amendment approved by order of such
43 court shall be executed and verified in duplicate by such
44 person or persons as the court shall designate or appoint
45 for the purpose, and shall set forth the name of the
46 corporation, the amendments of the articles of incorpora-
47 tion approved by the court, the date of the order ap-
48 proving the articles of amendment, the title of the pro-
49 ceedings in which the order was entered, and a statement
50 that such order was entered by a court having juris-
51 diction of the proceedings for the reorganization of the
52 corporation pursuant to the provisions of an applicable
53 statute of the United States.

54 (2) Duplicate originals of the articles of amendments
55 shall be delivered to the secretary of state. If the secre-
56 tary of state finds that the articles of amendment con-
57 form to law he shall, when all fees have been paid as
58 prescribed by law, (i) endorse on each of such duplicate
59 originals the word "Filed," and the month, day and year
60 of the filing thereof; (ii) file one of such duplicate orig-
61 inals in his office; and (iii) issue a certificate of amend-
62 ment to which he shall affix the other duplicate
63 original.

64 The certificate of amendment, together with the dupli-
65 cate original of the articles of amendment affixed thereto
66 by the secretary of state, shall be returned to the cor-
67 poration or its representative.

68 Upon the issuance of the certificate of amendment by
69 the secretary of state, the amendment shall become
70 effective and the articles of incorporation shall be deemed
71 to be amended accordingly, without any action thereon
72 by the directors or shareholders of the corporation and
73 with the same effect as if the amendments had been
74 adopted by unanimous action of the directors and share-
75 holders of the corporation.

76 (d) The certificate of amendment issued by the

77 secretary of state pursuant to this section, or a certified
78 copy thereof, shall be recorded in the office of the appro-
79 priate county clerk in the same manner as original cer-
80 tificates of incorporation are required to be recorded,
81 in accordance with the provisions of subsection (b) of
82 section twenty-eight of this article and received in evi-
83 dence to the same extent as an original certificate of
84 incorporation or a certified copy of such original.

§31-1-112. Restriction on redemption or purchase of redeemable shares.

1 No redemption or purchase of redeemable shares shall
2 be made by a corporation when it is insolvent or when
3 such redemption or purchase would render it insolvent,
4 or which would reduce the net assets below the aggregate
5 amount payable to the holders of shares having prior
6 or equal rights to the assets of the corporation upon in-
7 voluntary dissolution.

§31-1-113. Cancellation of redeemable shares by redemption or purchase; statement of cancellation; contents; filing.

1 (a) When redeemable shares of a corporation are
2 redeemed or purchased by the corporation, the redemp-
3 tion or purchase shall effect a cancellation of such shares,
4 and a statement of cancellation shall be filed as provided
5 in this section. Thereupon such shares shall be restored
6 to the status of authorized but unissued shares, unless
7 the articles of incorporation provide that such shares
8 when redeemed or purchased shall not be reissued, in
9 which case the filing of the statement of cancellation
10 shall constitute an amendment to the articles of incor-
11 poration and shall reduce the number of shares of the
12 class so cancelled which the corporation is authorized
13 to issue by the number of shares so cancelled.

14 (b) The statement of cancellation shall be executed
15 in duplicate by the corporation by its president or a vice
16 president and by its secretary or an assistant secretary,
17 and verified by one of the officers signing such statement,
18 and shall set forth:

19 (1) The name of the corporation.

20 (2) The number of redeemable shares cancelled
21 through redemption or purchase, itemized by classes
22 and series.

23 (3) The aggregate number of issued shares, itemized
24 by classes and series, after giving effect to such can-
25 cellation.

26 (4) The amount, expressed in dollars, of the stated
27 capital of the corporation after giving effect to such
28 cancellation.

29 (5) If the articles of incorporation provide that the
30 cancelled shares shall not be reissued, the number of
31 shares which the corporation will have authority to issue
32 itemized by classes and series, after giving effect to such
33 cancellation.

34 (c) Duplicate originals of such statement shall be
35 delivered to the secretary of state. If the secretary of
36 state finds that such statement conforms to law, he shall,
37 when all fees have been paid as prescribed by law, (i)
38 endorse on each of such duplicate originals the word
39 "Filed," and the month, day and year of the filing there-
40 of; (ii) file one of such duplicate originals in his office;
41 and (iii) return the other duplicate original to the cor-
42 poration or its representative.

43 Upon the filing of such statement of cancellation, the
44 stated capital of the corporation shall be deemed to be
45 reduced by that part of the stated capital which was,
46 at the time of such cancellation, represented by the shares
47 so cancelled.

48 (d) Nothing contained in this section shall be con-
49 strued to forbid a cancellation of shares or a reduction
50 of stated capital in any other manner permitted by this
51 article.

**§31-1-114. Cancellation of other reacquired shares; statement
of cancellation; contents; filing.**

1 (a) A corporation may at any time, by resolution of

2 its board of directors, cancel all or any part of the shares
3 of the corporation of any class reacquired by it, other
4 than redeemable shares redeemed or purchased, and in
5 such event a statement of cancellation shall be filed as
6 provided in this section.

7 (b) The statement of cancellation shall be executed
8 in duplicate by the corporation by its president or a vice
9 president and by its secretary or an assistant secretary,
10 and verified by one of the officers signing such state-
11 ment, and shall set forth:

12 (1) The name of the corporation.

13 (2) The number of reacquired shares cancelled by
14 resolution duly adopted by the board of directors, item-
15 ized by classes and series, and the date of its adop-
16 tion.

17 (3) The aggregate number of issued shares, itemized
18 by classes and series, after giving effect to such can-
19 cellation.

20 (4) The amount, expressed in dollars, of the stated
21 capital of the corporation after giving effect to such
22 cancellation.

23 (c) Duplicate originals of such statement shall be
24 delivered to the secretary of state. If the secretary of
25 state finds that such statement conforms to law, he shall,
26 when all fees have been paid as prescribed by law, (i)
27 endorse on each of such duplicate originals the word
28 "Filed," and the month, day and year of the filing there-
29 of; (ii) file one of such duplicate originals in his office;
30 and (iii) return the other duplicate original to the cor-
31 poration or its representative.

32 Upon the filing of such statement of cancellation, the
33 stated capital of the corporation shall be deemed to be
34 reduced by that part of the stated capital which was,
35 at the time of such cancellation, represented by the
36 shares so cancelled, and the shares so cancelled shall be
37 restored to the status of authorized but unissued shares.

38 (d) Nothing contained in this section shall be con-

39 strued to forbid a cancellation of shares or a reduction
40 of stated capital in any other manner permitted by this
41 article.

§31-1-115. Reduction of stated capital without amendment of articles or cancellation of shares; statement required to be filed and its contents; limitations.

1 (a) A reduction of the stated capital of a corpora-
2 tion, where such reduction is not accompanied by any
3 action requiring an amendment of the articles of incor-
4 poration and not accompanied by a cancellation of shares,
5 may be made in the following manner:

6 (1) The board of directors shall adopt a resolution
7 setting forth the amount of the proposed reduction and
8 the manner in which the reduction shall be effected, and
9 directing that the question of such reduction be sub-
10 mitted to a vote at a meeting of shareholders, which may
11 be either an annual or a special meeting.

12 (2) Written notice, stating that the purpose or one
13 of the purposes of such meeting is to consider the ques-
14 tion of reducing the stated capital of the corporation in
15 the amount and manner proposed by the board of direc-
16 tors, shall be given to each shareholder of record entitled
17 to vote thereon within the time and in the manner pro-
18 vided in this article for the giving of notice of meetings
19 of shareholders.

20 (3) At such meeting a vote of the shareholders en-
21 titled to vote thereon shall be taken on the question of
22 approving the proposed reduction of stated capital, which
23 shall require for its adoption the affirmative vote of the
24 holders of a majority of the shares entitled to vote
25 thereon.

26 (b) When a reduction of the stated capital of a cor-
27 poration has been approved as provided in subsection
28 (a) of this section, a statement shall be executed in
29 duplicate by the corporation by its president or a vice
30 president and by its secretary or an assistant secretary,
31 and verified by one of the officers signing such statement,
32 and shall set forth:

- 33 (1) The name of the corporation.
- 34 (2) A copy of the resolution of the shareholders ap-
35 proving such reduction, and the date of its adoption.
- 36 (3) The number of shares outstanding, and the num-
37 ber of shares entitled to vote thereon.
- 38 (4) The number of shares voted for and against such
39 reduction, respectively.
- 40 (5) A statement of the manner in which such reduc-
41 tion is effected and a statement expressed in dollars, of
42 the amount of stated capital of the corporation after
43 giving effect to such reduction.
- 44 (c) Duplicate originals of such statement shall be
45 delivered to the secretary of state. If the secretary of
46 state finds that such statement conforms to law, he shall,
47 when all fees have been paid as prescribed by law, (i)
48 endorse on each of such duplicate originals the word
49 "Filed," and the month, day and year of the filing thereof;
50 (ii) file one of such duplicate originals in his office;
51 and (iii) return the other duplicate original to the cor-
52 poration or its representative.
- 53 Upon the filing of such statement, the stated capital
54 of the corporation shall be reduced as therein set
55 forth.
- 56 (d) No reduction of stated capital shall be made
57 under the provisions of this section which would reduce
58 the amount of the aggregate stated capital of the cor-
59 poration to an amount equal to or less than the aggre-
60 gate preferential amounts payable upon all issued shares
61 having a preferential right in the assets of the corporation
62 in the event of involuntary liquidation, plus the aggregate
63 par value of all issued shares having a par value but no
64 preferential rights in the assets of the corporation in the
65 event of involuntary liquidation.

§31-1-116. Special provisions relating to surplus and reserves.

- 1 The surplus, if any, created by or arising out of a
2 reduction of the stated capital of a corporation shall

3 be capital surplus. The capital surplus of a corporation
4 may be increased from time to time by a resolution of
5 the board of directors directing that all or a part of the
6 earned surplus of the corporation be transferred to cap-
7 ital surplus.

8 A corporation may, by resolution of its board of direc-
9 tors, apply any part or all of its capital surplus to the
10 reduction or elimination of any deficit arising from
11 losses, however incurred, but only after first eliminating
12 the earned surplus, if any, of the corporation by apply-
13 ing such losses against earned surplus and only to the
14 extent that such losses exceed the earned surplus, if any.
15 Each such application of capital surplus shall, to the
16 extent thereof, effect a reduction of capital surplus.

17 A corporation may, by resolution of its board of direc-
18 tors, create a reserve or reserves out of its earned surplus
19 for any proper purpose or purposes, and may abolish
20 any such reserve in the same manner. Earned surplus of
21 the corporation to the extent so reserved shall not be
22 available for the payment of dividends or other dis-
23 tributions by the corporation except as expressly per-
24 mitted by this article.

**§31-1-117. Merger or consolidation; approval by shareholders;
abandonment.**

1 The board of directors of each corporation intending
2 to merge or consolidate with another corporation, upon
3 approving such plan of merger or plan of consolidation,
4 shall, by resolution, direct that the plan be submitted to
5 a vote at a meeting of shareholders, which may be either
6 an annual or a special meeting. Written notice shall be
7 given to each shareholder of record, whether or not
8 entitled to vote at such meeting, not less than twenty days
9 before such meeting, in the manner provided in this
10 article for the giving of notice of meetings of share-
11 holders, and, whether the meeting be an annual or a
12 special meeting, shall state that the purpose or one of
13 the purposes is to consider the proposed plan of merger
14 or consolidation. A copy or a summary of the plan of

15 merger or plan of consolidation, as the case may be,
16 shall be included in or enclosed with such notice.

17 At each such meeting, a vote of the shareholders shall
18 be taken on the proposed plan of merger or consolida-
19 tion. The plan of merger or consolidation shall be ap-
20 proved upon receiving the affirmative vote of the holders
21 of a majority of the shares entitled to vote thereon of
22 each such corporation, unless any class of shares of any
23 such corporation is entitled to vote thereon as a class,
24 in which event, as to such corporation, the plan of merger
25 or consolidation shall be approved upon receiving the
26 affirmative vote of the holders of a majority of the
27 shares of each class of shares entitled to vote thereon
28 as a class and of the total shares entitled to vote thereon.
29 Any class of shares of any such corporation shall be
30 entitled to vote as a class if the plan of merger or con-
31 solidation, as the case may be, contains any provision
32 which, if contained in a proposed amendment to articles
33 of incorporation, would entitle such class of shares to
34 vote as a class.

35 After such approval by a vote of the shareholders of
36 each corporation, and at any time prior to the filing of
37 the articles of merger or consolidation, the merger or
38 consolidation may be abandoned pursuant to provisions
39 therefor, if any, set forth in the plan of merger or con-
40 solidation.

**§31-1-118. Contents required in articles of merger or consoli-
dation.**

1 Articles of merger or articles of consolidation shall,
2 in addition to any other matters deemed appropriate, set
3 forth:

4 (1) The plan of merger or the plan of consolidation.

5 (2) As to each corporation, the number of shares out-
6 standing, and, if the shares of any class are entitled to
7 vote as a class, the designation and number of outstand-
8 ing shares of each such class.

9 (3) As to each corporation, the number of shares
10 voted for and against such plan respectively, and, if the

11 shares of any class are entitled to vote as a class, the
12 number of shares of each class voted for and against
13 such plan, respectively.

§31-1-119. Merger of subsidiary corporation; procedures; articles of merger; recordation; admission in evidence.

1 (a) Any corporation owning at least ninety percent
2 of the outstanding shares of each class of another corpor-
3 ation may merge such other corporation into itself with-
4 out approval by a vote of the shareholders of either
5 corporation. Its board of directors shall, by resolution,
6 approve a plan of merger setting forth (i) the name of
7 the subsidiary corporation and the name of the corpor-
8 ation owning at least ninety percent of its shares, which
9 is hereinafter designated as the surviving corporation;
10 and (ii) the manner and basis of converting the shares
11 of the subsidiary corporation into shares, obligations or
12 other securities of the surviving corporation or of any
13 other corporation or, in whole or in part, into cash or
14 other property. A copy of such plan of merger shall be
15 mailed to each shareholder of record of the subsidiary
16 corporation.

17 (b) Articles of merger shall be executed in duplicate
18 by the surviving corporation by its president or a vice
19 president and by its secretary or an assistant secretary,
20 and verified by one of its officers signing such articles,
21 and shall set forth:

22 (1) The plan of merger;

23 (2) The number of outstanding shares of each class
24 of the subsidiary corporation and the number of such
25 shares of each class owned by the surviving corporation;
26 and

27 (3) The date of the mailing to shareholders of the
28 subsidiary corporation of a copy of the plan of merger.

29 (c) On and after the thirtieth day after the mailing
30 of a copy of the plan of merger to shareholders of the
31 subsidiary corporation or upon the waiver thereof by
32 the holders of all outstanding shares, duplicate originals

33 of the articles of merger shall be delivered to the secre-
34 tary of state. If the secretary of state finds that such
35 articles conform to law, he shall, when all fees have been
36 paid as prescribed by law, (i) endorse on each of such
37 duplicate originals the word "Filed," and the month, day
38 and year of the filing thereof; (ii) file one of such dupli-
39 cate originals in his office; and (iii) issue a certificate of
40 merger to which he shall affix the other duplicate
41 original.

42 The certificate of merger, together with the duplicate
43 original of the articles of merger affixed thereto by the
44 secretary of state, shall be returned to the surviving
45 corporation or its representative.

46 (d) The certificate of merger, or certified copy thereof,
47 shall be recorded in the office of the appropriate county
48 clerk in the same manner as original certificates of in-
49 corporation are required to be recorded, in accordance
50 with the provisions of subsection (b) of section twenty-
51 eight of this article and received in evidence to the
52 same extent as an original certificate of incorporation
53 or a certified copy of such original.

§31-1-120. Sale of assets in regular course of business and mortgage or pledge of assets.

1 The sale, lease, exchange or other disposition of all,
2 or substantially all, the property and assets of a corpora-
3 tion in the usual and regular course of its business,
4 and the mortgage or pledge of any or all property and
5 assets of a corporation whether or not in the usual and
6 regular course of business, may be made upon such
7 terms and conditions and for such consideration, which
8 may consist in whole or in part of cash or other property,
9 including shares, obligations or other securities of any
10 other corporation, domestic or foreign, as shall be autho-
11 rized by its board of directors; and in any such case no
12 authorization or consent of the shareholders shall be
13 required.

§31-1-121. Sale of assets other than in regular course of business.

1 A sale, lease, exchange or other disposition of all, or

2 substantially all, the property and assets, with or with-
3 out the good will, of a corporation, if not in the usual
4 and regular course of its business, may be made upon
5 such terms and conditions and for such consideration,
6 which may consist in whole or in part of cash or other
7 property, including shares, obligations or other securities
8 of any other corporation, domestic or foreign, as may
9 be authorized in the following manner:

10 (a) The board of directors shall adopt a resolution
11 recommending such sale, lease, exchange or other dis-
12 position and directing the submission thereof to a vote
13 at a meeting of shareholders, which may be either an
14 annual or a special meeting.

15 (b) Written notice shall be given to each shareholder
16 of record, whether or not entitled to vote at such meet-
17 ing, not less than twenty days before such meeting, in
18 the manner provided in this article for the giving of
19 notice of meetings of shareholders, and, whether the meet-
20 ing be an annual or a special meeting, shall state that
21 the purpose, or one of the purposes is to consider the
22 proposed sale, lease, exchange or other disposition.

23 (c) At such meeting the shareholders may authorize
24 such sale, lease, exchange or other disposition and may
25 fix, or may authorize the board of directors to fix, any
26 or all of the terms and conditions thereof and the con-
27 sideration to be received by the corporation therefor.
28 Such authorization shall require the affirmative vote of
29 the holders of a majority of the shares of the corporation
30 entitled to vote thereon, unless any class of shares is
31 entitled to vote thereon as a class, in which event such
32 authorization shall require the affirmative vote of the
33 holders of a majority of the shares of each class of shares
34 entitled to vote as a class thereon and of the total shares
35 entitled to vote thereon.

36 (d) After such authorization by a vote of share-
37 holders, the board of directors nevertheless, in its dis-
38 cretion, may abandon such sale, lease, exchange or other
39 disposition of assets, subject to the rights of third parties
40 under any contracts relating thereto, without further
41 action or approval by shareholders.

§31-1-122. Right of shareholders to dissent.

1 Any shareholder of a corporation shall have the right
2 to dissent from any of the following corporate actions:

3 (a) Any plan of merger or consolidation to which
4 the corporation is a party; or

5 (b) Any sale or exchange of all or substantially all
6 of the property and assets of the corporation not made
7 in the usual and regular course of its business, including
8 a sale in dissolution, but not including a sale pursuant
9 to an order of a court having jurisdiction in the premises
10 or a sale for cash on terms requiring that all or sub-
11 stantially all of the net proceeds of sale be distributed
12 to the shareholders in accordance with their respective
13 interests within one year after the date of sale.

14 A shareholder may dissent as to less than all of the
15 shares registered in his name. In that event, his rights
16 shall be determined as if the shares as to which he has
17 dissented and his other shares were registered in the
18 names of different shareholders.

§31-1-123. Rights of dissenting shareholders; procedure for purchasing of dissenting shareholders' shares; civil action for determining value of shares; procedure for transferring of such shares to corporation and payment therefor.

1 (a) Any shareholder electing to exercise his right to
2 dissent, pursuant to section one hundred twenty-two of
3 this article, shall file with the corporation, prior to or
4 at the meeting of shareholders at which such proposed
5 corporate action is submitted to a vote, a written ob-
6 jection to such proposed corporate action. If such pro-
7 posed corporate action be approved by the required vote
8 and such shareholder shall not have voted in favor
9 thereof, such shareholder may, within ten days after
10 the date on which the vote was taken or if a corpora-
11 tion is to be merged without a vote of its shareholders
12 into another corporation, any of its shareholders may,
13 within fifteen days after the plan of such merger shall
14 have been mailed to such shareholders, make written

15 demand on the corporation, or, in the case of a merger
16 or consolidation, on the surviving or new corporation,
17 domestic or foreign, for payment of the fair value of
18 such shareholder's shares, and, if such proposed corporate
19 action is effected, such corporation shall pay to such
20 shareholder, upon surrender of the certificate or certifi-
21 cates representing such shares, the fair value thereof
22 as of the day prior to the date on which the vote was
23 taken approving the proposed corporate action, exclud-
24 ing any appreciation or depreciation in anticipation of
25 such corporate action. Any shareholder failing to make
26 demand within the ten-day period shall be bound by
27 the terms of the proposed corporate action. Any share-
28 holder making such demand shall thereafter be entitled
29 only to payment as in this section provided and shall
30 not be entitled to vote or to exercise any other rights
31 of a shareholder.

32 (b) No such demand may be withdrawn unless the
33 corporation shall consent thereto. If, however, such de-
34 mand shall be withdrawn upon consent, or if the pro-
35 posed corporate action shall be abandoned or rescinded
36 or the shareholders shall revoke the authority to effect
37 such action, or if, in the case of a merger, on the date
38 of the filing of the articles of merger the surviving
39 corporation, is the owner of all the outstanding shares
40 of the other corporations, domestic and foreign, that
41 are parties to the merger, or if no demand or petition
42 for the determination of fair value by a court of general
43 civil jurisdiction have been made or filed within the
44 time provided in subsection (e) of this section, or if a
45 court of general civil jurisdiction shall determine that
46 such shareholder is not entitled to the relief provided
47 by this section, then the right of such shareholder to
48 be paid the fair value of his shares shall cease and his
49 status as a shareholder shall be restored, without preju-
50 dice to any corporate proceedings which may have been
51 taken during the interim.

52 (c) Within ten days after such corporate action is
53 effected, the corporation, or, in the case of a merger or
54 consolidation, the surviving or new corporation, domestic

55 or foreign, shall give written notice thereof to each
56 dissenting shareholder who has made demand as herein
57 provided, and shall make a written offer to each share-
58 holder to pay for such shares at a specified price deemed
59 by such corporation to be fair value thereof. Such
60 notice and offer shall be accompanied by a balance
61 sheet of the corporation the shares of which the dis-
62 senting shareholder holds, as of the latest available date
63 and not more than twelve months prior to the making
64 of such offer, and a profit and loss statement of such
65 corporation for the twelve months' period ended on
66 the date of such balance sheet.

67 (d) If within thirty days after the date on which
68 such corporate action is effected the fair value of such
69 shares is agreed upon between any such dissenting share-
70 holder and the corporation, payment therefor shall be
71 made within ninety days after the date on which such
72 corporate action was effected, upon surrender of the
73 certificate or certificates representing such shares. Upon
74 payment of the agreed value the dissenting shareholder
75 shall cease to have any interest in such shares.

76 (e) If within such period of thirty days, a dissenting
77 shareholder and the corporation do not so agree, then
78 the corporation shall within thirty days after receipt of
79 written demand from any dissenting shareholder, which
80 written demand must be given within sixty days after
81 the date on which such corporate action was effected,
82 file a complaint in a court of general civil jurisdiction
83 requesting that the fair value of such shares be found
84 and determined, or the corporation may file such com-
85 plaint at any time within such sixty-day period at its
86 own election. Such complaint shall be filed in any court
87 of general civil jurisdiction in the county in which the
88 principal office of the corporation is situated, or, if there
89 be no such office in this state, in the county in which
90 any dissenting shareholder resides or is found or in
91 which the property of such corporation, or any part
92 of it, may be. If the corporation shall fail to institute
93 such proceedings, any dissenting shareholder may do so
94 in the name of the corporation. All dissenting share-

95 holders wherever residing, may be made parties to the
96 proceedings as an action against their shares quasi in
97 rem. A copy of the complaint shall be served on each
98 dissenting shareholder who is a resident of this state in
99 the same manner as in other civil actions. Dissenting
100 shareholders who are nonresidents of this state shall
101 be served a copy of the complaint by registered or certi-
102 fied mail, return receipt requested. In addition, service
103 upon such nonresident shareholders shall be made by
104 publication, as provided in Rule 4 (e) (2) of the West
105 Virginia Rules of Civil Procedure. All shareholders
106 who are parties to the proceeding shall be entitled to
107 judgment against the corporation for the amount of
108 the fair value of their shares. The court may, if it so
109 elects, appoint one or more persons as appraisers to
110 receive evidence and recommend a decision on the ques-
111 tion of fair value. The appraisers shall have such power
112 and authority as shall be specified in the order of their
113 appointment or any subsequent appointment. The judg-
114 ment shall be payable only upon and concurrently with
115 the surrender to the corporation of the certificate or
116 certificates representing such shares. Upon payment of
117 the judgment, the dissenting shareholder shall cease to
118 have any interest in such shares.

119 The judgment shall include an allowance for interest
120 at such rate as the court may find to be fair and equi-
121 table in all the circumstances, from the date on which
122 the vote was taken on the proposed corporate action to
123 the date of payment.

124 The costs and expenses of any such proceeding shall be
125 determined by the court and shall be assessed against the
126 corporation, but all or any part of such costs and expenses
127 may be apportioned and assessed as the court may deem
128 equitable against any or all of the dissenting shareholders
129 who are parties to the proceeding to whom the corpora-
130 tion shall have made an offer to pay for the shares if the
131 court shall find that the action of such shareholders in
132 failing to accept such offer was arbitrary or vexatious or
133 not in good faith. Such expenses shall include reasonable
134 compensation for and reasonable expenses of the ap-

135 praisers, but shall exclude the fees and expenses of
136 counsel for and experts employed by any party; but if the
137 fair value of the shares as determined materially ex-
138 ceeds the amount which the corporation offered to pay
139 therefor, or if no offer was made, the court in its discre-
140 tion may award to any shareholder who is a party to the
141 proceeding such sum as the court may determine to be
142 reasonable compensation to any expert or experts em-
143 ployed by the shareholder in the proceeding. Any party
144 to the proceeding may appeal any judgment or ruling of
145 the court as in other civil cases.

146 (f) Within twenty days after demanding payment for
147 his shares, each shareholder demanding payment shall
148 submit the certificate or certificates representing his
149 shares to the corporation for notation thereon that such
150 demand has been made. His failure to do so shall, at the
151 option of the corporation, terminate his rights under this
152 section unless a court of general civil jurisdiction, for
153 good and sufficient cause shown, shall otherwise direct. If
154 shares represented by a certificate on which notation has
155 been so made shall be transferred, each new certificate
156 issued therefor shall bear similar notation, together with
157 the name of the original dissenting holder of such shares,
158 and a transferee of such shares shall acquire by such
159 transfer no rights in the corporation other than those
160 which the original dissenting shareholder had after mak-
161 ing demand for payment of the fair value thereof.

162 (g) Shares acquired by a corporation pursuant to
163 payment of the agreed value therefor or to payment of
164 the judgment entered therefor, as in this section provided,
165 may be held and disposed of by such corporation as in
166 the case of other treasury shares, except that, in the case
167 of a merger or consolidation, they may be held and dis-
168 posed of as the plan of merger or consolidation may other-
169 wise provide.

§31-1-124. Voluntary dissolution by incorporators.

1 A corporation which has not commenced business and
2 which has not issued any shares, may be voluntarily
3 dissolved by its incorporators at any time in the follow-
4 ing manner:

5 (a) Articles of dissolution shall be executed in dupli-
6 cate by a majority of the incorporators and verified by
7 them, and shall set forth:

8 (1) The name of the corporation.

9 (2) The date of issuance of its certificate of incor-
10 poration.

11 (3) That none of its shares has been issued.

12 (4) That the corporation has not commenced busi-
13 ness.

14 (5) That the amount, if any, actually paid in on sub-
15 scriptions for its shares, less any part thereof disbursed
16 for necessary expenses, has been returned to those en-
17 titled thereto.

18 (6) That no debts of the corporation remain unpaid.

19 (7) That a majority of the incorporators elect that
20 the corporation be dissolved.

21 (b) Duplicate originals of the articles of dissolution
22 shall be delivered to the secretary of state. If the sec-
23 retary of state finds that the articles of dissolution con-
24 form to law, he shall, subject to the provisions of section
25 sixty-one of this article, and when all fees have been
26 paid as prescribed by law, (i) endorse on each of such
27 duplicate originals the word "Filed," and the month,
28 day and year of the filing thereof; (ii) file one of such
29 duplicate originals in his office; and (iii) issue a cer-
30 tificate of dissolution to which he shall affix the other
31 duplicate original.

32 (c) The certificate of dissolution, together with the
33 duplicate original of the articles of dissolution affixed
34 thereto by the secretary of state, shall be returned to
35 the incorporators or their representative.

36 (d) If the certificate of incorporation shall have been
37 recorded in the office of the clerk of the county court
38 of any county in the state, the incorporators or their
39 representative shall record the certificates of dissolution
40 in the office of the clerk of the county court in which

41 the certificate of incorporation is recorded, and the clerk
42 shall note on the margin of the record book in which
43 the certificate of incorporation is engrossed the fact of
44 the dissolution of the corporation, and upon such recor-
45 dation the existence of the corporation shall cease.

§31-1-125. Voluntary dissolution by consent of shareholders.

1 A corporation may be voluntarily dissolved by the
2 written consent of all its shareholders.

3 Upon the execution of such written consent, a state-
4 ment of intent to dissolve shall be executed in duplicate
5 by the corporation by its president or a vice president
6 and by its secretary or an assistant secretary, and verified
7 by one of the officers signing such statement, which state-
8 ment shall set forth:

9 (a) The name of the corporation.

10 (b) The names and respective addresses of its offi-
11 cers.

12 (c) The names and respective addresses of its direc-
13 tors.

14 (d) A copy of the written consent signed by all share-
15 holders of the corporation.

16 (e) A statement that such written consent has been
17 signed by all shareholders of the corporation or signed
18 in their names by their attorneys thereunto duly au-
19 thorized.

§31-1-126. Voluntary dissolution by act of corporation.

1 A corporation may be dissolved by the act of the
2 corporation, when authorized in the following manner:

3 (a) The board of directors shall adopt a resolution
4 recommending that the corporation be dissolved, and
5 directing that the question of such dissolution be sub-
6 mitted to a vote at a meeting of shareholders, which
7 may be either an annual or a special meeting.

8 (b) Written notice shall be given to each shareholder
9 of record entitled to vote at such meeting within the

10 time and in the manner provided in this article for the
11 giving of notice of meetings of shareholders, and, whether
12 the meeting be an annual or special meeting, shall state
13 that the purpose, or one of the purposes, of such meeting
14 is to consider the advisability of dissolving the cor-
15 poration.

16 (c) At such meeting a vote of shareholders entitled
17 to vote thereat shall be taken on a resolution to dissolve
18 the corporation. Such resolution shall be adopted upon
19 receiving the affirmative vote of the holders of a ma-
20 jority of the shares of the corporation entitled to vote
21 thereon, unless any class of shares is entitled to vote
22 thereon as a class, in which event the resolution shall be
23 adopted upon receiving the affirmative vote of the hold-
24 ers of a majority of the shares of each class of shares
25 entitled to vote thereon as a class and of the total shares
26 entitled to vote thereon.

27 (d) Upon the adoption of such resolution, a state-
28 ment of intent to dissolve shall be executed in duplicate
29 by the corporation by its president or a vice president
30 and by its secretary or an assistant secretary, and veri-
31 fied by one of the officers signing such statement, which
32 statement shall set forth:

33 (1) The name of the corporation.

34 (2) The names and respective addresses of its offi-
35 cers.

36 (3) The names and respective addresses of its direc-
37 tors.

38 (4) A copy of the resolution adopted by the share-
39 holders authorizing the dissolution of the corporation.

40 (5) The number of shares outstanding, and, if the
41 shares of any class are entitled to vote as a class, the
42 designation and number of outstanding shares of each
43 such class.

44 (6) The number of shares voted for and against the
45 resolution, respectively, and, if the shares of any class
46 are entitled to vote as a class, the number of shares of

47 each such class voted for and against the resolution,
48 respectively.

§31-1-127. Filing of statement of intent to dissolve.

1 Duplicate originals of the statement of intent to dis-
2 solve, whether by consent of shareholders or by act of
3 the corporation, shall be delivered to the secretary of
4 state. If the secretary of state finds that such statement
5 conforms to law, he shall, subject to the provisions of sec-
6 tion sixty-one of this article, and when all fees have been
7 paid as prescribed by law, (i) endorse on each of such
8 duplicate originals the word "Filed," and the month, day
9 and year of the filing thereof; (ii) file one of such duplicate
10 originals in his office; and (iii) return the other dupli-
11 cate original to the corporation or its representative.

§31-1-128. Effect of statement of intent to dissolve.

1 Upon the filing by the secretary of state of a statement
2 of intent to dissolve, whether by consent of shareholders
3 or by act of the corporation, the corporation shall cease
4 to carry on its business, except insofar as may be neces-
5 sary for the winding up thereof, but its corporate exist-
6 tence shall continue until a certificate of dissolution has
7 been issued by the secretary of state or until an order
8 dissolving the corporation has been entered by a court
9 of competent jurisdiction as in this article provided.

**§31-1-129. Procedure after filing of statement of intent to dis-
solve.**

1 After the filing by the secretary of state of a statement
2 of intent to dissolve:

3 (a) The corporation shall immediately cause notice
4 thereof to be mailed to each known creditor of the cor-
5 poration.

6 (b) The corporation shall proceed to collect its assets,
7 convey and dispose of such of its properties as are not
8 to be distributed in kind to its shareholders, pay, satisfy
9 and discharge its liabilities and obligations and do all
10 other acts required to liquidate its business and affairs,
11 and, after paying or adequately providing for the pay-

12 ment of all its obligations, distribute the remainder of
13 its assets, either in cash or in kind, among its share-
14 holders according to their respective rights and
15 interests.

16 (c) The corporation, at any time during the liquida-
17 tion of its business and affairs, may make application to a
18 court of competent jurisdiction within this state to have
19 the liquidation continued under the supervision of the
20 court as provided in this article. Such application shall
21 be made by filing a complaint in the appropriate circuit
22 court specified in section one hundred thirty-four of this
23 article.

§31-1-130. Revocation of voluntary dissolution proceedings by consent of shareholders.

1 By the written consent of all of its shareholders, a cor-
2 poration may, at any time prior to the issuance of a cer-
3 tificate of dissolution by the secretary of state, revoke
4 voluntary dissolution proceedings theretofore taken.

5 Upon the execution of such written consent, a statement
6 of revocation of voluntary dissolution proceedings shall be
7 executed in duplicate by the corporation by its president
8 or a vice president and by its secretary or an assistant
9 secretary, and verified by one of the officers signing such
10 statement, which statement shall set forth:

11 (a) The name of the corporation.

12 (b) The names and respective addresses of its officers.

13 (c) The names and respective addresses of its direc-
14 tors.

15 (d) A copy of the written consent signed by all share-
16 holders of the corporation revoking such voluntary dis-
17 solution proceedings.

18 (e) That such written consent has been signed by all
19 shareholders of the corporation or signed in their names
20 by their attorneys thereunto duly authorized.

§31-1-131. Revocation of voluntary dissolution proceedings by act of corporation.

1 By the act of the corporation, a corporation may, at any

2 time prior to the issuance of a certificate of dissolution by
3 the secretary of state, revoke voluntary dissolution pro-
4 ceedings theretofore taken, in the following manner:

5 (a) The board of directors shall adopt a resolution
6 recommending that the voluntary dissolution proceedings
7 be revoked, and directing that the question of such revoca-
8 tion be submitted to a vote at a special meeting of share-
9 holders.

10 (b) Written notice, stating that the purpose or one of
11 the purposes of such meeting is to consider the advis-
12 ability of revoking the voluntary dissolution proceedings,
13 shall be given to each shareholder of record entitled to
14 vote at such meeting within the time and in the manner
15 provided in this article for the giving of notice of special
16 meetings of shareholders.

**§31-1-132. Filing of statement of revocation of voluntary dis-
solution proceedings.**

1 Duplicate originals of the statement of revocation of
2 voluntary dissolution proceedings, whether by consent of
3 shareholders or by act of the corporation, shall be de-
4 livered to the secretary of state. If the secretary of state
5 finds that such statement conforms to law, he shall, when
6 all fees have been paid as prescribed by law, (i) endorse
7 on each of such duplicate originals the word "Filed," and
8 the month, day and year of the filing thereof; (ii) file one
9 of such duplicate originals in his office; and (iii) return
10 the other duplicate original to the corporation or its rep-
11 resentative.

**§31-1-133. Effect of statement of revocation of voluntary dis-
solution proceedings.**

1 Upon the filing by the secretary of state of a statement
2 of revocation of voluntary dissolution proceedings, wheth-
3 er by consent of shareholders or by act of the corpora-
4 tion, the revocation of the voluntary dissolution proceed-
5 ings shall become effective and the corporation may
6 again carry on its business.

§31-1-134. Actions for dissolution by shareholders; right of majority shareholders to purchase plaintiffs' shares; appeal.

1 If not less than one fifth in interest of the shareholders
2 of a corporation desire to wind up its affairs, they may
3 apply by complaint to the circuit court of the county in
4 which the principal office of such corporation is situ-
5 ated, or, if there be no such office in this state, to the
6 circuit court of the county in which the other sharehold-
7 ers, or any one or more of them, reside or are found, or
8 in which the property of such corporation or any part of it
9 may be, setting forth in the complaint the grounds of their
10 application, and the court may thereupon proceed accord-
11 ing to the principles and usages of law and equity to
12 hear the matter, and, if sufficient cause therefor be shown,
13 to order a dissolution of the corporation and make such
14 orders and judgments, and award such injunctions in the
15 cause as justice and right may require. In any such action
16 the defendant holders of a majority of the shares of the
17 outstanding stock of such corporation shall have the right
18 to avoid the appointment of a receiver or the dissolution
19 of such corporation by purchasing the shares of stock
20 owned by the plaintiffs at their fair cash value. If the
21 defendant shareholders shall elect to purchase the shares
22 of stock owned by the plaintiffs and are unable to agree
23 with the plaintiffs upon the fair cash value of such shares,
24 and shall give bond with sufficient security to protect the
25 interests and rights of the plaintiffs and to assure unto
26 the plaintiffs the payment of the value of their shares of
27 stock, the court shall stay the action or proceeding and
28 shall proceed to ascertain and fix the value of the shares of
29 stock owned by the plaintiffs. For such purpose the court
30 shall appoint three disinterested commissioners to appraise
31 the fair value of such shares of stock, and shall make an
32 order referring the matter to the commissioners so ap-
33 pointed for the purpose of ascertaining such value; and
34 such order shall prescribe the time and manner of pro-
35 ducing evidence, if evidence be required. The award of
36 such commissioners, or of a majority of them, when con-
37 firmed by the court shall be final and conclusive upon all
38 parties, and the court shall enter a judgment for the

39 amount of such award against such defendant sharehold-
40 ers and the surety or sureties on such bond, and such
41 judgment may be enforced in the same manner as other
42 orders and judgments of such court. Any shareholder,
43 feeling aggrieved by such action of the court, may appeal
44 to the supreme court of appeals of this state, as otherwise
45 provided by law. The defendant shareholders shall pay to
46 the plaintiff shareholders the value of their stock ascer-
47 tained and ordered as aforesaid, or, in case of an appeal,
48 as fixed on such appeal; and, on receiving such payment or
49 the tender thereof, such plaintiff shareholders shall trans-
50 fer their stock to the defendant shareholders.

§31-1-135. Application of assets in liquidation of corporation by court.

1 In all proceedings to liquidate the assets and business
2 or affairs of a business corporation, pursuant to section
3 forty-one of this article, the assets of such corporation
4 or the proceeds resulting from a sale, conveyance or other
5 disposition thereof shall be applied to the expenses of such
6 liquidation and to the payment of the liabilities and
7 obligations of the corporation, and any remaining assets or
8 proceeds shall be distributed among its shareholders
9 according to their respective rights and interests.

PART IV. NONPROFIT CORPORATIONS.

§31-1-136. Use of term "corporation."

1 As used in Part IV of this article, the term "corpora-
2 tion" shall refer exclusively to nonprofit corporations.

§31-1-137. Members.

1 A corporation may have one or more classes of members
2 or may have no members. If the corporation has one or
3 more classes of members, the designation of such class or
4 classes, the manner of election or appointment and the
5 qualifications and rights of the members of each class
6 shall be set forth in the articles of incorporation or the
7 bylaws. If the corporation has no members, that fact shall
8 be set forth in the articles of incorporation or the bylaws.
9 A corporation may issue certificates evidencing member-
10 ship therein.

11 The directors, officers, employees and members of the
12 corporation shall not, as such, be liable on its obligations.

§31-1-138. Voting.

1 The right of the members, or any class or classes of
2 members, to vote may be limited, enlarged or denied to
3 the extent specified in the articles of incorporation or the
4 bylaws. Unless so limited, enlarged or denied, each mem-
5 ber, regardless of class, shall be entitled to one vote on
6 each matter submitted to a vote of members.

7 A member entitled to vote may vote in person or, unless
8 the articles of incorporation or the bylaws otherwise pro-
9 vide, may vote by proxy executed in writing by the mem-
10 ber or by his duly authorized attorney-in-fact. No proxy
11 shall be valid after eleven months from the date of its
12 execution, unless otherwise provided in the proxy. Where
13 directors or officers are to be elected by members, the
14 bylaws may provide that such elections may be conducted
15 by mail.

16 The articles of incorporation or the bylaws may provide
17 that in all elections for directors every member entitled to
18 vote shall have the right to cumulate his vote and to give
19 one candidate a number of votes equal to his vote multi-
20 plied by the number of directors to be elected, or by
21 distributing such votes on the same principle among any
22 number of such candidates.

23 If a corporation has no members or its members have no
24 right to vote, the directors shall have the sole voting
25 power.

§31-1-139. Board of directors.

1 The affairs of a corporation shall be managed by a
2 board of directors. Directors need not be residents of this
3 state or members of the corporation unless the articles of
4 incorporation or the bylaws so require. The articles of
5 incorporation or the bylaws may prescribe other qualifi-
6 cations for directors.

§31-1-140. Removal of directors.

1 A director may be removed from office pursuant to any

2 procedure therefor provided in the articles of incorpora-
3 tion or bylaws.

§31-1-141. Committees; authority; limitations of authority.

1 If the articles of incorporation or the bylaws so provide,
2 the board of directors, by resolution adopted by a majority
3 of the directors in office, may designate and appoint one
4 or more committees each of which shall consist of two
5 or more directors, which committees, to the extent pro-
6 vided in such resolution, in the articles of incorporation
7 or in the bylaws of the corporation, shall have and exer-
8 cise all the authority of the board of directors, except that
9 no such committee shall have the authority of the board
10 of directors in reference to (i) amending, altering or
11 repealing the bylaws; (ii) electing, appointing or remov-
12 ing any member of any such committees or any director
13 or officer of the corporation; (iii) amending the articles
14 of incorporation, restating articles of incorporation, adopt-
15 ing a plan of merger or adopting a plan of consolidation
16 with another corporation; (iv) authorizing the sale, lease,
17 exchange or mortgage of all or substantially all of the
18 property and assets of the corporation; (v) authorizing
19 the voluntary dissolution of the corporation or revoking
20 proceedings therefor; (vi) adopting a plan for the dis-
21 tribution of the assets of the corporation; or (vii) amend-
22 ing, altering or repealing any resolution of the board of
23 directors which by its terms provides that it shall not be
24 amended, altered or repealed by such committee. The
25 designation and appointment of any such committee and
26 the delegation thereto of authority shall not operate to
27 relieve the board of directors, or any individual director
28 of any responsibility imposed upon it or him by law.

§31-1-142. Officers; removal of officers.

1 (a) The officers of a corporation shall consist of a
2 president, one or more vice presidents, a secretary, a
3 treasurer and such other officers and assistant officers as
4 may be deemed necessary, each of whom shall be elected
5 or appointed at such time and in such manner and for
6 such terms not exceeding three years as may be prescribed
7 in the articles of incorporation or the bylaws. In the
8 absence of any such provision, all officers shall be elected

9 or appointed annually by the board of directors. If the
10 bylaws so provide, any two or more offices may be held
11 by the same person, except the offices of president and
12 secretary.

13 The articles of incorporation or the bylaws may provide
14 that any one or more officers of the corporation shall be
15 ex officio members of the board of directors.

16 The officers of a corporation may be designated by such
17 additional titles as may be provided in the articles of
18 incorporation or the bylaws.

19 (b) Any officer elected or appointed may be removed
20 by the persons authorized to elect or appoint such officer
21 whenever in their judgment the best interests of the
22 corporation will be served thereby. The removal of an
23 officer shall be without prejudice to the contract rights,
24 if any, of the officer so removed. Election or appointment
25 of an officer or agent shall not of itself create contract
26 rights.

§31-1-143. Books and records.

1 Each corporation shall keep correct and complete books
2 and records of account and shall keep minutes of the
3 proceedings of its members, board of directors and com-
4 mittees having any of the authority of the board of
5 directors; and shall keep at its principal office in this
6 state a record of the names and addresses of its members
7 entitled to vote. All books and records of a corporation
8 may be inspected by any member, or his agent or attor-
9 ney, for any proper purpose at any reasonable time.

§31-1-144. Shares of stock permitted; dividends prohibited.

1 Corporations may have or issue shares of stock. No
2 dividend shall be paid and no part of the income or profit
3 of a corporation shall be distributed to its members,
4 directors or officers. A corporation may pay compensation
5 in a reasonable amount to its members, directors, or
6 officers for services rendered, may confer benefits upon its
7 members in conformity with its purposes, and upon
8 dissolution or final liquidation may make distributions to
9 its members as permitted by this article, and no such

10 payment, benefit or distribution shall be deemed to be a
11 dividend or a distribution of income or profit.

§31-1-145. Loans to directors and officers prohibited.

1 No loans shall be made by a corporation to its directors
2 or officers. Any director or officer who assents to or
3 participates in the making of any such loan shall be
4 liable to the corporation for the amount of such loan until
5 the repayment thereof.

§31-1-146. Right to amend articles of incorporation.

1 A corporation may amend its articles of incorporation
2 from time to time, in any and as many respects as may be
3 desired, so long as its articles of incorporation as amended
4 contain only such provisions as are lawful under this
5 article.

§31-1-147. Procedure to amend articles of incorporation.

1 Amendments to the articles of incorporation shall be
2 made in the following manner:

3 (a) If there are members entitled to vote thereon, the
4 board of directors shall adopt a resolution setting forth
5 the proposed amendments and directing that they be sub-
6 mitted to a vote at a meeting of members entitled to vote
7 thereon, which may be either an annual or a special meet-
8 ing. Written notice setting forth the proposed amendment
9 or a summary of the changes to be effected thereby shall
10 be given to each member entitled to vote at such meeting
11 within the time and in the manner provided in this article
12 for the giving of notice of meetings of members. The pro-
13 posed amendment shall be adopted upon receiving a
14 majority of the votes which members present at
15 such meeting or represented by proxy are entitled to
16 cast.

17 (b) If there are no members, or no members entitled to
18 vote thereon, an amendment shall be adopted at a meeting
19 of the board of directors upon receiving the vote of a
20 majority of the directors in office.

21 Any number of amendments may be submitted and
22 voted upon at any one meeting.

§31-1-148. Articles of amendment.

1 The articles of amendment shall be executed in dupli-
2 cate by the corporation by its president or a vice president
3 and by its secretary or an assistant secretary and shall
4 set forth:

5 (a) The name of the corporation.

6 (b) The amendment so adopted.

7 (c) If there are members entitled to vote thereon, (1)
8 a statement setting forth the date of the meeting of mem-
9 bers at which the amendment was adopted, that a quorum
10 was present at such meeting, and that such amendment
11 received a majority of the votes which members
12 present at such meeting or represented by proxy were
13 entitled to cast, or (2) a statement that such amendment
14 was adopted by a consent in writing signed by all mem-
15 bers entitled to vote with respect thereto.

16 (d) If there are no members, or no members entitled to
17 vote thereon, a statement of such fact, the date of the
18 meeting of the board of directors at which the amendment
19 was adopted, and a statement of the fact that such amend-
20 ment received the vote of a majority of the directors in
21 office.

§31-1-149. Restated articles of incorporation; procedures for adoption; contents.

1 (a) A domestic corporation may at any time restate its
2 articles of incorporation as theretofore amended, in the
3 following manner:

4 (1) If there are members entitled to vote thereon, the
5 board of directors shall adopt a resolution setting forth
6 the proposed restated articles of incorporation and direct-
7 ing that they be submitted to a vote at a meeting of
8 members entitled to vote thereon, which may be either an
9 annual or a special meeting.

10 (2) Written notice setting forth the proposed restated
11 articles or a summary of the provisions thereof shall be
12 given to each member entitled to vote thereon, within the
13 time and in the manner provided in this article for the

14 giving of notice of meetings of members. If the meeting be
15 an annual meeting, the proposed restated articles or a
16 summary of the provisions thereof may be included in the
17 notice of such annual meeting.

18 (3) At such meeting a vote of the members entitled to
19 vote thereon shall be taken on the proposed restated
20 articles, which shall be adopted upon receiving the
21 affirmative vote of a majority of the members entitled to
22 vote thereon present at such meeting or represented by
23 proxy.

24 (4) If there are no members, or no members entitled to
25 vote thereon, the proposed restated articles shall be
26 adopted at a meeting of the board of directors upon
27 receiving the affirmative vote of a majority of the direc-
28 tors in office.

29 (b) Upon such approval, restated articles of incorpora-
30 tion shall be executed in duplicate by the corporation by
31 its president or vice president and by its secretary or
32 assistant secretary and shall set forth:

33 (1) The name of the corporation.

34 (2) The period of its duration.

35 (3) The purpose or purposes which the corporation is
36 authorized to pursue.

37 (4) Any other provisions, not inconsistent with law,
38 which are then set forth in the articles of incorporation as
39 theretofore amended, except that it shall not be necessary
40 to set forth in the restated articles of incorporation the
41 address of the principal office of the corporation, its di-
42 rectors or its incorporators.

43 The restated articles of incorporation shall state that
44 they correctly set forth the provisions of the articles of
45 incorporation as theretofore amended, that they have been
46 duly adopted as required by law and that they supersede
47 the original articles of incorporation and all amendments
48 thereto.

§31-1-150. Approval of merger or consolidation; abandonment.

1 A plan of merger or consolidation shall be adopted in
2 the following manner:

3 (a) If the members of any merging or consolidating
4 corporation are entitled to vote thereon, the board of
5 **directors of such corporation** shall adopt a resolution
6 approving the proposed plan and directing that it be
7 submitted to a vote at a meeting of members entitled to
8 vote thereon, which may be either an annual or a special
9 meeting. Written notice setting forth the proposed plan
10 or a summary thereof shall be given to each member
11 entitled to vote at such meeting within the time and in
12 the manner provided in this article for the giving of
13 notice of meetings of members. The proposed plan shall
14 be adopted upon receiving the approval of the majority
15 of the votes which members present at each such meeting
16 or represented by proxy are entitled to cast.

17 (b) If any merging or consolidating corporation has
18 **no members**, or **no members** entitled to vote thereon, a
19 plan of merger or consolidation shall be adopted at a
20 meeting of the board of directors of such corporation
21 upon receiving the vote of a majority of the directors in
22 office.

23 After such approval, and at any time prior to the filing
24 of the articles of merger or consolidation, the merger or
25 consolidation may be abandoned pursuant to provisions
26 therefor, if any, set forth in the plan of merger or
27 consolidation.

**§31-1-151. Contents required in articles of merger or consoli-
dation.**

1 Articles of merger or articles of consolidation shall,
2 in addition to any other matters deemed appropriate, set
3 forth:

4 (1) The plan of merger or the plan of consolidation.

5 (2) If the members of any merging or consolidating
6 corporation are entitled to vote thereon, then as to each
7 such corporation (i) a statement setting forth the date
8 of the meeting of members at which the plan was
9 adopted, that a quorum was present at such meeting,
10 and that such plan received a majority of the votes
11 which members present at such meeting or represented

12 by proxy were entitled to cast, or (ii) a statement that
13 such amendment was adopted by a consent in writing
14 signed by all members entitled to vote with respect
15 thereto.

16 (3) If any merging or consolidating corporation has
17 no members, or no members entitled to vote thereon,
18 then as to each such corporation a statement of such
19 fact, the date of the meeting of the board of directors at
20 which the plan was adopted and a statement of the fact
21 that such plan received the vote of a majority of the di-
22 rectors in office.

§31-1-152. Sale, lease, exchange or mortgage of assets.

1 A sale, lease, exchange, mortgage, pledge or other dis-
2 position of all, or substantially all, the property and as-
3 sets of a corporation may be made upon such terms and
4 conditions and for such consideration, which may consist
5 in whole or in part of money or property, real or personal,
6 including shares of any corporation, domestic or foreign,
7 whether stock or nonstock and whether or not organized
8 for profit, as may be authorized in the following manner:

9 (a) If there are members entitled to vote thereon, the
10 board of directors shall adopt a resolution recommend-
11 ing such sale, lease, exchange, mortgage, pledge or other
12 disposition and directing that it be submitted to a vote at
13 a meeting of members entitled to vote thereon, which
14 may be either an annual or a special meeting. Written
15 notice stating that the purpose, or one of the purposes,
16 of such meeting is to consider the sale, lease, exchange,
17 mortgage, pledge or other disposition of all, or substan-
18 tially all, the property and assets of the corporation shall
19 be given to each member entitled to vote at such meeting,
20 within the time and in the manner provided by this article
21 for the giving of notice of meetings of members. At such
22 meeting the members may authorize such sale, lease, ex-
23 change, mortgage, pledge or other disposition and may
24 fix, or may authorize the board of directors to fix, any or
25 all of the terms and conditions thereof and the considera-
26 tion to be received by the corporation therefor. Such
27 authorization shall require the approval of the majority

28 of the votes which members present at such meeting or
29 represented by proxy are entitled to cast. After such
30 authorization by a vote of members, the board of directors
31 nevertheless, in its discretion, may abandon such sale,
32 lease, exchange, mortgage, pledge or other disposition of
33 assets, subject to the rights of third parties under any con-
34 tracts relating thereto, without further action or approval
35 by members.

36 (b) If there are no members, or no members entitled
37 to vote thereon, a sale, lease, exchange, mortgage, pledge
38 or other disposition of all or substantially all of the prop-
39 erty and assets of a corporation shall be authorized upon
40 receiving the vote of a majority of the directors in office.

**§31-1-153. Right of members to dissent; procedures for de-
termining value of dissenting members' interests.**

1 (a) Any member of a corporation who holds shares of
2 or owns an interest in such corporation shall have the
3 right to dissent from any of the following corporate ac-
4 tions:

5 (1) Any plan of merger or consolidation to which the
6 corporation is a party; or

7 (2) Any sale or exchange of all or substantially all of
8 the property and assets of the corporation not made in the
9 usual and regular course of its business, including a sale
10 in dissolution but not including a sale pursuant to an order
11 of a court having jurisdiction in the premises or a sale for
12 cash on terms requiring that all or substantially all of the
13 net proceeds of sale be distributed to the members in ac-
14 cordance with their respective interests within one year
15 after the date of sale.

16 (b) All of the rights enjoyed by dissenting sharehold-
17 ers, as provided in section one hundred twenty-three of
18 this article, shall apply to and be enjoyed by any mem-
19 ber electing to exercise his right of dissent, and all of the
20 procedures relating to the valuation and purchase of such
21 dissenting member's shares or interest in the corporation
22 and to the payment therefor as are contained in said sec-
23 tion one hundred twenty-three shall apply to such dis-

24 sending member's shares or interest to the same extent
25 as if said section one hundred twenty-three were set forth
26 in extenso in this section. Similarly, the right to judicial
27 relief, as provided for dissenting shareholders in said sec-
28 tion one hundred twenty-three, shall be available to the
29 same extent as specified in such section, and the same
30 procedures therein outlined shall apply to any civil action
31 instituted under this section one hundred fifty-three.

§31-1-154. Voluntary dissolution.

1 (a) A corporation may dissolve and wind up its
2 affairs in the following manner:

3 (1) If there are members entitled to vote thereon, the
4 board of directors shall adopt a resolution recommending
5 that the corporation be dissolved, and directing that the
6 question of such dissolution be submitted to a vote at a
7 meeting of members entitled to vote thereon, which may
8 be either an annual or a special meeting. Each member
9 entitled to vote at such meeting shall be given written
10 notice stating that the purpose, or one of the purposes,
11 of such meeting is to consider the advisability of dissolv-
12 ing the corporation. Such notice shall be given within the
13 time and in the manner provided in this article for the
14 giving of notice of meetings of members. A resolution to
15 dissolve the corporation shall be adopted upon receiving
16 the approval of the majority of the votes which members
17 present at such meeting or represented by proxy are en-
18 titled to cast.

19 (2) If there are no members, or no members entitled
20 to vote thereon, the dissolution of the corporation shall
21 be authorized at a meeting of the board of directors upon
22 the adoption of a resolution to dissolve by the vote of a
23 majority of the directors in office.

24 (b) Upon the adoption of a resolution to dissolve by
25 the members, or by the board of directors if there are no
26 members or no members entitled to vote thereon, the
27 corporation shall cease to conduct its affairs except in-
28 sofar as may be necessary for the winding up thereof.
29 The corporation shall immediately cause a notice of the
30 proposed dissolution to be mailed to each known creditor

31 of the corporation by registered or certified mail, return
32 receipt requested, and the corporation shall proceed to
33 collect its assets and apply and distribute them as pro-
34 vided in this article.

35 (c) As soon as practicable after the passage of a
36 resolution to dissolve, the directors and officers of the
37 corporation shall cause the corporate assets to be dis-
38 tributed in the manner provided in this article, but no such
39 distribution shall be made to the members of the cor-
40 poration until notice of the resolution of dissolution shall
41 have been published as a Class II legal advertisement in
42 compliance with the provisions of article three, chapter
43 fifty-nine of this code. The publication area for such pub-
44 lication shall be the county in which its principal office
45 in this state is located, or if there be no such office in this
46 state, then any county in this state where it conducts its
47 affairs or transacts its business.

§31-1-155. Distribution of assets.

1 The assets of a corporation in the process of dissolution
2 shall be applied and distributed as follows:

3 (a) All liabilities and obligations of the corporation
4 shall be paid and discharged, or adequate provisions shall
5 be made therefor.

6 (b) Assets held by the corporation upon condition
7 requiring return, transfer or conveyance, which condition
8 occurs by reason of the dissolution, shall be returned,
9 transferred or conveyed in accordance with such require-
10 ments.

11 (c) Assets received and held by the corporation sub-
12 ject to limitations permitting their use only for charit-
13 able, religious, eleemosynary, benevolent, educational or
14 similar purposes, but not held upon a condition requir-
15 ing return, transfer or conveyance by reason of the dis-
16 solution, shall be transferred or conveyed to one or more
17 domestic or foreign corporations, societies or organiza-
18 tions engaged in activities substantially similar to those
19 of the dissolving corporation, pursuant to a plan of dis-
20 tribution adopted as provided in this article.

21 (d) Other assets, if any, shall be distributed in ac-
22 cordance with the provisions of the articles of incorpora-
23 tion or the bylaws to the extent that the articles of in-
24 corporation or bylaws determine the distributive rights
25 of members, or any class or classes of members, or pro-
26 vide for distribution to others.

27 (e) Any remaining assets may be distributed to such
28 persons, societies, organizations or domestic or foreign
29 corporations, whether stock or nonstock and whether or
30 not organized for profit, as may be specified in a plan of
31 distribution adopted as provided in this article.

§31-1-156. Plan of distribution.

1 A plan providing for the distribution of assets, not
2 inconsistent with the provisions of this article, may be
3 adopted by a corporation in the process of dissolution and
4 shall be adopted by a corporation for the purpose of
5 authorizing any transfer or conveyance of assets for which
6 this article requires a plan of distribution, in the following
7 manner:

8 (a) If there are members entitled to vote thereon, the
9 board of directors shall adopt a resolution recommending
10 a plan of distribution and directing the submission thereof
11 to a vote at a meeting of members entitled to vote thereon,
12 which may be either an annual or a special meeting.
13 Written notice setting forth the proposed plan of distri-
14 bution or a summary thereof shall be given to each mem-
15 ber entitled to vote at such meeting, within the time and
16 in the manner provided in this article for the giving of
17 notice of meetings of members. Such plan of distribution
18 shall be adopted upon receiving the approval of a majority
19 of the votes which members present at such meeting or
20 represented by proxy are entitled to cast.

21 (b) If there are no members or no members entitled to
22 vote thereon, a plan of distribution shall be adopted at a
23 meeting of the board of directors upon receiving a vote of
24 a majority of the directors in office.

§31-1-157. Revocation of voluntary dissolution proceedings.

1 A corporation may, at any time prior to the issuance of
2 a certificate of dissolution by the secretary of state,

3 revoke the action theretofore taken to dissolve the
4 corporation, in the following manner:

5 (a) If there are members entitled to vote thereon, the
6 board of directors shall adopt a resolution recommending
7 that the voluntary dissolution proceedings be revoked, and
8 directing that the question of such revocation be submit-
9 ted to a vote at a meeting of members entitled to vote
10 thereon, which may be either an annual or a special meet-
11 ing. Each member entitled to vote at such meeting shall
12 be given written notice stating that the purpose, or one of
13 the purposes of such meeting, is to consider the advis-
14 ability of dissolving the corporation. Such notice shall be
15 given within the time and in the manner provided in this
16 article for the giving of notice of meetings of members. A
17 resolution to revoke the voluntary dissolution proceedings
18 shall be adopted upon receiving the approval of a majority
19 of the votes which members present at such meeting or
20 represented by proxy are entitled to cast.

21 (b) If there are no members, or no members entitled to
22 vote thereon, a resolution to revoke the voluntary disso-
23 lution proceedings shall be adopted at a meeting of the
24 board of directors upon receiving the vote of a majority of
25 the directors in office.

26 Upon the adoption of such resolution by the members,
27 or by the board of directors where there are no members
28 or no members entitled to vote thereon, the corporation
29 may thereupon again do or transact business or conduct
30 its affairs.

**§31-1-158. Application of assets in liquidation of corporation
by court.**

1 In all proceedings to liquidate the assets and business
2 or affairs of a nonprofit corporation, pursuant to section
3 forty-one of this article, the assets of such corporation
4 or the proceeds resulting from a sale, conveyance or other
5 disposition thereof shall be applied and distributed as
6 follows:

7 (a) All costs and expenses of the court proceedings and
8 all liabilities and obligations of the corporation shall be

9 paid, satisfied and discharged, or adequate provision shall
10 be made therefor;

11 (b) Assets held by the corporation upon condition
12 requiring return, transfer or conveyance, which condition
13 occurs by reason of the dissolution or liquidation, shall be
14 returned, transferred or conveyed in accordance with such
15 requirements;

16 (c) Assets received and held by the corporation subject
17 to limitations permitting their use only for charitable,
18 religious, eleemosynary, benevolent, educational or simi-
19 lar purposes, but not held upon a condition requiring re-
20 turn, transfer or conveyance by reason of the dissolution
21 or liquidation, shall be transferred or conveyed to one or
22 more domestic or foreign corporations, societies or organi-
23 zations engaged in activities substantially similar to those
24 of the dissolving or liquidating corporation as the court
25 may direct;

26 (d) Other assets, if any, shall be distributed in
27 accordance with the provisions of the articles of incorpora-
28 tion or the bylaws to the extent that the articles of
29 incorporation or bylaws determine the distributive right
30 of members, or any class or classes of members, or provide
31 for distribution to others;

32 (e) Any remaining assets may be distributed to such
33 persons, societies, organizations or domestic or foreign
34 corporation, whether stock or nonstock and whether or
35 not organized for profit, specified in the plan of distribu-
36 tion adopted as provided in this article, or where no plan
37 of distribution has been adopted, as the court may direct.

**§31-1-159. Annual report of domestic and foreign corporations;
filing.**

1 (a) Each domestic corporation, and each foreign cor-
2 poration authorized to conduct affairs or do or transact
3 business in this state, shall file, within the time prescribed
4 by this article, an annual report setting forth:

5 (1) The name of the corporation and the state or coun-
6 try under the laws of which it is incorporated.

7 (2) In the case of a domestic corporation, the address

8 of the principal office of the corporation in this state, if
9 any, and, in the case of a foreign corporation, the address
10 of its principal office in this state, if any, and the address
11 of its principal office in the state or country under the laws
12 of which it is incorporated.

13 (3) A brief statement of the character of the affairs
14 which the corporation is actually conducting, or the busi-
15 ness it is doing or transacting, in this state.

16 (4) The names and respective addresses of the di-
17 rectors and officers of the corporation.

18 (b) Such annual report shall be made on forms pre-
19 scribed and furnished by the secretary of state, and the
20 information therein contained shall be given as of the date
21 of the execution of the report. It shall be executed by the
22 corporation by its president, a vice president, secretary,
23 an assistant secretary or treasurer, or, if the corporation
24 is in the hands of a receiver or trustee, it shall be executed
25 on behalf of the corporation by such receiver or trustee.

26 (c) Such annual report of a domestic or foreign cor-
27 poration shall be delivered to the secretary of state be-
28 tween the first day of January and the first day of March
29 of each year, except that the first annual report of a do-
30 mestic or foreign corporation shall be filed between the
31 first day of January and the first day of March of the year
32 next succeeding the calendar year in which its certificate
33 of incorporation or its certificate of authority, as the case
34 may be, was issued by the secretary of state. Proof to the
35 satisfaction of the secretary of state that prior to the first
36 day of March such report was deposited in the United
37 States mail in a sealed envelope, properly addressed, with
38 postage prepaid, shall be deemed compliance with this
39 requirement. If the secretary of state finds that such re-
40 port conforms to the requirements of this article, he shall
41 file the same. If he finds that it does not so conform, he
42 shall promptly return the same to the corporation for any
43 necessary corrections in which event the penalties here-
44 after prescribed in this article for failure to file such
45 report within the time hereinabove provided shall not
46 apply, if such report is corrected to conform to the re-

47 quirements of this article and returned to the secretary of
48 state within thirty days from the date on which it was
49 mailed to the corporation by the secretary of state.

**§31-1-160. Penalties imposed for failure to file annual report;
notice; hearings conducted by secretary of state;
appeal.**

1 Each corporation, domestic or foreign, which fails or
2 refuses to file its annual report for three successive years,
3 as required by the provisions of section one hundred
4 fifty-nine of this article, shall be notified by registered
5 or certified mail, return receipt requested, of its failure
6 to file such annual report. Such notice shall be mailed to
7 the address of its last known principal office in this state
8 or if it has no such principal office in this state, then
9 such notice shall be mailed to the address of its last known
10 principal office, wherever situated.

11 Such notice shall also advise the corporation that its
12 failure to file all of the annual reports within thirty days
13 of receipt of the notice shall subject such corporation to
14 an order of dissolution or an order revoking its certificate
15 of authority, as the case may be. Such order shall also
16 advise the corporation of its right to a hearing and shall
17 set forth the date and time of the hearing, which hearing
18 shall be held in the office of the secretary of state by the
19 secretary of state or his designee. At such hearing, the
20 corporation shall be afforded an opportunity to explain
21 its reasons for failure to file the required reports.

22 If the corporation fails to file the required reports
23 within such thirty-day period or fails to appear at the
24 hearing, as set by the secretary of state, or fails to ex-
25 plain to the satisfaction of the secretary of state its rea-
26 sons for not filing the reports, then the secretary of state
27 shall issue an order dissolving the corporation or shall
28 issue an order revoking its certificate of authority, as the
29 case may be.

30 Any person or corporation aggrieved by the action of
31 the secretary of state with respect to dissolving the cor-
32 poration or revoking its certificate of authority under this

33 section shall have the same right of appeal as set forth in
34 subsection (b) of section sixty-eight of this article.

CHAPTER 11. TAXATION.

ARTICLE 12. LICENSE TAXES.

- §11-12-77.** Relief from assessment of corporate license tax.
- §11-12-78.** Amount of license tax on domestic corporations.
- §11-12-79.** Assessment and collection of tax on domestic corporation.
- §11-12-80.** License tax on foreign corporations.
- §11-12-81.** Preliminary report by foreign corporations; assessment; collection of license tax.
- §11-12-82.** Annual fee of secretary of state as attorney-in-fact.
- §11-12-83.** Notice to corporations taxable; statement on payment; tax as lien.
- §11-12-84.** Publication of list of delinquent corporations.
- §11-12-85.** Investigation of corporations' delinquencies.
- §11-12-86.** Action to enforce payment of corporate license tax; forfeiture of charter or revocation of right to do business.
- §11-12-87.** Limitation on institution of actions to set aside sales in prior actions or proceedings.
- §11-12-88.** Process in such action; record of forfeiture, revocation or dissolution.
- §11-12-89.** Corporations exempt from license tax.
- §11-12-90.** Monthly report by secretary of state to tax commissioner as to corporations.

§11-12-77. Relief from assessment of corporate license tax.

1 Any corporation feeling aggrieved at the assessment of
 2 its license tax by the tax commissioner, under the provi-
 3 sions of this article, may apply to the board of public
 4 works for relief; and the board shall have authority
 5 to consider such case, and also cases of the insolvency or
 6 financial distress of any corporation or any other case
 7 involving such license tax. In any such case the board
 8 may fix the amount to be paid by such corporation in
 9 full discharge of the license tax, interest and penalties
 10 due the state for the period named in the order made
 11 therein. Every such order shall be entered in the record
 12 of the board and a certified copy thereof shall be delivered
 13 to the tax commissioner by the secretary of the board.

§11-12-78. Amount of license tax on domestic corporations.

1 Every domestic corporation shall pay an annual license
 2 tax on its charter for the fiscal year beginning on the
 3 first day of July of each year, based on its authorized
 4 capital stock as follows: If the authorized capital stock

5 be five thousand dollars, or less, twenty dollars; if more
6 then five thousand dollars and not more than ten thou-
7 sand dollars, thirty dollars; if more than ten thousand
8 dollars and not more than twenty-five thousand dol-
9 lars, forty dollars; if more than twenty-five thousand
10 dollars and not more than fifty thousand dollars, fifty
11 dollars; if more than fifty thousand dollars and not
12 more than seventy-five thousand dollars, eighty dollars;
13 if more than seventy-five thousand dollars and not
14 more than one hundred thousand dollars, one hundred
15 dollars; if more than one hundred thousand dollars
16 and not more than one hundred and twenty-five thou-
17 sand dollars, one hundred and ten dollars; if more than
18 one hundred and twenty-five thousand dollars and not
19 more than one hundred and fifty thousand dollars, one
20 hundred and twenty dollars; if more than one hun-
21 dred and fifty thousand dollars and not more than
22 one hundred and seventy-five thousand dollars, one
23 hundred and forty dollars; if more than one hundred
24 and seventy-five thousand dollars and not more than
25 two hundred thousand dollars, one hundred and fifty
26 dollars; if more than two hundred thousand dollars
27 and not more than one million dollars, one hundred and
28 eighty dollars, and an additional twenty cents on each
29 one thousand dollars, or fraction thereof, in excess of two
30 hundred thousand dollars; if more than one million
31 dollars and not more than fifteen million dollars, three
32 hundred and forty dollars, and an additional fifteen cents
33 on each one thousand dollars, or fraction thereof, in ex-
34 cess of one million dollars; if more than fifteen million
35 dollars, twenty-five hundred dollars. The license tax col-
36 lected hereunder shall be in addition to the annual fee,
37 if any, payable to the secretary of state as statutory at-
38 torney-in-fact. For the purpose of the assessment of the
39 license tax provided by this section, and that provided by
40 sections eighty and eighty-one of this article, and for no
41 other purpose, shares of stock having no par value shall
42 be presumed to be of the par value of twenty-five dollars
43 each: *Provided*, That if such stock was original-
44 ly issued for a consideration greater than twenty-five
45 dollars per share, such license taxes as are required to

46 be paid to the tax commissioner under the provisions of
47 sections seventy-nine, eighty and eighty-one of this ar-
48 ticle shall be computed upon the basis of the consideration
49 for which such stock was issued.

**§11-12-79. Assessment and collection of tax on domestic cor-
poration.**

1 When application is made to the secretary of state for
2 a certificate of incorporation, it shall be his duty to make
3 the assessment and collect the license tax for the first
4 year before issuing such certificate. If such certificate be
5 issued after the last day of the third month of the license
6 year, he shall assess one tenth of the amount of the annual
7 tax for each month, or fractional part of a month, to
8 ensue before the first day of the next license tax year; but
9 in no case shall the amount assessed and collected be less
10 than ten dollars in addition to the fee, if any, payable to
11 the secretary of state as statutory attorney-in-fact. There-
12 after, on or before the first day of the license tax year
13 next following the date of the certificate of incorporation,
14 and on or before the first day of each succeeding license
15 tax year, the tax commissioner shall collect such tax for
16 a full year together with the statutory attorney fee; ex-
17 cept that if the certificate of incorporation be issued on
18 or after the first day of the second month preceding the
19 beginning of the license tax year, and before the first day
20 of the ensuing license tax year, the secretary of state
21 shall assess and collect the tax for the full year beginning
22 on such first day of the license tax year in addition to the
23 initial tax, together with the statutory attorney fee. The
24 money so received by the secretary of state and the tax
25 commissioner shall be paid by them into the state trea-
26 sury. Any corporation authorized by its articles of incor-
27 poration to issue stock having no par value shall, within
28 sixty days after its board of directors shall have autho-
29 rized the issue of all or a portion of such stock under the
30 provisions of article one, chapter thirty-one of this code,
31 make a report to the tax commissioner stating the number
32 of shares of stock so authorized to be issued and the con-
33 sideration for which such stock is authorized to be issued.
34 Such report shall be verified by the affidavit of the presi-

35 dent, secretary or other executive officer of such corpora-
36 tion.

37 The payment of the tax and statutory attorney fee,
38 payable under the provisions of this section, shall be ac-
39 companied by a report on forms provided by the tax
40 commissioner for the purpose, and shall be submitted in
41 duplicate. The tax commissioner shall forward a copy of
42 such report to the secretary of state, together with a list
43 of all corporations which have paid such tax. Such report
44 shall contain, in addition to such information as the tax
45 commissioner deems appropriate, the name and address of
46 the corporation, the date of incorporation, the place of its
47 principal office and the names and post-office addresses of
48 its president, secretary and other officers.

§11-12-80. License tax on foreign corporations.

1 Every foreign corporation which has qualified to hold
2 property or to do business in this state shall make a report
3 in duplicate to the tax commissioner annually in the third
4 month preceding the beginning of the license tax year, in
5 which report shall be set out: (a) The name of such
6 corporation, the name of the state or country by which
7 incorporated, the date of the incorporation, the date of the
8 certificate of the secretary of state authorizing it to do
9 business in this state, the place of its principal office,
10 the names and post-office addresses of its president, secre-
11 tary and its officers, if any, charged with the duty of
12 making returns of its property for taxation and the name
13 and post-office address of its attorney of record in this
14 state; (b) the number of shares of its authorized capital
15 stock having a par value and the par value of each share,
16 and the number of its issued and outstanding shares and
17 the par value of each share; (c) the number of shares of
18 its authorized capital stock having no par value, the num-
19 ber of shares of such stock authorized to be issued and the
20 considerations fixed for the issue of each share of the same
21 by its articles of incorporation or board of directors, and
22 the number of shares thereof issued and outstanding; (d)
23 the value of the property owned and used by such corpora-
24 tion within this state, where situate, of what it consists,

25 and the number of acres of land it holds in this state, and
26 the value of its property owned and used without this
27 state; and (e) the proportion of its capital stock which is
28 represented by property owned and used in the state of
29 West Virginia. Such report shall be verified by the
30 affidavit of the president, secretary or other executive
31 officers of such corporation.

32 It shall be the duty of the tax commissioner to assess
33 and fix the license tax of such corporation according to the
34 proportion of its issued and outstanding capital stock
35 which is represented by its property owned and used in
36 this state, which license tax shall be at the rate prescribed
37 in section seventy-eight of this article, plus seventy-five
38 percent of such tax. In no event shall any such corpora-
39 tion pay an annual license tax of less than two hundred
40 fifty dollars, which shall be in addition to the fee of the
41 secretary of state as statutory attorney-in-fact. The tax
42 commissioner may in any case require such additional
43 information as he may deem necessary to enable him
44 to assess and fix the just amount of license tax of such
45 corporation; and it shall be his duty to notify every such
46 corporation of the amount so assessed by him and it
47 shall be the duty of the corporation to pay the same to
48 the tax commissioner within thirty days thereafter, and
49 if it fails to do so it shall be liable to the penalties pre-
50 scribed in sections eighty-six and eighty-seven of this
51 article.

**§11-12-81. Preliminary report by foreign corporations; assess-
ment; collection of license taxes.**

1 Every foreign corporation, at the time of its application
2 for a certificate of authority under the provisions of article
3 one of chapter thirty-one of this code, shall file with the
4 secretary of state a report preliminary to the annual
5 report hereinbefore provided for, which preliminary
6 report shall contain sufficient information upon which to
7 base an assessment of its license tax for the then current
8 year. It shall be the duty of the secretary of state to make
9 assessment of its license tax for such year, and he may
10 require such further information as he may deem neces-
11 sary for that purpose. Before issuing such certificate the

12 secretary of state shall collect the amount of license tax
13 he finds to be proper for the license tax year ending with
14 the thirtieth day of the last month of the license tax
15 year. If the certificate be issued after the last day of the
16 third month of the license tax year and before the first
17 day of the ensuing license tax year, the secretary of state
18 shall ~~assess~~ and collect such taxes at the rate of one tenth
19 the amount of the annual license tax for each month or
20 fractional part of a month to ensue before the first day of
21 the ensuing license tax year. Thereafter on or before the
22 first day of the license tax year next following the date of
23 the certificate of authority and on or before every succeed-
24 ing first day of the license tax year the tax commissioner
25 shall collect such tax for a full year: *Provided*, That if the
26 certificate be issued in either of the last two months of the
27 license tax year, the secretary of state shall assess and
28 collect the license tax for such month or months, as well as
29 for a full year beginning with the first day of the ensuing
30 license tax year. When the tax commissioner shall ~~assess~~
31 and collect the tax on any such foreign corporation, he
32 may include in the tax for any year any amount that such
33 corporation should have paid for any previous year and
34 failed to pay. The collections hereunder shall be in addi-
35 tion to the annual fee of the secretary of state as statutory
36 attorney-in-fact. All moneys collected by the secretary of
37 state and the tax commissioner shall be paid into the state
38 treasury in the manner prescribed by law.

§11-12-82. Annual fee of secretary of state as attorney-in-fact.

1 Every foreign corporation, and every domestic corpora-
2 tion whose principal place of business or chief works is
3 located without the state, shall pay an annual fee of ten
4 dollars for the services of the secretary of state as
5 attorney-in-fact for such corporation, which fee shall be
6 due and payable at the same time, collected by the same
7 officers, and accounted for in the same way, as the annual
8 license tax, payable to the secretary of state as statutory
9 attorney-in-fact.

**§11-12-83. Notice to corporations taxable; statement on pay-
ment; tax as lien.**

1 It shall be the duty of the tax commissioner, between

2 the fifteenth day of the third month next preceding the
3 first day of the license tax year and the fifteenth day of
4 the second month next preceding the first day of the
5 license tax year, in each year, to notify each corporation,
6 liable to the tax imposed by this article, of the time of
7 payment of such tax and the amount thereof, together
8 with the statutory attorney fee, if any. Such notices may
9 be sent through the mails, addressed to the corporation
10 at its last known post-office address as shown by the
11 records in the office of the secretary of state. If the tax
12 commissioner shall make a mistake in the amount of such
13 tax such corporation may file a sworn certificate of the
14 president, vice president or secretary of the corporation,
15 showing such mistake, or showing the actual amount of
16 tax due; and, in that event, it shall be the duty of the tax
17 commissioner to accept the amount due as shown by such
18 certificate, unless contrary to provisions of this article.
19 At the time of making payment to the tax commissioner
20 every domestic corporation shall deliver to him a state-
21 ment, in duplicate, which shall show the name of the
22 corporation, the date of its certificate of incorporation, the
23 name and post-office address of its attorney of record in
24 this state, if any, the names and post-office addresses of its
25 president, secretary and treasurer, the amount of its au-
26 thorized capital stock, the number of acres of land it holds
27 in this state if the number exceeds ten thousand acres,
28 and such other facts as the tax commissioner may require.
29 Such statement shall be signed by the president, secretary
30 or treasurer of the corporation. The amount of such tax
31 shall be deemed a debt due the state, and shall be a lien
32 as to an innocent purchaser for value, on the property and
33 assets of the corporation prior to all other liens, except
34 the lien of the taxes levied on its property for state, county
35 and district purposes, from the time a notice of such lien,
36 specifying the year and the amount for which the lien is
37 claimed, is filed in the office of the clerk of the county
38 court of the county in which the property subject to such
39 liens is situated. Such clerk shall, upon the filing in his
40 office of any such notice, record such notice in a separate
41 docket in his office to be known as "Corporation License
42 Tax Lien Docket," and index the same in the name of the

43 corporation against whom the lien is claimed. Upon pay-
44 ment of such lien debt there shall be executed by the tax
45 commissioner and delivered to the clerk of the county
46 court in whose office notice of such lien is filed a release
47 thereof, which said release shall be filed and recorded by
48 such clerk in like manner as releases of judgment liens
49 are filed and recorded. Such tax shall be a preferred debt
50 in case of insolvency.

51 The tax commissioner shall forward to the secretary of
52 state a copy of the statement required by this section,
53 together with a list of all corporations which have
54 delivered such statements and which have paid their
55 taxes. Such list shall contain, in addition to such infor-
56 mation as the tax commissioner deems appropriate, the
57 name and address of the corporation, the place of its prin-
58 cipal office, and the names and post-office addresses of its
59 president, secretary and other officers.

§11-12-84. Publication of list of delinquent corporations.

1 The tax commissioner shall, between the first and fif-
2 teenth day of the second month of the license tax year in
3 every year, publish a list of all corporations failing to
4 pay the license tax, or any part thereof, due therefrom on
5 or before the first day of the first month of the license
6 tax year, as a Class I legal advertisement in compliance
7 with the provisions of article three, chapter fifty-nine of
8 this code, and the publication area for such publication
9 shall be the state. Such list shall contain the names of
10 such delinquent corporations, arranged in two classes,
11 domestic and foreign. The cost of such publication shall
12 be paid by the tax commissioner when allowed by the
13 board of public works, out of the moneys in the treasury.
14 Any such delinquent corporation may, on or before the
15 first day of the fifth month of the license tax year follow-
16 ing or at any time before judgment or order is entered as
17 hereinafter provided, pay the amount of such tax and a
18 penalty of one percent per month for each month or
19 fractional part thereof that such failure continued, but
20 the amount of such penalty shall not be less than five
21 dollars. After the publication of the list of delinquent
22 corporations by the tax commissioner, he shall mail to

23 the last known post-office address of each of such corpora-
24 tions a supplemental notice, together with a statement of
25 the total amount of tax and penalties due therefrom,
26 which notice shall be mailed at least thirty days before
27 the first day of the fifth month of the license tax year.

§11-12-85. Investigation of corporations' delinquencies.

1 The tax commissioner, with the approval of the gover-
2 nor, may appoint agents to investigate all violations of the
3 provisions of this article concerning landholding or char-
4 ter license taxes on corporations, and also for the purpose
5 of collecting such taxes from all corporations which have
6 not paid the same, whether due from domestic or foreign
7 corporations. The compensation of all such agents shall
8 be fixed by the tax commissioner.

**§11-12-86. Action to enforce payment of corporate license tax;
forfeiture of charter or revocation of right to do
business.**

1 Within thirty days after such first day of the fifth
2 month of the license tax year, the tax commissioner shall
3 certify to the governor and the secretary of state a list
4 of all such delinquent corporations, domestic and foreign.
5 The secretary of state shall preserve the list in his office,
6 and a certificate from him that the name of any corpora-
7 tion mentioned in such certificate is delinquent in the
8 payment of the license tax imposed by this article shall
9 be prima facie evidence thereof. Within thirty days after
10 receiving such list from the tax commissioner the gov-
11 ernor shall issue his proclamation, in which he shall de-
12 clare the delinquency of every such corporation. A copy
13 of such proclamation shall be filed and recorded in the
14 office of the secretary of state, and be published in such
15 newspapers as the governor may designate, not exceed-
16 ing one in each congressional district; the costs of such
17 publication shall be paid by the governor. Sixty days
18 after the date of the publication of such proclamation,
19 it shall be the duty of the attorney general to institute
20 in the circuit court, in the county in which the seat of
21 government is, an action or actions, in the name of the
22 state, in which such delinquent corporations shall be

23 made defendants; in the complaint so filed it shall only
24 be necessary to allege that the corporations therein made
25 defendants have failed to pay such license tax, and that
26 each of them justly owes to the state the amount of license
27 tax, penalty and fines stated therein, in connection with
28 the name of the corporation, which amount shall be com-
29 puted up to the first day of the month succeeding that
30 in which such complaint is filed. No such corporation
31 shall interpose as a plea or defense in such action the
32 fact that the tax commissioner failed to notify it as pre-
33 scribed in this article, or that it failed to receive such
34 notice, or that its name was not included in the list or
35 proclamation hereinbefore mentioned. Upon the hearing
36 of such action, if it shall appear to the court that any
37 such corporation has failed to pay any such license tax
38 and the penalties and fines assessed against it, the court
39 shall enter an order of judgment against such corporation
40 for the amount due, including the costs of the proceeding,
41 or such portion of such costs as the court shall apportion
42 to be paid by such corporation, and, if the same be not
43 then and there paid, the court shall enter an order if it
44 be a domestic corporation, forfeiting its charter or cer-
45 tificate of incorporation, rights and franchises; and if it
46 be a foreign corporation, revoking its rights and priv-
47 ileges to hold property and transact business in this state.
48 The amount of the judgment, including costs, entered
49 against any corporation, and interest thereon until paid,
50 may be collected by the attorney general, or be collected
51 by the tax commissioner in the same manner that other
52 claims due the state are collected. In any such action
53 the court may upon payment of the judgment herein-
54 above mentioned together with interest and costs and
55 the payment of any and all license taxes which may have
56 accrued since the institution of such action, reinstate any
57 corporation to its former rights as if it had not been
58 delinquent and proceeded against under this section, and
59 make such other orders as it shall deem necessary and
60 proper; and may appoint a receiver for any such cor-
61 poration and order its assets marshalled and distributed
62 among its creditors; and may, on motion of the attorney
63 general, grant an injunction against any such corporation

64 restraining it from the exercise of any franchise or the
65 transaction of any business within this state, until such tax
66 and the costs be paid. Any person or persons who shall
67 exercise or attempt to exercise any powers under the ar-
68 ticles of incorporation, charter or certificate of incorpora-
69 tion of any such corporation, after the issuing of the gov-
70 ernor's proclamation, shall be guilty of a misdemeanor,
71 and, shall be punished by imprisonment not exceeding one
72 year, or a fine not exceeding one thousand dollars, or both
73 such fine and imprisonment, in the discretion of the court.
74 The words "license tax" used in this section include, in
75 addition to the amount of license tax proper, all penalties
76 and fines accruing for failure to pay such tax, the annual
77 fee of the secretary of state as statutory attorney-in-fact,
78 and the cost of any action to enforce the collection of
79 the same. When two or more corporations are included
80 in one action, the court shall apportion the cost thereof
81 among them as it may deem just.

82 If in any such action the court shall order the sale
83 of the property of any delinquent corporation without
84 ordering that its assets be marshalled and distributed
85 among its creditors, the purchaser at the sale shall acquire
86 title to the property subject to any rights which the cred-
87 itors of the corporation would have had if no action had
88 been brought by the state for collection of delinquent
89 license taxes. In any subsequent action, however, brought
90 by the creditors of the corporation to subject the prop-
91 erty in the hands of the purchaser to the payment of their
92 claims against the corporation, the purchaser shall be
93 given a preference over any creditor for the payment of
94 the purchase price, including costs with interest at six
95 percent per annum from the date of sale.

§11-12-87. Limitation on institution of actions to set aside sales in prior actions or proceedings.

1 No action shall be instituted in any court of this state on
2 and after the first day of January, one thousand nine hun-
3 dred and fifty, for the purpose of setting aside the sale of
4 all or any of the assets of any corporation heretofore sold
5 by order of the court in any former action or proceeding

6 instituted under the preceding section on the ground that
7 process was served on the auditor or the secretary of state,
8 or that service thereof was accepted by either of them.

§11-12-88. Process in such action; record of forfeiture, revocation or dissolution.

1 In any such action process shall be served in the man-
2 ner provided by law. The attorney general may cause a
3 copy of any order of publication to be mailed to each cor-
4 poration at its last known post-office address as aforesaid.
5 It shall be the duty of the clerk of every court of this state
6 in which any proceedings are had which result in the for-
7 feiture of the charter or certificate of incorporation of any
8 corporation issued under the laws of this state, or result
9 in the dissolution or extinction of any such corporation,
10 or in the revocation of the rights and privileges, of any
11 foreign corporation to do business in this state, to notify
12 the secretary of state of any such forfeiture, dissolution,
13 extinction or revocation, in which report he shall state
14 the name of the court, the name of the corporation, the
15 nature of the actions and the date of the order or judg-
16 ment, and such other pertinent matter as may be required
17 by the secretary of state; and the secretary of state shall
18 file and record such report in his office, and aptly note the
19 same in the indexes of corporations kept in his office. If
20 any clerk fail to make such report he shall be liable to a
21 fine of not exceeding one hundred dollars.

§11-12-89. Corporations exempt from license tax.

1 Nothing in sections seventy-five through ninety, in-
2 clusive, of this article shall be construed as imposing
3 license tax on corporations chartered strictly for
4 educational, literary, agricultural, scientific, religious
5 or charitable purposes, or upon charters, or certificates of
6 incorporation incorporating cemeteries or lodges of Ma-
7 sons, Odd Fellows, or the like, or other charitable, fra-
8 ternal or patriotic societies not incorporated for profit to
9 the stockholders; but the secretary of state shall require
10 full proof as to the character of any such corporation
11 claiming such exemption from the payment of license tax.
12 Every such corporation, however, shall, in the third month

13 preceding the first day of the license tax year in each year,
 14 deliver to the tax commissioner the statement required
 15 in section eighty-three of this article.

§11-12-90. Monthly report by secretary of state to tax commissioner as to corporations.

1 The secretary of state shall within twenty days after
 2 the close of each month make a report to the tax com-
 3 missioner for the preceding month, in which he shall set
 4 out the name of every corporation to which he issued a
 5 certificate of incorporation during the month, as well as
 6 the name of each corporation to which he issued a cer-
 7 tificate under section fifty-four, article one, chapter
 8 thirty-one of this code with the amount of license tax paid
 9 to him by each; also he shall set out in such report the
 10 names of all corporations to which he issued, during such
 11 preceding month, certificates of increase or decrease of
 12 stock, or of shares of stock, or of par value of shares of
 13 stock; certificates of change of name or of change of
 14 location of principal office; and a statement of all moneys
 15 received by him during such preceding month from all
 16 sources and due to the state, and pay the same into the
 17 treasury; if he fail to do so it shall be the duty of the tax
 18 commissioner to report such failure to the governor.

CHAPTER 59. FEES, ALLOWANCES AND COSTS.

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-2. Fees to be charged by secretary of state.

1 Except as may be otherwise provided in article one,
 2 chapter thirty-one of this code, the secretary of state
 3 shall charge for services rendered in his office the follow-
 4 ing fees to be paid by the person to whom the service is
 5 rendered at the time it is done:

6 For each certificate of incorporation or copy thereof,
 7 including restatements of any such certificates
 8 issued on new agreements, and/or consolidations
 9 or all certificates of merger or consolidation or
 10 certificates authorizing a foreign corporation to
 11 do business within this state _____ \$10.00

| | | |
|----|----------------------------------------------------------|-------|
| 12 | For each certified copy of certificate of incorporation, | |
| 13 | not to exceed ten pages | 10.00 |
| 14 | If such copy contains in excess of ten pages, for | |
| 15 | each additional page | .20 |
| 16 | For filing and recording a trademark | 5.00 |
| 17 | For each certificate of change of name, of increase | |
| 18 | or decrease of authorized capital stock, of change | |
| 19 | of principal office, or of amendment to certificate | |
| 20 | of incorporation | 5.00 |
| 21 | For recording a power of attorney and certificate | |
| 22 | thereof | 3.00 |
| 23 | For any other certificate, whether required by law | |
| 24 | or made at the request of any person | 5.00 |
| 25 | The foregoing fees shall include the tax on the | |
| 26 | great seal or the less seal impressed on any such | |
| 27 | document, as well as the filing, recording and in- | |
| 28 | dexing of the same. | |
| 29 | For endorsing and filing reports of corporations, | |
| 30 | and all other papers, which shall include the in- | |
| 31 | dexing of the same, for each report or paper filed | 1.00 |
| 32 | For any search, not less than | 1.00 |
| 33 | For searches of more than one hour, for each hour | |
| 34 | or fraction thereof consumed in making such | |
| 35 | search | 1.00 |
| 36 | The cost of the search shall be in addition to the | |
| 37 | cost of any certificate issued pursuant thereto or | |
| 38 | based thereon. | |
| 39 | For entering statement of satisfaction of conditional | |
| 40 | sale contract | 1.00 |
| 41 | For filing each financing, continuation or termina- | |
| 42 | tion statement or other statement or writing per- | |
| 43 | mitted to be filed under chapter forty-six of the | |
| 44 | code | 1.00 |
| 45 | For filing, preserving and indexing a security agree- | |
| 46 | ment filed under chapter forty-six of the code | 2.00 |

| | | |
|----|-----------------------------------------------------|------|
| 47 | For recording any paper for which no specific fee | |
| 48 | is prescribed | 1.00 |
| 49 | Or at the rate, for each one hundred words re- | |
| 50 | corded, of | .20 |
| 51 | For issuing commission to a notary public, or to a | |
| 52 | commissioner of deeds, which shall include the | |
| 53 | tax on the state seal thereon and other charges ... | 5.00 |
| 54 | For a testimonial | 1.50 |
| 55 | For a copy of any paper, if one sheet | 1.00 |
| 56 | For each sheet of copy after the first | .75 |
| 57 | For issuing a commission to a commissioner in any | |
| 58 | other state | 5.00 |
| 59 | For making out a requisition for a fugitive from | |
| 60 | justice demanded of the executive authority of | |
| 61 | another state | 2.00 |
| 62 | For issuing a warrant for the arrest of a fugitive | |
| 63 | from justice demanded by the executive authority | |
| 64 | of another state | 2.00 |
| 65 | For any other work or service not herein enu- | |
| 66 | merated, such fee as may be elsewhere prescribed. | |

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CHAPTER 14

(H. B. 902—By Mr. Speaker, Mr. McManus, and Mr. Seibert)

[Passed March 1, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article fourteen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to financial institutions as members of a business development corporation organized under article fourteen and relating to loans to a business development corporation by its members; providing that the limitation contained in section seven as to the total obligations of a business development corporation at any time shall not apply with respect to that portion of a business

development corporation's obligations incurred to fund the making or acquisition of loans, assets or investments to the extent such loans, assets or investments are federally guaranteed as therein defined; providing that in computing the total amount outstanding on loans to a business development corporation made by a member at any time the federally guaranteed portion of loans, assets or investments made or acquired by a business development corporation with the proceeds of such loans shall be excluded; providing that the loan limit of a member of a business development corporation shall be adjusted annually; and providing that the undivided profits of a member of a business development corporation shall be included in computing its loan limit.

Be it enacted by the Legislature of West Virginia:

That section seven, article fourteen, 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 14. WEST VIRGINIA BUSINESS DEVELOPMENT CORPORATIONS.

§31-14-7. Financial institutions as members of corporation; loans to corporation by members.

1 Any financial institution as defined in section one of this
2 article is authorized to become a member of a corporation
3 organized under the provisions of this article by making
4 application to the board of directors on such form and in
5 such manner as the board of directors may require and
6 membership shall become effective upon acceptance of such
7 application by said board. Membership in the corporation
8 shall be for the duration of the corporation: *Provided*, That
9 upon written notice given to the corporation one year in
10 advance, a member may withdraw from membership in the
11 corporation at the expiration date of such notice and shall
12 not thereafter be obligated to make any loans to the cor-
13 poration.

14 Each member of the corporation shall make loans to the
15 corporation as and when called upon by it to do so on such
16 terms and other conditions as shall be mutually approved

17 from time to time by the board of directors of the corporation
18 and such member, subject to the following conditions:

19 (1) All loan limits shall be established at the thousand-
20 dollar amount nearest to the amount computed in accordance
21 with the provisions of this section.

22 (2) No loans to the corporation shall be made if im-
23 mediately thereafter, the total amount of the obligations of
24 the corporation would exceed ten times the amount then paid
25 in on the outstanding capital stock of the corporation.
26 This limitation shall not apply with respect to that portion
27 of the corporation's obligations incurred for the purpose of
28 providing funds for making loans or for the acquisition of
29 assets or investments to the extent that such loans, assets or
30 investments are federally guaranteed, which for the purposes
31 of this section seven means secured or covered by guaranties
32 or by commitments or agreements to take over, or purchase,
33 made by the United States of America, or by any depart-
34 ment, bureau, agency, board, commission or establishment
35 of the United States including any corporation, wholly owned,
36 directly or indirectly, by the United States.

37 (3) The total amount outstanding on loans to the corporation
38 made by any member at any one time, when added to the
39 amount of the investment in the capital stock of the corporation
40 then held by such member, shall not exceed:

41 (a) Twenty percent of the total amount then outstanding on
42 loans to the corporation by all members, including in said total
43 amount outstanding, amounts validly called for loans but not
44 yet loaned.

45 (b) The following limit, to be adjusted annually on the basis
46 of the audited balance sheet of such member at the close of its
47 fiscal year, or, in the case of an insurance company, its annual
48 statement to the commissioner of insurance: two percent of the
49 capital, surplus and undivided profits of commercial banks and
50 trust companies; one percent of the total outstanding loans
51 made by a building and loan association or industrial loan com-
52 pany; one percent of the capital and unassigned surplus of stock
53 insurance companies, except fire insurance companies; one per-
54 cent of the unassigned surplus of mutual insurance companies,
55 except fire insurance companies; one tenth of one percent of

56 the assets of fire insurance companies; and such limits as may
57 be approved by the board of directors of the corporation for
58 other financial institutions.

59 In computing the total amount outstanding on loans to the
60 corporation made by a member at any time, there shall be
61 excluded such portion of such loans as were obtained by
62 the corporation for the purpose of providing funds for the
63 making of loans or for the acquisition of assets or investments
64 to the extent that such loans, assets or investments are
65 federally guaranteed.

66 Subject to paragraph three (a) of this section, each call made
67 by the corporation shall be prorated among the members of the
68 corporation in substantially the same proportion that the ad-
69 justed loan limit of each member bears to the aggregate of the
70 adjusted loan limit of all members. The adjusted loan limit of a
71 member shall be the amount of such member's loan limit, re-
72 duced by the balance of outstanding loans by such member to
73 the corporation and the investment in capital stock of the
74 corporation held by such member at the time of such call.

75 All loans to the corporation by members shall be evidenced
76 by bonds, debentures, notes or other evidences of indebtedness
77 of the corporation, which shall be freely transferable at all
78 times, and which shall bear interest at a rate of not less
79 than one quarter of one percent in excess of the rate of interest
80 determined by the board of directors to be the prime rate
81 prevailing at the date of issuance thereof on unsecured
82 commercial loans.

⊖

CHAPTER 15

(S. B. 367—By Mr. Galperin)

[Passed February 23, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three-f, article one, chap-
ter seven of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to permitting
county courts to expend general revenue funds for the

establishment and operation of garbage and refuse collection and disposal services.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. COUNTY COURTS GENERALLY.

§7-1-3f. Establishment and operation of garbage and refuse collection and disposal services.

1 In addition to all other powers and duties now conferred
2 by law upon county courts, such courts are hereby em-
3 powered to establish, operate and maintain, either direct-
4 ly or by contract, garbage and refuse collection and
5 disposal services, and to pay for the establishment, opera-
6 tion and maintenance of such collection and disposal
7 services, in whole or in part, either out of general funds
8 in the county treasury, or out of special funds to be
9 derived from fees charged to and paid by the users of
10 such services or a combination of both such general rev-
11 enue or special fund: *Provided*, That the power and au-
12 thority hereby conferred upon county courts shall not be
13 exercised in territory included within the boundaries of
14 any municipal corporation, except as provided herein.
15 Any county court for the purpose of implementing this
16 section is hereby authorized to enter into such contract
17 or contracts with any municipality or county within this
18 state for the purposes of carrying out the powers vested
19 in such county courts by this section, and all said county
20 courts may, pursuant to such contract, exercise the author-
21 ity herein granted within such contracting municipality:
22 *Provided, however*, That where an area is furnished gar-
23 bage and refuse collection service by an existing carrier
24 under authority issued by the public service commission
25 of West Virginia, the county court may enter into con-
26 tracts or agreements with such carrier to supplement such
27 existing service, but shall not enter into any competing
28 service without authority being granted by the public
29 service commission.

30 The term "users" as used herein shall mean and include
31 any person to whom such services are made available
32 under the provisions of this section.

CHAPTER 16

(S B. 258—By Mr. Huffman)

[Passed March 9, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three-m, article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the authority of the county court to employ, fix compensation for and discharge personnel including a county administrator.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. COUNTY COURTS GENERALLY.

§7-1-3m. Authority to employ, fix compensation for and discharge personnel.

1 In addition to all other powers and duties now con-
2 ferred by law upon county courts or tribunals in lieu
3 thereof, hereinafter referred to as county courts or courts,
4 such courts are hereby empowered to employ, fix compen-
5 sation for and discharge such clerical, stenographic, tech-
6 nical, professional and other personnel, including spe-
7 cialists and consultants, as may from time to time be
8 necessary to aid such courts in exercising their powers or
9 discharging their duties as provided by law and including
10 a county administrator, to coordinate the court's activities
11 and to do such other things as the court may direct: *Pro-*
12 *vided,* That such courts shall not have the power to employ

13 any such personnel to perform powers and duties that are
14 performed by such courts through their clerks pursuant
15 to law.

16 The county courts shall, not later than March twenty-
17 eight of each year, take up and consider the probable
18 amount necessary to be expended for such personnel in the
19 following fiscal year; shall determine and fix an aggregate
20 sum to be expended during the following fiscal year for
21 the compensation of such personnel, which shall be rea-
22 sonable and proper, taking into account the amount of
23 labor and services necessary to be performed by those
24 who are to receive the compensation; and shall make and
25 enter an order stating any action taken in this regard.

26 The county courts shall file with their clerks a state-
27 ment in writing showing such action and setting forth the
28 name of each person employed pursuant to the provisions
29 of this section, the time for which employed and the
30 monthly compensation. Such courts shall have authority
31 to discharge at their will and pleasure, any such personnel
32 by filing with their clerks a statement in writing showing
33 such action, to be entered in, and made a part of, their
34 order book or other daily record book. All statements re-
35 quired to be filed by this section shall be verified by the
36 affidavit of a majority of the members of the county court
37 making them, and among other things contained in the
38 affidavit shall be the statement that the amounts shown
39 therein were the amounts actually paid or intended to be
40 paid to each person employed without rebates, or any
41 agreement, understanding and expectation that any part
42 thereof shall be repaid to any of such members making
43 said affidavit, and that nothing has heretofore been paid
44 or promised any of such members making said affidavit
45 on that account, and that if any of such members making
46 said affidavit shall thereafter receive any money, or thing
47 of value, on account thereof, the same will be accounted
48 for and paid to the county. Until the statements required
49 by this section shall have been filed, no allowance or pay-
50 ments shall be made by the county courts for personnel.

CHAPTER 17

(H. B. 1023—By Miss Prestero)

[Passed March 9, 1974; in effect from passage. Approved by the Governor.]

AN ACT to amend article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-t, relating to county courts; and providing that county courts may make grants to public service districts and to municipalities from their general revenue funds and other funds for the purpose of establishing and improving water and sewer systems.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. COUNTY COURTS GENERALLY.

§7-1-3t. Authority to make grants from general revenue funds and other funds for water and sewer systems.

1 In addition to all other powers and duties now conferred by
2 law upon county courts, such courts are hereby authorized
3 and empowered to make grants from general county revenues
4 and any other revenues of the county available for such
5 purposes, to public service districts as defined and provided for
6 in article thirteen-a, chapter sixteen of the code and to
7 municipalities for the purpose of establishing or improving
8 water and sewer systems.

CHAPTER 18

(H. B. 1305—Originating in the Committee on Political Subdivisions)

[Passed March 9, 1974; in effect July 1, 1974. 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 sections three and four, article seven of said chapter, all relating to county courts and officers; relating to classifying counties on the basis of assessed valuation; relating to compensation of county commissioners; relating to the compensation of other elected county officials; and relating to requiring certain county officers to devote full time to public duties to the exclusion of any other employment.

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 sections three and four, article seven of said chapter be amended and reenacted, all to read as follows:

Article

1. County Courts 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 COURTS GENERALLY.

§7-1-5a. Salaries of county commissioners.

1 In addition to the payment for services in court as described
 2 in section four of this article, all county commissioners shall
 3 be paid compensation out of the county treasury in amounts
 4 hereafter set forth for each class of county as determined
 5 by the provisions of section three, article seven, chapter seven:
 6 *Provided*, That as to any county having a tribunal in lieu
 7 of a county court, the county commissioners of such county
 8 may be paid less than the minimum compensation limits of
 9 the county court for the particular class of such county.

| | | |
|----|-----------|----------|
| 10 | Class I | \$12,600 |
| 11 | Class II | \$ 9,600 |
| 12 | Class III | \$ 9,000 |
| 13 | Class IV | \$ 6,400 |
| 14 | Class V | \$ 4,300 |
| 15 | Class VI | \$ 2,500 |
| 16 | Class VII | \$ 1,000 |

17 The compensation hereinabove provided shall be paid on
 18 and after January one, one thousand nine hundred seventy-
 19 five to each county commissioner beginning a new term of
 20 office. Salaries in effect December thirty-one, one thousand
 21 nine hundred seventy-four shall remain in effect except as
 22 hereinbefore provided in this section.

**ARTICLE 7. TRAINING PROGRAMS FOR COUNTY EMPLOYEES,
 ETC.; COMPENSATION OF ELECTED COUNTY OF-
 FICIALS; COUNTY ASSISTANTS, DEPUTIES AND
 EMPLOYEES, THEIR NUMBER AND COMPENSA-
 TION.**

§7-7-3. Classification of counties for purpose of determining compensation of
 elected county officials.

§7-7-4. Compensation of elected county officials other than county commis-
 sioners for each class of county; effective date.

**§7-7-3. Classification of counties for purpose of determining com-
 pensation of elected county officials.**

1 For the purpose of determining the compensation of elected
 2 county officials, the counties of the state of West Virginia
 3 are hereby grouped into seven classes based on their assessed
 4 valuation of property, all classes. These seven classes and
 5 the minimum and maximum valuation of property, all classes,
 6 established to determine the classification of each county
 7 are as follows:

| Class | Minimum Assessed Valuatiou of Property All Classes | Maximum Assessed Valuation of Property All Classes |
|--------------|----------------------------------------------------------|----------------------------------------------------------|
| 8 Class I | \$600,000,000 | No limit |
| 9 Class II | \$450,000,000 | \$599,999,999 |
| 10 Class III | \$200,000,000 | \$449,999,999 |
| 11 Class IV | \$100,000,000 | \$199,999,999 |
| 12 Class V | \$ 50,000,000 | \$ 99,999,999 |
| 13 Class VI | \$ 15,000,000 | \$ 49,999,999 |
| 14 Class VII | \$ 0 | \$ 14,999,999 |

15 The assessed valuation of property, all classes, that shall
 16 be used as the base to determine the class of a county shall

17 be the assessed valuation of property, all classes, of the
18 county as certified by the county assessor, state auditor and
19 county clerk prior to March twenty-nine, one thousand nine
20 hundred seventy-two.

21 Prior to March twenty-nine, one thousand nine hundred
22 seventy-four and each second year thereafter, the county
23 court of each county shall determine if the assessed valuation
24 of property, all classes, of the county, as certified by the
25 county assessor, state auditor and county clerk, is within
26 the minimum and maximum limits of a class above or below
27 the class in which the county then is. If the county court so
28 determines, it shall record the new classification of the county
29 with the state auditor and state tax commissioner and record
30 its action on its county court record.

31 The classification of each county shall be subject to review
32 by the state tax commissioner. He shall determine if the
33 classification of each county is correct based on the final
34 assessed valuation of property, all classes, certified to him
35 by the county assessor, state auditor and county clerk. If
36 he finds that a county is incorrectly classified he shall notify
37 the county court of that county promptly of his finding and
38 in any case shall notify the county court prior to June
39 thirtieth of that current fiscal year. Any county court so
40 notified shall correct its classification immediately and make
41 any necessary corrections in the salaries of its elected county
42 officials for the next fiscal year. Nothing in this section shall
43 be construed as authorizing an increase in compensation
44 except at such time as the affected county officer begins a
45 new term of office.

**§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 fol-
3 lowing compensations for each county office by class are
4 hereby established and shall be used by each county court in
5 determining the compensation of each of their county officials
6 other than compensation of members of the county court:

| | | Sheriff | County Clerk | Circuit Clerk | Assessor | Prosecuting Attorney |
|----|-----------|----------|--------------|---------------|----------|----------------------|
| 7 | Class I | \$12,000 | \$19,500 | \$19,500 | \$12,000 | \$22,000 |
| 8 | Class II | \$ 8,400 | \$15,600 | \$15,600 | \$ 8,400 | \$22,000 |
| 9 | Class III | \$10,000 | \$15,600 | \$15,600 | \$12,000 | \$14,000 |
| 10 | Class IV | \$10,000 | \$13,000 | \$13,000 | \$10,000 | \$13,500 |
| 11 | Class V | \$ 9,000 | \$11,500 | \$11,500 | \$ 9,000 | \$ 9,600 |
| 12 | Class VI | \$ 6,900 | \$ 8,300 | \$ 8,300 | \$ 6,900 | \$ 6,900 |
| 13 | Class VII | \$ 4,200 | \$ 3,600 | \$ 3,000 | \$ 3,600 | \$ 2,100 |

14 Any county clerk, circuit clerk, joint clerk of the county
 15 and circuit court, if any, county assessor, sheriff and prose-
 16 cuting attorney of a Class I county and any prosecuting attorney
 17 of a Class II county shall devote full time to his public duties to
 18 the exclusion of any other employment. Notwithstanding the
 19 effective date of this section the compensation provided in this
 20 section for county clerks, circuit clerks and joint clerks of
 21 county and circuit courts shall become effective January one,
 22 one thousand nine hundred seventy-five, and the compensation
 23 provided in this section for assessors, sheriffs and prosecuting
 24 attorneys shall become effective January one, one thousand
 25 nine hundred seventy-three.

26 In the case of a county that has a joint clerk of the county
 27 and circuit court, the compensation of the joint clerk shall be
 28 fixed in an amount twenty-five percent higher than the
 29 compensation would be fixed for the county clerk if it had
 30 separate offices of county clerk and circuit clerk.

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CHAPTER 19

(Com. Sub. for H. B. 1278—By Mrs. Smirl)

[Passed March 9, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section

eleven, relating to requiring competitive bids for certain purchases of commodities and printing by county courts.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. COUNTY COURTS GENERALLY

§7-1-11. Purchasing in open market on competitive bids.

1 County courts may make a purchase of commodities and
2 printing of two thousand dollars or less in amount in the
3 open market, but a purchase of and contract for commodities
4 and printing over two thousand dollars shall be based on
5 competitive bids, except in case of emergency.

6 The county court of any county is hereby authorized and
7 empowered to promulgate rules and regulations governing
8 the procedure of competitive bids.

9 As used in this section, the terms "commodities" and
10 "printing" shall have the same meaning as those terms are
11 defined in section one, article one, chapter five-a of this
12 code.

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CHAPTER 20

(S. B. 473—By Mr. Rogerson)

[Passed March 9, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article four, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to prosecuting attorneys hiring investigators of crime.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. PROSECUTING ATTORNEY, REWARDS AND LEGAL ADVICE.

§7-4-2. Rewards for apprehension of persons charged with crime and expenditure of money for detection of crime; appointment of investigators of crime.

1 The prosecuting attorney of any county, with the ap-
2 proval of the county court, or of the governor, or of the
3 court of the county vested with authority to try criminal
4 offenses, or of the judge thereof in vacation, may, within
5 his discretion, offer rewards for the apprehension of per-
6 sons charged with crime, or may expend money for the
7 detection of crime. Any money expended under this sec-
8 tion shall, when approved by the prosecuting attorney, be
9 paid out of the county fund, in the same manner as other
10 county expenses are paid: *Provided*, That the prosecuting
11 attorneys of the several counties of the state may, with
12 the approval of the county courts of their respective coun-
13 ties, entered of record, appoint to assist them in the dis-
14 charge of their official duties, trained and qualified full-
15 time or part-time investigators of crime. Such investiga-
16 tors shall accept no other public employment or employ-
17 ment in a private police or investigative capacity during
18 the term of their appointment and shall be paid such sal-
19 ary and expenses as may be fixed by the county court.
20 Such expenses shall be itemized and sworn to by the in-
21 vestigator upon presentation to the county court.

22 Notwithstanding any other provision of this code to the
23 contrary, the prosecuting attorney of any county, with the
24 consent of the judge of the court of competent jurisdiction
25 and the county court, may appoint an investigator of crime
26 who need not be a resident of this state.

CHAPTER 21

(Com. Sub. for H. B. 635—By Mr. Rollins)

[Passed March 9, 1974; in effect July 1, 1974. Approved by the Governor.]

AN ACT to amend and reenact section sixteen, article seven, chapter seven; and section twelve, article seventeen, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing mileage allowance for public officers and employees utilizing personally owned vehicles in the actual performance and discharge of their official duties; relating to mileage allowance for county officials, their deputies, assistants and employees; relating to mileage allowance for constables in criminal cases and relating to other fees of constables.

Be it enacted by the Legislature of West Virginia:

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

Chapter

7. County Courts and Officers.

50. Justices and Constables.

CHAPTER 7. COUNTY COURTS AND OFFICERS.

ARTICLE 7. TRAINING PROGRAMS FOR COUNTY EMPLOYEES, ETC.; COMPENSATION OF ELECTED COUNTY OFFICIALS; COUNTY ASSISTANTS, DEPUTIES AND EMPLOYEES, THEIR NUMBER AND COMPENSATION.

§7-7-16. Mileage allowance for county officials, their assistants, deputies and employees.

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

7 Every county official shall file monthly, under oath, a full
 8 and accurate account of all the actual mileage driven by him,
 9 his deputies, assistants and employees, in the performance and
 10 discharge of their official duties supported by verified accounts
 11 before reimbursement thereof shall be allowed by the county
 12 court. Reimbursement, properly allowed, shall be made from
 13 the general county fund.

CHAPTER 50. JUSTICES AND CONSTABLES.

ARTICLE 17. FEES, FINES AND COSTS.

§50-17-12. Fees of constables in criminal cases.

1 Every constable shall be entitled to the following fees in
 2 criminal cases:

| | | |
|---|---------------------------------------------------|--------|
| 3 | 1. For an arrest in case of felony | \$3.50 |
| 4 | 2. For an arrest in cases other than felony | 3.00 |
| 5 | 3. For serving a subpoena | .50 |
| 6 | 4. For executing a search warrant | 2.50 |
| 7 | 5. For summoning a jury in criminal action | 1.50 |
| 8 | 6. Witness fee constable | .50 |

9 7. In addition to above fees, constables shall be allowed
 10 twelve cents for each mile of necessary travel utilizing their
 11 personally owned vehicles in the actual performance and dis-
 12 charge of their official duties, and fifteen cents per mile for
 13 transporting prisoners if the constables are driving their per-
 14 sonally owned motor vehicles in the transporting of such
 15 prisoners, if such mileage fees in any case shall exceed one
 16 dollar.

17 8. In cases of search warrants and proceedings under article
 18 one, chapter sixty-two of this code, the fees of the constable
 19 shall be chargeable to the county, shall be audited and paid
 20 as other claims of like nature by the county court.

21 9. In criminal cases, other than felony, such fees shall be
 22 charged and paid as provided in section fifteen, article five,
 23 chapter seven of this code, and section eight, article eighteen
 24 of this chapter.

CHAPTER 22

(Com. Sub. for H. B. 1004—By Mr. Whitlow)

[Passed March 9, 1974; in effect ninety days from passage. . Approved by the Governor.]

AN ACT to amend article eleven-a, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section two, relating to authorizing county courts with the approval of the sheriff to employ county prisoners and pay wages for such employment.

Be it enacted by the Legislature of West Virginia:

That article eleven-a, 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 two, to read as follows:

ARTICLE 11A. RELEASE FOR WORK AND OTHER PURPOSES.

§62-11A-2. Employment by county.

1 With the approval of the county sheriff, the county court
2 of any county is hereby authorized to employ any person
3 imprisoned upon conviction for a misdemeanor in a county
4 jail to work within the county as the county court may decide.
5 In such instance the wages to be paid to the prisoner shall
6 be no less than one dollar per hour. Such prisoners shall
7 remain in the custody of and be supervised by said sheriff.
8 No imprisoned person shall be required to work without his
9 consent.

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CHAPTER 23

(H. B. 972—By Mr. Hager and Mr. Queen)

[Passed March 9, 1974; in effect ninety days from passage. . Approved by the Governor.]

AN ACT to amend and reenact section five, article seven, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to mileage and expenses of judges.

Be it enacted by the Legislature of West Virginia:

That section five, 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.

§6-7-5. Mileage and expenses of judges.

1 A judge of the supreme court of appeals and of a circuit
2 court shall be entitled to an allowance for mileage at the rate
3 of twelve cents for each mile, to be computed according to the
4 distance by the nearest practicable route, necessarily traveled
5 from his place of residence, to the place of holding any term
6 of court in a county other than that of his residence, and from
7 such place to his residence; and a judge of the circuit court
8 shall be paid the sum of twenty-five dollars per day as expenses
9 while holding court in a county other than that in which he
10 resides: *Provided*, That no judge of a circuit court shall be
11 paid mileage and expenses for holding more than ten terms
12 of court in any county in any one year, including regular, ad-
13 journed and special terms. The mileage and expenses provided
14 for in this article shall be paid to any judge out of the state
15 treasury as and when the salary of such judge is payable.

CHAPTER 24

(Com. Sub. for H. B. 1199—By Mr. McCuskey and Mr. Stone)

[Passed March 9, 1974; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article seventeen, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact article nineteen of said chapter, relating to fees of justices of the peace in civil cases; creating the office of county magistrate; relating to the number and qualifications of county magistrates; providing for appointment of county magistrates by county courts; providing that county magistrates be commissioned by the governor; providing that certain justices of the peace shall be

appointed county magistrates; relating to the power of county courts to determine when a person has been actively engaged in the practice of justice of the peace; providing for magistrate courts; relating to jurisdiction of county magistrates; specifying that the procedure shall be the same as for justices of the peace; prohibiting compensation on a fee basis; relating to fees, costs, fines, forfeitures and penalties and accounting therefor; relating to compensation of county magistrates; classifying counties on basis of population for the purpose of establishing maximum limitations on the compensation of county magistrates; establishing maximum limitations on such compensation; creating a compensation advisory board; relating to the compensation, functions and expenses of such board; authorizing county magistrates to be reimbursed for all reasonable and necessary expenses, subject to certain limitations; specifying requirements for reimbursement; providing that salaries and expenses of county magistrates shall be paid from the county general fund; providing that constables shall serve county magistrates; relating to fiscal affairs of county magistrates; authorizing the county court to establish administrative requirements as to the discharge of the duties of county magistrates; specifying that county magistrates shall be subject to supervision by the circuit court as to the performance of judicial functions; authorizing a circuit court to censure or suspend a county magistrate; providing for audit of all records and materials of a county magistrate; relating to records to be used by a county magistrate; requiring county magistrates to submit monthly reports to the county courts; relating to the contents of such monthly reports; providing that each county court shall prepare a consolidated report therefrom; requiring a copy of such consolidated report to be forwarded each quarter to the joint committee on government and finance; specifying that other provisions of law shall be applicable to magistrates; providing that in event of conflict, the provisions of article nineteen shall control; providing criminal offenses and penalties; relating to removal from and disqualification for office of county magistrate; and providing for expiration of article.

Be it enacted by the Legislature of West Virginia:

That section one, article seventeen, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended,

be amended and reenacted; and that article nineteen of said chapter be amended and reenacted, all to read as follows:

Article

17. Fees, Fines and Costs.

19. County Magistrates.

ARTICLE 17. FEES, FINES AND COSTS.

§50-17-1. Fees of justices in civil cases.

- 1 A justice of the peace shall charge and shall collect in
 2 advance from the party or parties requesting such services the
 3 following fees:
- 4 (1) For entering and trying any civil suit and the
 5 issuance of all papers including distress war-
 6 rant and attachment orders and the perform-
 7 ance of all other services in connection with
 8 any such civil suit whether the suit be con-
 9 tested or uncontested and whether or not the
 10 suit be completed or discontinued but ex-
 11 cepting services in connection with executions
 12 or garnishments and suggestee executions... \$5.00
- 13 (2) For all services in connection with an execution
 14 on judgment, suggestion on judgment, execu-
 15 tion and garnishment whether execution be
 16 without garnishment or there be both execu-
 17 tion and garnishment or suggestee execution... \$2.50
- 18 (3) For each bond filed in a case, appeal bond, stay
 19 of execution bond, bail bond, civil order of
 20 arrest, detinue bond, except bond in attach-
 21 ment case and docketing same \$1.00
- 22 (4) For taking depositions of witnesses if done in an
 23 hour or less \$1.00
- 24 (5) If not completed in an hour, for additional time
 25 at the rate, per hour of \$1.00
- 26 (6) For taking an inquest on a dead body, to be
 27 audited and paid from the treasury of the
 28 county \$5.00

| | | |
|----|----------------------------------------------------|--------|
| 29 | (7) Order of appraisal, appointing appraisers, | |
| 30 | swearing of the same and docketing same, to | |
| 31 | be paid by plaintiff ----- | \$1.00 |
| 32 | (8) For taking and certifying acknowledgment of | |
| 33 | deed or other instrument of writing ----- | .50 |
| 34 | (9) For mailing each suggestee execution by regis- | |
| 35 | tered and/or certified mail and return receipt | |
| 36 | requested | .55 |

ARTICLE 19. COUNTY MAGISTRATES.

- §50-19-1. County magistrates created; number; qualifications.
- §50-19-2. Appointment of county magistrates; determination by county court as to persons actively engaged in the practice of justice of the peace; decision final.
- §50-19-3. Magistrate courts; county magistrates; jurisdiction; procedure; appeal.
- §50-19-4. Fees and costs; limitation on justices of the peace; disposition.
- §50-19-5. Compensation; advisory board.
- §50-19-6. Constables.
- §50-19-7. Administration; rules and regulations; supervision as to judicial functions by circuit court; inspection; reports to county court; quarterly reports to joint committee on government and finance.
- §50-19-8. Application of chapter; conflict of provisions.
- §50-19-9. Violations; penalties; removal from office.
- §50-19-10. Expiration of provisions.

§50-19-1. County magistrates created; number; qualifications.

1 There is hereby created the office of county magistrate
2 which, in each county, shall equal the number of, and shall
3 correspond to the magisterial district of, justices of the peace
4 serving on the first day of January, one thousand nine hundred
5 seventy-four, and who were actively engaged in the practice
6 of justice of the peace during the last six months of the year
7 one thousand nine hundred seventy-three. County magistrates
8 shall be residents of the county and district in which they
9 serve and shall be qualified to vote. Notwithstanding any pro-
10 vision of law to the contrary, persons serving as justices of
11 the peace on the first day of January, one thousand nine
12 hundred seventy-four, and actively engaged in the practice of
13 justice of the peace, as aforesaid, shall be deemed qualified to
14 serve as county magistrates in the district of their residence.

§50-19-2. Appointment of county magistrates; determination by county court as to persons actively engaged in the practice of justice of the peace; decision final.

1 The county court of each county shall forthwith appoint
2 those persons serving as justices of the peace on the first
3 day of January, one thousand nine hundred seventy-four,
4 and actively engaged in the practice of justice of the peace, as
5 aforesaid, to the office of county magistrate for his district,
6 unless such person is not so serving on the effective date of this
7 article, in which event the person then serving as justice of the
8 peace, if any, shall be appointed as county magistrate. In
9 the event any such person is unwilling or, in the opinion of
10 the county court, unable, due to physical or mental debility,
11 to serve or in the event no person is entitled to appointment
12 by virtue of service as a justice of the peace or in the event of
13 a vacancy in the office of county magistrate, the county court
14 may, but notwithstanding any other provision of law to the
15 contrary shall not be required to, appoint a qualified person
16 to serve as county magistrate. The oath of office for county
17 magistrates shall be administered by the county court.

18 The question of whether a person has been actively engaged
19 in the practice of justice of the peace so as to be entitled to
20 appointment as a county magistrate shall be determined by
21 the county court, and its decision with respect to this issue shall
22 be final and conclusive subject to review by the circuit court
23 upon application therefor made by such person within thirty
24 days after the decision of the county court has been entered
25 upon the order book of such county court.

§50-19-3. Magistrate courts; county magistrates; jurisdiction; procedure; appeal.

1 Each county magistrate shall hold and preside over a
2 magistrate court. Such magistrate court shall not be a court of
3 record for any purpose. County magistrates shall be com-
4 missioned by the governor and shall have the same jurisdiction
5 over all matters, both civil and criminal, which is now or may
6 hereafter be conferred upon justices of the peace, in addition to
7 jurisdiction which may otherwise be conferred by law upon
8 county magistrates.

9 Except as they may be clearly in conflict with the provisions

10 of this article, all provisions of law relating to justices of the
11 peace in regard to all aspects of procedure, trial of causes and
12 appeals shall apply to county magistrates.

**§50-19-4. Fees and costs; limitation on justices of the peace;
disposition.**

1 Notwithstanding any provision of article seventeen of this
2 chapter or any other provision of law to the contrary, no
3 justice of the peace, after the thirtieth day of June, one thou-
4 sand nine hundred seventy-four, or county magistrate, at any
5 time, except as provided in section five of this article, shall
6 collect or receive any sum of money or other emolument by
7 virtue of his office for his own use or benefit. Notwithstanding
8 any provision of article seventeen of this chapter or any other
9 provision of law to the contrary, no justice of the peace shall
10 collect or receive any sum of money or other emolument by
11 virtue of his office as justice of the peace while he serves as a
12 county magistrate.

13 Each county magistrate shall collect all fees and costs, both
14 civil and criminal, which a justice of the peace may by law
15 collect in the same manner and subject to the prohibitions
16 as prescribed by law for justices of the peace. All such fees
17 and costs, together with an accounting of their source and the
18 services for which rendered, shall be paid over to the sheriff of
19 the county by the fifteenth day of the month following the
20 month of their collection. Such fees and costs shall be de-
21 posited into the general fund of the county. Each county
22 magistrate shall pay over all fines, costs, forfeitures and penal-
23 ties which accrue to the state in the same manner and subject
24 to the same provisions of law as apply to justices of the peace.

§50-19-5. Compensation; advisory board.

1 For the purpose of establishing maximum limitations on
2 the compensation for county magistrates, the counties shall be
3 classified according to population, as ascertained in the last
4 preceding census taken under the authority of the United States,
5 as follows: Counties with a population of two hundred thousand
6 or more shall be designated Class I counties; counties with a
7 population of one hundred thousand or more but less than two
8 hundred thousand shall be designated Class II counties;

9 counties with a population of seventy thousand or more but
10 less than one hundred thousand shall be designated Class III
11 counties; counties with a population of thirty thousand or more
12 but less than seventy thousand shall be designated Class IV
13 counties; counties with a population of twenty thousand or
14 more but less than thirty thousand shall be designated Class
15 V counties; counties with a population of ten thousand or
16 more but less than twenty thousand shall be designated Class
17 VI counties; and counties with a population of less than ten
18 thousand shall be designated Class VII counties.

19 Salaries for county magistrates shall be fixed by the county
20 courts within the following maximum limits: In Class I
21 counties, not more than seventeen thousand five hundred
22 dollars per year; in Class II counties, not more than fifteen
23 thousand dollars per year; in Class III counties, not more
24 than twelve thousand five hundred dollars per year; in Class
25 IV counties, not more than ten thousand dollars per year; in
26 Class V counties, not more than seven thousand five hundred
27 dollars per year; in Class VI counties, not more than six
28 thousand two hundred fifty dollars per year; and in Class
29 VII counties, not more than five thousand dollars per year.

30 Within the maximum limitations above prescribed, the
31 county court may fix the same salary for all county magistrates
32 within such county or it may establish a different salary for
33 one or more of such county magistrates. In fixing the salaries
34 within the maximum limitations above prescribed, the county
35 court shall consider the advice of the advisory board herein
36 created and shall take into account the amount of time each
37 county magistrate shall be available to perform the duties
38 of his office.

39 For the purpose of advising the county court in the fixing of
40 salaries of county magistrates within the maximum limitations
41 above prescribed, there is hereby created in each county
42 the county magistrates advisory board which shall be com-
43 posed of the county clerk, the clerk of the circuit court and
44 three members to be appointed by the county court. Justices of
45 the peace, county magistrates or members of their immediate
46 families shall be ineligible to serve as members of the board
47 unless their service is by virtue of their office as county clerk or
48 clerk of the circuit court. The advisory board shall elect from

49 its membership a chairman. The advisory board shall meet at
 50 such times and places as shall be directed by the chairman or
 51 by the county court. It shall be the duty of the advisory board
 52 to advise the county court on the fixing of salaries of county
 53 magistrates within the maximum limitations above prescribed.
 54 No member of the county magistrates advisory board shall be
 55 entitled to any pay or reimbursement for expenses incurred in
 56 the performance of his duties.

57 In addition to his salary, as specified by the county court,
 58 each county magistrate shall be entitled to be reimbursed for all
 59 reasonable and necessary expenses actually incurred by him in
 60 providing office space, furnishing necessary clerical help and
 61 providing stationery and supplies and for all other incidental
 62 operating expenses, but the total of all such reimbursed ex-
 63 penses in any fiscal year may not exceed seventy-five percent
 64 of the salary of such county magistrate for such fiscal year.
 65 Requisition for such reimbursement shall be accompanied by
 66 a sworn statement, detailed vouchers and documentation per-
 67 taining to such expenses.

68 The salary of each county magistrate and all payments made
 69 to reimburse him for all reasonable and necessary expenses
 70 actually incurred in the performance of his duties as a county
 71 magistrate shall be paid by the county court from the county
 72 general fund. The salary shall be paid in equal monthly in-
 73 stallments.

§50-19-6. Constables.

1 All constables as provided for in this chapter shall perform
 2 the functions and duties for county magistrates as may be pre-
 3 scribed by law in regard to justices of the peace.

**§50-19-7. Administration; rules and regulations; supervision as to
 judicial functions by circuit court; inspection; reports
 to county court; quarterly reports to joint committee
 on government and finance.**

1 Except as may be modified by the provisions of this article
 2 and except as may be clearly conflicting with the provisions of
 3 this article, all county magistrates are hereby imposed with
 4 the duty to conduct their fiscal affairs in the same manner as
 5 prescribed for justices of the peace.

6 Each county court may by order entered of record adopt
7 rules and regulations establishing administrative requirements
8 as to the discharge of the duties of county magistrates, includ-
9 ing, but not limited to, the specification of a reasonable
10 schedule of hours for each county magistrate, requirements
11 that the office of a county magistrate be located in a place
12 readily accessible to the public, and requirements that each
13 county magistrate maintain regular telephone service if such
14 service is available.

15 Each county magistrate shall be subject to supervision by
16 the circuit court of his county as to the performance of his
17 judicial functions, and, without any limitation of all other power
18 and authority vested in the circuit court, such court, upon
19 receipt of a complaint against a county magistrate, shall have
20 plenary power and authority, after hearing, to censure or
21 suspend such county magistrate.

22 Each county magistrate shall be subject to audit of his
23 records, both civil and criminal, and all materials relating to
24 such records, by the chief inspector of public offices. For the
25 purpose of uniformity, the chief inspector of public offices
26 shall designate the form of records to be used by county mag-
27 istrates.

28 Each county magistrate shall furnish to the county court of
29 his county monthly reports indicating the volume of judicial
30 business handled by him, both civil and criminal, the total
31 amount of moneys received, whether in the form of fees, costs,
32 fines, forfeitures or penalties, the total amount of moneys re-
33 mitted by him as required by law, the total amount of ex-
34 penses incurred by such county magistrate during such month
35 for which reimbursement is claimed, and all such other de-
36 tailed information as the county court shall require. The county
37 court shall consolidate all such monthly reports and each
38 quarter forward a copy of the consolidated report to the
39 joint committee on government and finance.

§50-19-8. Application of chapter; conflict of provisions.

1 Except as may be clearly in conflict with the provisions of
2 this article, all provisions of this code relating to justices of
3 the peace, including those provisions specifying and prohibiting

4 unlawful or improper conduct, and including the requirement to
 5 post bond as provided in section ten, article two, chapter six of
 6 this code, shall apply to county magistrates. To the extent such
 7 provisions are clearly in conflict, the provisions of this article
 8 shall control.

§50-19-9. Violations; penalties; removal from office.

1 Any county magistrate who shall violate any provision of
 2 this article or any provision of this code which by virtue of
 3 this article is made applicable to county magistrates shall be
 4 guilty of a misdemeanor, and, upon conviction thereof, shall
 5 be fined not more than one thousand dollars, or imprisoned
 6 in the county jail not more than one year, or both fined and im-
 7 prisoned. A conviction hereunder shall effect the removal of a
 8 county magistrate from office and shall disqualify him from
 9 further service as a county magistrate.

§50-19-10. Expiration of provisions.

1 The provisions of this article shall expire on the thirtieth day
 2 of June, one thousand nine hundred seventy-five. Such expira-
 3 tion, however, shall not affect any act or decision of a county
 4 magistrate.

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CHAPTER 25

(S. B. 482—By Mr. McGraw)

[Passed March 9, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one-aa, article two, chap-
 ter fifty-one of the code of West Virginia, one thousand nine
 hundred thirty-one, as amended, relating to terms of the
 circuit court of Wyoming county.

Be it enacted by the Legislature of West Virginia:

That section one-aa, 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; CIRCUIT, CRIMINAL AND INTERMEDIATE JUDGES.**§51-2-1aa. Twenty-seventh circuit.**

- 1 For the county of Wyoming on the first Monday in
- 2 February, the first Monday in May, and the first Monday
- 3 in October.

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CHAPTER 26

(H. B. 1080—By Mr. Jolliffe)

[Passed March 9, 1974; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article three, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the fixing of the opening day of court; consecutive days of failure to sit.

Be it enacted by the Legislature of West Virginia:

That section ten, article three, 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 3. COURTS IN GENERAL**§51-3-10. Opening after day fixed.**

- 1 Though a court be not held on the first day of a term, it
- 2 may nevertheless be opened on any subsequent day; provided,
- 3 in the case of any court of record for any county, the same be
- 4 done before four o'clock in the afternoon of the third day.
- 5 If, after a court is opened, it fail to sit on any day, it may
- 6 nevertheless sit on any subsequent day of the term: *Provided,*
- 7 That in the case of any court of record for any county, there be
- 8 not more than seven consecutive days of such failure.

CHAPTER 27

(H. B. 1307—By Mr. Myles)

[Passed March 9, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article seven, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increase in costs per page of transcripts and copies furnished by official court reporters.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. OFFICIAL REPORTERS.

§51-7-4. Transcript of notes; fees; authenticity; transcript for judge in criminal cases.

1 The reporter shall furnish, upon request, to any party
2 to a case, a typewritten transcript of his shorthand notes
3 of the testimony or other proceedings, which shall be upon
4 paper measuring eight and one-half inches in width and
5 eleven inches in length, with margins of one-half inch on
6 the right side and bottom, one inch at the top and one and
7 one-half inches on the left, with twenty-four lines on each
8 page, and shall certify the same as being correct, and shall
9 be paid therefor, by the party requesting such transcript,
10 at the rate of one dollar and ten cents for each page so
11 transcribed and certified; and for each carbon copy of such
12 transcript, ordered at the same time, he shall be paid forty
13 cents for each page so furnished.

14 A transcript of such testimony or proceedings, when
15 certified by the official reporter and by the judge of the
16 court, shall be authentic for all purposes, and shall be
17 used by the parties to the cause in any further proceeding
18 therein wherein the use of the same may be required. It may
19 be used, without further authentication, in making up the
20 record on appeal, as provided in sections thirty-six and

21 thirty-seven, article six, chapter fifty-six of this code; and
22 in all cases of appeal such reporter shall also make a carbon
23 copy of such transcript, which copy shall be filed in the
24 office of the clerk of the court in which the trial or pro-
25 ceedings were had, to be used, if necessary, in making up
26 the record on appeal, and, if so used, the clerk shall not
27 be entitled to any fee for that part of the record. If, upon
28 appeal or writ of error, the judgment, decree or order entered
29 in the cause be reversed, the cost of such transcript shall
30 be taxed as other costs; and if such transcript be requested
31 or required for the purpose of demurring to the evidence, the
32 cost thereof shall be taxed in favor of the party prevailing on
33 the demurrer.

34 It shall also be the duty of such reporter in any criminal
35 case, upon the request of the court or the judge thereof,
36 and for his use, to furnish a transcript of his notes of the
37 testimony and proceedings without extra charge.

CHAPTER 28

(H. B. 1147—By Mr. Romine)

[Passed March 8, 1974; in effect July 1, 1974. Approved by the Governor.]

AN ACT to amend and reenact sections two and twenty-four, chapter twenty-eight, acts of the Legislature, regular session, one thousand eight hundred ninety-three, as last amended and reenacted by chapter thirty, acts of the Legislature, regular session, one thousand nine hundred seventy-two, relating to increasing the jurisdiction, and increasing the judge's salary of the common pleas court of Cabell County.

Be it enacted by the Legislature of West Virginia:

That sections two and twenty-four, chapter twenty-eight, acts of the Legislature, regular session, one thousand eight hundred ninety-three, as last amended and reenacted by chapter thirty, acts of the Legislature, regular session, one thousand nine hundred seventy-two, be amended and reenacted to read as follows:

COMMON PLEAS COURT OF CABELL COUNTY.

§2. Jurisdiction.

§24. Salary of judge.

§2. Jurisdiction.

1 That said common pleas court of Cabell County shall
2 have original jurisdiction within said county of all crimes,
3 felonies, misdemeanors, criminal proceedings, and all mat-
4 ters in anywise relating thereto, and all civil actions, civil
5 matters and proceedings in anywise relating thereto.

6 Such jurisdiction of the common pleas court shall be general,
7 common and concurrent with the jurisdiction of the circuit
8 court of such county in all and every respect as the same
9 is constituted and set forth in section twelve, article eight
10 of the constitution of West Virginia, and by the laws and
11 statutes of the state of West Virginia, except where the
12 matters in controversy in civil suits or proceedings shall
13 exceed the sum of two hundred fifty thousand dollars, and
14 except as to those matters specifically reserved to the jurisdic-
15 tion of the circuit court, but including concurrent jurisdiction
16 with that of the circuit court in all suits and matters arising
17 under chapter thirty-six, article seven of the code of West
18 Virginia, one thousand nine hundred thirty-one, as amended,
19 and known as the "West Virginia Gifts to Minors Act."

§24. Salary of judge.

1 The judge of the common pleas court of Cabell County,
2 shall, from and after the first day of July, one thousand
3 nine hundred seventy-four, receive for his services a salary
4 in the amount of twenty six thousand dollars per annum,
5 to be paid in semimonthly installments out of the county
6 treasury of Cabell County, out of the funds of said treasury,
7 in the manner provided by statute. The salary of said judge
8 shall continue as provided in chapter thirty, acts of the
9 Legislature, regular session, one thousand nine hundred
10 seventy-two, until the first day of July, one thousand nine
11 hundred seventy-four. The county court of Cabell County
12 shall annually make provision by appropriate levy and ap-
13 propriation for the payment of said salary.

14 All acts or parts of acts inconsistent or in conflict here-
15 with are repealed.

CHAPTER 29

(H. B. 1149—By Mr. Romine)

[Passed March 8, 1974; in effect July 1, 1974. Approved by the Governor.]

AN ACT to amend and reenact sections two and four, chapter one hundred sixty-eight, acts of the Legislature, regular session, one thousand nine hundred twenty-one, as last amended and reenacted by chapter thirty-one, acts of the Legislature, regular session, one thousand nine hundred seventy-two, relating to increasing the jurisdiction of the domestic relations court of Cabell County; the court generally; increasing the salary of the chief probation officer; providing for an additional probation officer; and increasing the salaries of probation officers and of the judge of the court.

Be it enacted by the Legislature of West Virginia:

That sections two and four, chapter one hundred sixty-eight, acts of the Legislature, regular session, one thousand nine hundred twenty-one, as last amended and reenacted by chapter thirty-one, acts of the Legislature, regular session, one thousand nine hundred seventy-two, be amended and reenacted to read as follows:

DOMESTIC RELATIONS COURT OF CABELL COUNTY.

§2. Jurisdiction.

§4. Salary of judge.

§2. Jurisdiction.

1 The said domestic relations court shall have jurisdiction
2 within the said county of Cabell, concurrent with the circuit
3 court, of all matters and causes arising out of or pertaining
4 to annulment of marriages, separate maintenance suits, di-
5 vorce, alimony, the custody and maintenance of children of
6 litigants and the adjudication of property rights arising
7 out of the same, and of all other matters and causes coming
8 within the purview of chapter forty-eight of the code of
9 West Virginia, one thousand nine hundred thirty-one, and
10 all amendments and reenactments thereof concerning domestic
11 relations, habeas corpus proceedings; of all matters and
12 causes coming within the purview of chapter forty-nine of

13 the code of West Virginia, one thousand nine hundred thirty-
14 one, as enacted by chapter one, acts of the Legislature of
15 West Virginia, one thousand nine hundred thirty-six, and
16 of all amendments and reenactments thereof, commonly known
17 as the child welfare law; of all matters and causes coming
18 within the purview of chapter eighteen of the code of West
19 Virginia, one thousand nine hundred thirty-one, and all
20 amendments and reenactments thereof, commonly called the
21 general school law; of all matters and causes coming within
22 the purview of chapter forty-eight of the code of West Virginia,
23 one thousand nine hundred thirty-one, and of all amendments
24 and reenactments thereof, commonly known as the reciprocal
25 dependency law; of all matters and causes coming within the
26 purview of chapter forty-eight of the code of West Virginia,
27 one thousand nine hundred thirty-one, and all amendments
28 and reenactments thereof, commonly known as the adoption
29 law; and of all matters and causes coming within the purview
30 of chapter forty-eight of the code of West Virginia, one
31 thousand nine hundred thirty-one, and of all amendments
32 and reenactments thereof, commonly known as the change of
33 name law; and of all matters and causes coming within the
34 purview of chapter forty-eight of the code of West Virginia,
35 one thousand nine hundred thirty-one, and of all amendments
36 and reenactments thereof, commonly known as the mainten-
37 ance of illegitimate children law; and of all matters and
38 causes coming within the purview of chapter forty-four,
39 article ten, section fourteen of the code of West Virginia,
40 one thousand nine hundred thirty-one, and of all amendments
41 and reenactments thereof, commonly known as the approval
42 of the compromising of infants' claims for damages; and of
43 all matters and causes coming within the purview of chapter
44 forty-eight, article one, section six-c of the code of West
45 Virginia, one thousand nine hundred thirty-one, and of all
46 amendments and reenactments thereof, commonly known as
47 the issuance of marriage license in case of emergency or
48 extraordinary circumstances; and of all matters and causes
49 coming within the purview of chapter fifty-five, article seven-a
50 of the code of West Virginia, one thousand nine hundred
51 thirty-one, and of all amendments and reenactments thereof,
52 commonly known as the liability of parents; and of all

53 matters and causes coming within the purview of chapter
54 thirty-seven of the code of West Virginia, one thousand nine
55 hundred thirty-one, and of all amendments and reenactments
56 thereof, commonly known as the approval of the sale, lease
57 or mortgage of infants' lands; and of all matters and causes
58 coming within the purview of chapter sixty-one, article
59 seven, section two, commonly known as license to carry
60 weapons, how obtained; and shall have concurrent with the
61 circuit court of Cabell County, supervision and control of
62 proceedings before justices and other inferior tribunals by
63 mandamus, prohibition and certiorari; and of all matters and
64 causes, concurrent with the circuit court of Cabell County
65 and the common pleas court of Cabell County coming within
66 the purview of chapter sixty-two, article one-c, section one,
67 commonly known as the right to bail; and of all matters
68 and causes coming within the purview of all other or future
69 acts of the Legislature touching the subject matter of any
70 and all said laws and acts, and the amendments and re-
71 enactments thereof, and of the common law of said state
72 relating to the subject matter thereof. Independently of
73 any of the foregoing matters, the domestic relations court
74 shall also have and is hereby given what was heretofore
75 recognized as general equity jurisdiction concurrent with
76 the circuit court, excepting in cases involving the enforce-
77 ment of criminal laws and labor disputes, and excepting
78 cases where it shall appear from the pleadings that the
79 matter or thing in controversy exceeds in value the sum of
80 five hundred thousand dollars. The proceedings and modes
81 of procedure and power and jurisdiction conferred by law
82 upon the circuit court or the common pleas court in any
83 and all said matters and causes are hereby conferred upon
84 and shall be exercised by said domestic relations court.

85 The court is authorized and empowered to appoint and
86 discharge one chief probation officer at a yearly salary of
87 eleven thousand dollars and two probation officers at a
88 yearly salary of ten thousand seven hundred fifty dollars
89 each, which said salaries shall be paid by the county court
90 in monthly installments, and in addition thereto the said
91 county court shall reimburse the said probation officers of
92 their necessary expenses actually incurred monthly in the

93 performance of official duties, including an allowance of ten
94 cents per mile of their automobile driven in the performance
95 of official duties. The court is further authorized and
96 empowered to appoint and discharge such medical, clerical
97 and secretarial assistance as shall enable it to discharge all
98 of the duties required of it under the provisions of this
99 section and the general laws of the state and such person or
100 persons shall be paid by the county court monthly upon the
101 written approval of the judge of the said court.

§4. Salary of judge.

1 The judge of the domestic relations court of Cabell County,
2 shall, from and after the first day of July, one thousand nine
3 hundred seventy-four, receive for his services a salary in the
4 amount of twenty six thousand dollars per annum, to be paid
5 in monthly installments out of the county treasury of Cabell
6 County, out of the funds of said treasury, in the manner pro-
7 vided by statute. The salary of said judge shall continue as
8 provided in chapter thirty-one, acts of the Legislature, regular
9 session, one thousand nine hundred seventy-two, until the
10 first day of July, one thousand nine hundred seventy-four.
11 The county court of Cabell County shall annually make pro-
12 vision by appropriate levy and appropriation for the pay-
13 ment of said salary.

14 All acts or parts of acts inconsistent or in conflict herewith
15 are hereby repealed.

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CHAPTER 30

(H. B. 1101—By Mr. Carey and Mr. Brenda)

[Passed February 28, 1974; in effect July 1, 1974. Approved by the Governor.]

AN ACT to amend and reenact sections two, five and twelve, chapter thirty-five, acts of the Legislature, regular session, one thousand nine hundred seventy, relating to the jurisdiction of the common pleas court of Hancock County and the salary of the judge thereof and manner of compensation of judge's secretary.

Be it enacted by the Legislature of West Virginia:

That sections two, five and twelve, chapter thirty-five, acts of the Legislature, regular session, one thousand nine hundred seventy, be amended and reenacted to read as follows:

HANCOCK COUNTY COMMON PLEAS COURT.

§2. Jurisdiction.

§5. Salary.

§12. Supplies, finances, seal, courtrooms and offices.

§2. Jurisdiction.

1 The court shall have jurisdiction within Hancock County,
2 concurrent with the circuit court of said county of causes,
3 matters, proceedings and suits relating to: (a) Those matters
4 within the purview of article one, chapter forty-eight of the
5 official code of West Virginia, as amended; (b) adoption pro-
6 ceedings arising out of article four, chapter forty-eight of the
7 code of West Virginia, one thousand nine hundred thirty-one,
8 as amended; (c) proceedings for a change of name arising out
9 of article five of said chapter forty-eight, as amended; (d)
10 maintenance of illegitimate children proceedings arising out of
11 article seven, chapter forty-eight of the official code of West
12 Virginia, as amended; (e) desertion and nonsupport of wife
13 or child proceedings arising out of article eight, chapter forty-
14 eight of the official code of West Virginia, as amended; (f)
15 the enforcement of support of dependents arising out of article
16 nine of said chapter forty-eight, as amended; (g) all civil ac-
17 tions or proceedings at law, except where it shall appear from
18 the pleadings that the matter in controversy exceeds the value of
19 seventy-five thousand dollars; (h) all cases arising under arti-
20 cles five, six, seven and eight, chapter forty-nine of the code of
21 West Virginia, one thousand nine hundred thirty-one, as
22 amended; (i) appellate jurisdiction in all cases, civil and crim-
23 inal, from judgments of justices of the peace in said county,
24 police judges or mayors of any incorporated city, town or vil-
25 lage, or of any inferior tribunal therein, wherein an appeal, writ
26 of error, supersedeas or writ of certiorari may be allowed; (j)
27 all proceedings under article one, chapter thirty-seven of the
28 code of West Virginia, one thousand nine hundred thirty-one, as
29 amended; (k) the approval of compromising an infant's claim
30 for damages in accordance with section fourteen, article ten,

31 chapter forty-four of the official code of West Virginia, as
32 amended; (1) any and all other matters arising under the pre-
33 sent and future laws of the state of West Virginia, common or
34 statutory, incidental to the foregoing, including, but not limited
35 to, the disposition of property and property interests involved
36 in any such matters, and, as well, the adjudication of any and
37 all rights, titles and interests necessary or incidental to a full
38 determination of all such matters pending in said court.

39 The court shall have general equity jurisdiction in causes,
40 matters, proceedings and suits before it within its jurisdiction
41 with power to grant injunctions and to require and take recog-
42 nizances.

43 The proceedings, modes of procedures, power and jurisdic-
44 tion conferred by law upon the circuit court of Hancock County
45 in any and all said causes, matters, proceedings and suits are
46 hereby conferred upon and shall be exercised by the court of
47 common pleas of Hancock County.

48 The judge of said court shall have the same powers in vaca-
49 tion as to any and all of said causes, matters, proceedings and
50 suits that are conferred upon the judges of the circuit court of
51 Hancock County.

52 It shall not be necessary in any such causes or proceedings
53 to set forth upon the record the facts authorizing said court to
54 take jurisdiction thereof, but jurisdiction shall be presumed un-
55 less the contrary plainly appears from the record.

§5. Salary.

1 The judge of the common pleas court of Hancock County,
2 shall, from and after the first day of July, one thousand nine
3 hundred seventy-four, receive for his services a salary in the
4 amount of twenty-five thousand dollars per annum, to be
5 paid in monthly installments out of the treasury of Hancock
6 County, out of the funds of said treasury, in the manner
7 prescribed by statute. The salary of said judge shall continue
8 as provided in chapter thirty-five, acts of the Legislature,
9 regular session, one thousand nine hundred seventy, until the
10 first day of July, one thousand nine hundred seventy-four.
11 The county court shall annually make provision by appropriate
12 levy and appropriation for the payment of said salary.

§12. Supplies, finances, seal, courtrooms and offices.

1 It shall be the duty of the county court of Hancock County
2 to provide all records and other books and stationery, postage
3 and supplies that may be necessary for said court. Likewise
4 a seal for said court shall be provided and full faith and
5 credit shall be given to the records of the court and certificates
6 of its judge or clerk in like manner and with the same effect
7 as if the same were records of the circuit court similarly
8 authenticated. The county court of Hancock County shall
9 likewise furnish rooms, furniture and equipment for the proper
10 conduct and administration of said court and shall, through
11 annual levy and appropriations, make provision for the
12 payment for all such rooms, supplies and equipment. It shall
13 be the duty of the county court of Hancock County to pay the
14 salary of a full-time secretary in the office of the judge of
15 said court, to be appointed by him, whose compensation shall
16 be set annually by the county court of Hancock County.

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CHAPTER 31

(H. B. 1091—By Mr. Savilla and Mr. Jones, of Kanawha)

[Passed March 8, 1974; In effect July 1, 1974. Approved by the Governor.]

AN ACT to amend and reenact section nine, chapter twenty-five, acts of the Legislature, regular session, one thousand nine hundred seven, as last amended by chapter thirty-eight, acts of the Legislature, regular session, one thousand nine hundred seventy, relating to the salary of the judge of the intermediate court of Kanawha County.

Be it enacted by the Legislature of West Virginia:

That section nine, chapter twenty-five, acts of the Legislature, regular session, one thousand nine hundred seven, as last amended by chapter thirty-eight, acts of the Legislature, regular session, one thousand nine hundred seventy, be amended and reenacted to read as follows:

INTERMEDIATE COURT OF KANAWHA COUNTY.**§9. Salary.**

1 The judge of the intermediate court of Kanawha County,
 2 West Virginia, shall, from and after the first day of January,
 3 one thousand nine hundred seventy-five, receive for his ser-
 4 vices a salary in the amount of twenty-six thousand dollars
 5 per annum, to be paid in monthly installments out of the
 6 county treasury of Kanawha County, out of the funds of said
 7 treasury, in the manner provided by statute. The salary of
 8 said judge shall continue as provided in chapter thirty-eight,
 9 acts of the Legislature, regular session, one thousand nine
 10 hundred seventy, until the first day of January, one thousand
 11 nine hundred seventy-five.

CHAPTER 32

(H. B. 1270—By Mr. McKenzie and Mr. Pauley)

[Passed March 8, 1974; in effect July 1, 1974. Approved by the Governor.]

AN ACT to amend and reenact sections two and four, chapter thirty-six, acts of the Legislature, regular session, one thousand nine hundred seventy-one, relating to the intermediate court for the County of McDowell, increasing the jurisdiction of said court and increasing the salary of the judge thereof.

Be it enacted by the Legislature of West Virginia:

That sections two and four, chapter thirty-six, acts of the Legislature, regular session, one thousand nine hundred seventy-one, be amended and reenacted to read as follows:

THE INTERMEDIATE COURT OF McDOWELL COUNTY.

- §2. Jurisdiction concurrent with circuit court.
 §4. Salary of judge; payment thereof.

§2. Jurisdiction concurrent with circuit court.

1 The court, which is the same court originally established
 2 by chapter thirty-six, acts of the Legislature, regular session,
 3 one thousand eight hundred ninety-three, but with its name

4 and jurisdiction changed as in this act provided, shall
5 continue to have jurisdiction within the County of McDowell,
6 concurrent with the circuit court of the county, of all felonies,
7 misdemeanors and offenses committed or which may be
8 committed within the County of McDowell, and shall also
9 have, concurrent with the circuit court of the county, juris-
10 diction, supervision and control by appeal, mandamus, pro-
11 hibition and certiorari of all proceedings before justices of
12 the peace of the county or the police court, mayor or other
13 constituted tribunal, board or commission of any city, town
14 or village in the county. The court shall likewise have
15 jurisdiction within the County of McDowell concurrent with
16 the circuit court of the county, of all civil actions or
17 proceedings at law, except where it shall appear from the
18 pleadings that the matter or thing in controversy in any
19 such civil action or proceeding at law, exclusive of interests
20 and costs, exceeds in value the sum of sixty thousand dollars,
21 and all summary proceedings at law and any other manner
22 of actions or proceedings at law authorized by the general
23 laws of West Virginia, as well as of appeals from judgments
24 of the justices of the county when such appeals shall lie to
25 the court in the same manner and under the same regulations
26 as provided in the general laws for appeals from justices.
27 The court shall likewise have jurisdiction within the County
28 of McDowell, concurrent with the circuit court of the county,
29 of suits for divorce, annulment of marriage and separate
30 maintenance, of bastardy proceedings and actions for main-
31 tenance of illegitimate children as provided by the general
32 laws of West Virginia, and the court shall have jurisdiction
33 within the County of McDowell, concurrent with the circuit
34 court of the county, of proceedings for adoption, and all
35 juvenile and other matters of which the aforesaid criminal
36 court of McDowell County was given jurisdiction by the
37 general laws of West Virginia or of which the court hereby
38 established may be given jurisdiction by such general laws.

§4. Salary of judge; payment thereof.

1 The judge of the intermediate court shall receive for his
2 services the sum of twenty-four thousand dollars per annum
3 to be paid out of the county treasury of the County of Mc-
4 Dowell.

CHAPTER 33

(H. B. 1152—By Mr. Speaker, Mr. McManus)

[Passed March 9, 1974; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, five, eight and nine, chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred seven, as last amended by chapter thirty-eight, acts of the Legislature, regular session, one thousand nine hundred seventy-two, relating to the intermediate court of Raleigh County, providing that such court shall have jurisdiction in criminal matters, increasing the salary of the judge thereof, changing terms of the court and authorizing grand juries and petit juries for criminal matters.

Be it enacted by the Legislature of West Virginia:

That sections three, five, eight and nine, chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred seven, as last amended and reenacted by chapter thirty-eight, acts of the Legislature, regular session, one thousand nine hundred seventy-two, be amended and reenacted to read as follows:

INTERMEDIATE COURT OF RALEIGH COUNTY.

§3. Jurisdiction.

§5. Salary.

§8. Transfer of pending causes.

§9. Terms of court; maturity of causes; procedure; appointment of probation staff, clerical, and secretarial assistants and fixing salaries.

§3. Jurisdiction.

1 The court shall have jurisdiction within Raleigh County,
 2 concurrent with the circuit court of said county, of actions,
 3 causes, matters, proceedings and suits relating to (a) those
 4 matters within the purview of article one, chapter forty-eight
 5 of the code of West Virginia and of all amendments and
 6 reenactments thereof, of which the circuit court now has
 7 exclusive jurisdiction, including the issuance of a marriage
 8 license in an emergency or under extraordinary circumstances
 9 as now provided in section six-c of said article and chapter;
 10 (b) affirmation of marriages, annulment of marriages, separate
 11 maintenance, divorce, alimony, the care, custody, maintenance

12 and education of children of litigants and the adjudication
13 of property rights arising out of same and all other causes
14 and matters arising within the provisions of article two,
15 chapter forty-eight of the code of West Virginia, commonly
16 known as "the divorce law," and of all amendments and
17 reenactments thereof; (c) adoption proceedings arising out of
18 article four of the chapter last aforesaid and of all amendments
19 and reenactments thereof; (d) proceedings for a change of
20 name arising out of article five of the chapter last aforesaid
21 and of all amendments and reenactments thereof; (e) the
22 enforcement of support of dependents arising out of article
23 nine of the chapter last aforesaid and of all amendments and
24 reenactments thereof; (f) the care and disposition of delin-
25 quent, defective, neglected and dependent children and juve-
26 nile offenders arising out of articles five, six and seven,
27 chapter forty-nine of the code of West Virginia and of all
28 amendments and reenactments thereof; (g) all proceedings
29 arising out of article eight, chapter forty-nine of the code
30 of West Virginia, known as the "Interstate Compact on
31 Juveniles," and of all amendments and reenactments thereof;
32 (h) compulsory school attendance and truancy arising out
33 of article eight, chapter eighteen of the code of West Virginia
34 and of all amendments and reenactments thereof; (i) habeas
35 corpus proceedings involving the award and custody of
36 children under the age of eighteen years; (j) the collec-
37 tion of recognizances and bonds taken by said court, or of
38 bonds taken by the clerk thereof in vacation, to secure the
39 payment of judgments for fines and costs rendered by said
40 court; (k) the approval of compromise by fiduciaries of
41 liabilities where acting as guardian for an infant in accordance
42 with the provisions of section seven, article five, chapter
43 forty-four of the code of West Virginia and of all amend-
44 ments and reenactments thereof; (l) concerning the transfer
45 of securities the property of an infant in the name of a
46 fiduciary in accordance with the provisions of section eight,
47 article five, chapter forty-four of the code of West Virginia
48 and of all amendments and reenactments thereof; (m) di-
49 rection to fiduciaries concerning moneys belonging to a
50 minor in accordance with the provisions of section one,
51 article six, chapter forty-four of the code of West Virginia

52 and of all amendments and reenactments thereof; (n) author-
53 ity for investment by a fiduciary when the beneficiary of
54 trust funds is the property of a minor in accordance with
55 the provisions of section three, article six, chapter forty-four
56 of the code of West Virginia and of all amendments and
57 reenactments thereof, and authority for investment or dis-
58 bursement by a guardian or committee for a person receiving
59 veteran's benefits, in accordance with the provisions of article
60 fifteen, chapter forty-four of the code of West Virginia and
61 of all amendments and reenactments thereof; (o) instruction
62 of fiduciaries where minor is beneficiary of an estate or trust
63 as provided in section four, article six, chapter forty-four of
64 the code of West Virginia and of all amendments and re-
65 enactments thereof; (p) authorization of disbursements by
66 guardians from income and corpus of the estate of infant
67 wards as provided in section eight, article ten, chapter forty-
68 four of the code of West Virginia and of all amendments and
69 reenactments thereof; (q) sale of personal estate by guardian
70 in accordance with the provisions of section nine, article
71 ten, chapter forty-four of the code of West Virginia and
72 of all amendments and reenactments thereof; (r) proceedings
73 between guardians and wards in accordance with the provisions
74 of section thirteen, article ten, chapter forty-four of the code
75 of West Virginia and of all amendments and reenactments
76 thereof; (s) the approval of compromising an infant's claim
77 for damages in accordance with the provisions of section
78 fourteen, article ten, chapter forty-four of the code of West
79 Virginia and of all amendments and reenactments thereof;
80 (t) the transfer of property of nonresident infant or nonresident
81 insane person to foreign guardian in accordance with the
82 provisions of section three, article eleven, chapter forty-four
83 of the code of West Virginia and of all amendments and
84 reenactments thereof; (u) the transfer of proceeds of sale
85 belonging to nonresident infant to foreign guardian in ac-
86 cordance with section four, article eleven, chapter forty-four
87 of the code of West Virginia and of all amendments and re-
88 enactments thereof; (v) the approval of the sale, lease,
89 mortgage or deeding in trust of infants' lands or insane
90 persons' lands in accordance with the provisions of article
91 one, chapter thirty-seven of the code of West Virginia and

92 of all amendments and reenactments thereof; (w) release of
93 dower of an infant in accordance with the provisions of
94 section nine, article one, chapter thirty-seven of the code of
95 West Virginia and of all amendments and reenactments
96 thereof; (x) all matters coming within the purview of section
97 one, article one, chapter forty-eight of the code of West
98 Virginia, relating to the age of consent and of all amendments
99 and reenactments thereof; (y) all felonies, misdemeanors and
100 offenses committed within said county, and jurisdiction as to
101 the supervision and control of such proceedings before justices
102 of said county, or the mayor or police judge or police court of
103 any incorporated city, town or village of said county, by ap-
104 peal, mandamus, prohibition and certiorari.

105 Said court shall have jurisdiction in actions, causes, matters,
106 proceedings and suits which would have been matters in
107 equity prior to the adoption of the West Virginia rules of civil
108 procedure, which are before it within its jurisdiction with power
109 to grant injunctions and to require and take recognizances.

110 The proceedings, modes of procedures, power and jurisdic-
111 tion conferred by law upon the circuit court of Raleigh County
112 in any and all said actions, causes, matters, proceedings and
113 suits, are hereby conferred upon and shall be exercised by said
114 court.

115 It shall not be necessary in any such actions, causes, matters,
116 proceedings or suits to set forth upon the record the facts
117 authorizing said court to take jurisdiction thereof, but jurisdic-
118 tion shall be presumed unless the contrary plainly appears
119 from the record.

§5. Salary.

1 The judge of the intermediate court of Raleigh County shall,
2 from and after the first day of January, one thousand nine
3 hundred seventy-five, receive for his services a salary in the
4 amount of twenty-four thousand dollars per annum, to be paid
5 in monthly installments out of the county treasury of Raleigh
6 County, out of the funds of said treasury, in the manner pro-
7 vided by statute. The salary of said judge shall continue as
8 provided in chapter thirty-eight, acts of the Legislature, regular

9 session, one thousand nine hundred seventy-two, until the
10 first day of January, one thousand nine hundred seventy-five.
11 The county court of Raleigh County shall annually make
12 provision by appropriate levy and appropriation for the pay-
13 ment of said salary.

§8. Transfer of pending causes.

1 The judge of the circuit court of Raleigh County may,
2 in his discretion, after the effective date of this act or by
3 the first day of July, one thousand nine hundred seventy-four,
4 certify to the intermediate court of Raleigh County all
5 criminal matters yet to be tried or otherwise to be disposed
6 of and any and all other matters pending in said court
7 and properly coming within the jurisdiction of this court as
8 defined in section three hereof, and all such matters, suits,
9 actions, petitions and proceedings so certified to the inter-
10 mediate court of Raleigh County shall be docketed and there-
11 after proceeded with therein according to law. The judge of
12 the said circuit court, in his discretion, may also direct the
13 clerk of his court to certify to and to docket all such matters,
14 suits, actions, petitions, and proceedings properly within
15 the jurisdiction of the intermediate court of Raleigh County
16 as may be instituted on and after the effective date of this act
17 or not later than the first day of July, one thousand nine
18 hundred seventy-four, in the circuit court in the intermediate
19 court of Raleigh County. In the event of the absence or
20 disqualification of the judge of the circuit court, any matter
21 coming within the purview of this act, pending in said court,
22 may be certified by the judge of the intermediate court of
23 Raleigh County, docketed therein and proceeded within ac-
24 cording to law. In any civil action or proceeding where a
25 party is entitled to a jury trial, and demands the same, or
26 the court orders a jury trial, the said action or proceeding
27 shall be transferred by the judge of the intermediate court
28 of Raleigh County in its entirety to the circuit court for
29 disposition as though the same had been originally instituted
30 in the circuit court. For the purpose of effecting such
31 transfer, the intermediate court of Raleigh County shall have
32 jurisdiction in all matters brought before it.

§9. Terms of court; maturity of causes; procedure; appointment of probation staff, clerical, and secretarial assistance and fixing salaries.

1 For the purpose of maturing, docketing, hearing and deter-
2 mining all matters, suits, petitions and other proceedings
3 properly determinable in the intermediate court of Raleigh
4 County there shall be regularly continued and held three
5 jury terms of court each year, at which grand and petit
6 juries shall be called, beginning on the first Monday in the
7 months of February, June and October of each year. Special
8 terms of said court, with grand and petit juries, may be
9 called and held whenever, in the discretion of the judge of
10 the court, public interest requires such special terms. The
11 judge of the court shall have like jurisdiction and authority,
12 in vacation of the court, to make and enter such proper
13 orders in any matter, suit, action, petition or proceeding
14 pending in the court as the judges of the circuit courts have
15 under the laws of the state. All matters arising under the
16 jurisdiction of the court may be heard and determined
17 either in term time or in vacation: *Provided*, That proper
18 notice of any such proceedings be given as provided by law
19 for the particular case: *Provided, however*, That all felonies,
20 misdemeanors, and offenses committed within said county
21 shall be heard and determined at a regular or special term
22 of said court.

23 The mode of procedure in cases instituted in this court
24 shall be the same as that prescribed for the circuit court
25 in similar causes. The court is authorized and empowered to
26 appoint such additional officers, commissioners and pro-
27 bation officers, and clerical and secretarial assistance as
28 may be authorized by law and as shall enable the court to
29 discharge all the duties required of it under the provisions
30 of this chapter, and the general laws of the state, which
31 appointments shall be entered of record in the office of the
32 circuit clerk, with a copy to be filed with the county court.
33 Such personnel or staff of the judge shall be paid such
34 salaries, fees and expenses as may be determined by the court
35 and authorized by law from any available source, including
36 federal grant money or by the county court: *Provided*, That
37 for all such sums as shall be paid by the county court, the

38 judge shall first obtain the approval of the county court of
39 Raleigh County of the expenses to be incurred and the salary
40 or salaries to be paid. The county court shall at its next
41 meeting, regular or special, approve or disapprove in whole
42 or in part, said appointments, in writing, and shall notify
43 the judge of said court of its action. If the county court
44 fails or refuses to act on said appointments as herein
45 provided, said appointments shall be deemed to have been
46 approved. If the county court disapproves any appointment,
47 such appointment shall be nullified to the extent that the
48 county court shall not be obligated to pay any expenses or
49 salary for such disapproved appointment. Such appointment
50 shall be made by the judge and the appointees shall serve
51 during the pleasure of the judge.

52 The appointment of the probation officer and secretarial
53 and other assistants, when made by the judge, shall be
54 entered on the law order book of the court. A copy of the
55 order of appointment shall be transmitted to the clerk of
56 the county court. Thereupon, the county court shall make
57 provision for payment and shall pay the salaries of the
58 probation officer, clerical and secretarial assistance as shown
59 by the order of appointment. The annual salaries provided
60 for in said order of appointment shall be paid in equal monthly
61 installments. Expenses and mileage accounts of the proba-
62 tion officer shall be itemized and verified and presented to
63 and paid by the county court, if such accounts are approved
64 by the judge. The county court shall provide such office
65 space, equipment and supplies for the probation staff, clerical
66 and secretarial assistance as the judge shall deem necessary
67 and adequate.

CHAPTER 34

(Com. Sub. for H. B. 1047—By Mr. Butcher and Mr. Haynes)

[Passed February 25, 1974; in effect from passage;
disapproved by the Governor and repassed by both houses
notwithstanding the objections of the Governor.]

AN ACT establishing in the county of Wood, a court of limited jur-

isdiction to be known and designated as the "Court of Common Pleas of Wood County," and defining its jurisdiction.

Be it enacted by the Legislature of West Virginia:

COMMON PLEAS COURT OF WOOD COUNTY.

- §1. Creation of court of common pleas of Wood County.
- §2. Jurisdiction.
- §3. Powers conferred upon court.
- §4. Qualifications of judge.
- §5. Election of judge.
- §6. Jurisdiction presumed.
- §7. Punishment for contempt.
- §8. Grand jury for each term.
- §9. Duties of county court.
- §10. Clerk; powers, duties and compensation.
- §11. Salary of judge; payment.
- §12. Terms of court.
- §13. Seat of court.
- §14. Sheriff to execute process.
- §15. Certification to circuit court; special judge.
- §16. Transfer of cases.
- §17. Indictments found pending in circuit court may be certified to common pleas court.
- §18. Cases where appeals allowed to common pleas court concurrent with circuit court.
- §19. Appeals.
- §20. Prosecuting attorney or his assistant to attend terms of court; what duties to perform.
- §21. Certain sections of article eight, chapter seven made applicable.
- §22. Court reporter appointed; compensation.
- §23. Contest of office of judge.
- §24. Vacancy; how filled.
- §25. Removal proceedings.
- §26. Taxing of costs.
- §27. Writs of habeas corpus.
- §28. West Virginia reports and acts.
- §29. Liens, executions and remedies.
- §30. Issuance of attachments.
- §31. Severability.

§1. Creation of court of common pleas of Wood County.

1 That a court of limited jurisdiction is hereby established
 2 within and for the county of Wood, to be held and presided
 3 over as of January one, one thousand nine hundred seventy-
 4 five, by a judge to be selected as hereinafter provided, which
 5 court shall be named and designated as the "Court of Com-
 6 mon Pleas of Wood County."

§2. Jurisdiction.

1 That said court shall have original jurisdiction within said
2 county of all crimes, felonies, misdemeanors, criminal pro-
3 ceedings, and all matters in anywise relating thereto, and all
4 civil actions, civil matters and proceedings in anywise relating
5 thereto.

6 Such jurisdiction of said common pleas court shall be gen-
7 eral, common and concurrent with the jurisdiction of the cir-
8 cuit court of such county in all and every respect as the same
9 is constituted and set forth in section twelve, article eight of
10 the constitution of West Virginia, and by the laws and statutes
11 of the state of West Virginia, except where the matters in con-
12 troversy in civil suits or proceedings shall exceed the sum of
13 five hundred thousand dollars, including appellate jurisdiction
14 in all matters of probate arising in the county court wherein an
15 appeal or writ of error may be allowed, which appellate juris-
16 diction shall be concurrent with that of the circuit court.

§3. Powers conferred upon court.

1 The proceedings, modes of procedure, powers and juris-
2 diction conferred by law upon the circuit courts in any and
3 all said actions, causes, matters and proceedings are hereby
4 conferred upon and shall be exercised by the said court of
5 common pleas of Wood County, and the judge of said court
6 shall have the same powers in vacation as are now or may
7 hereafter be conferred upon the judge of the circuit court of
8 the fourth judicial circuit in respect to all cases, matters and
9 proceedings within the jurisdiction of said court of common
10 pleas of Wood County.

§4. Qualifications of judge.

1 The judge of said court shall be a resident of Wood County
2 and shall be a member of the West Virginia State Bar.

§5. Election of judge.

1 Candidates for the office of judge of the said court shall be
2 nominated at the primary election on the second Tuesday in
3 May in the year one thousand nine hundred seventy-four in
4 accordance with the provisions of chapter three, article five of

5 the official code of West Virginia, as amended. Candidates
6 for nomination to said office shall file a certificate of candidacy
7 no later than the first Saturday in April, said certificate shall
8 be in the form required by section seven, article five, chapter
9 three of said code. There shall, at the general election in
10 this state to be held on Tuesday after the first Monday in
11 November, one thousand nine hundred seventy-four, be elected
12 by the legal voters of said county, a judge of the court of
13 common pleas of Wood County, for the term of two years,
14 from the first day of January succeeding said election. There
15 shall, at the general election in this state to be held on Tuesday
16 after the first Monday in November, one thousand nine hundred
17 seventy-six and every eight years, thereafter, be elected by said
18 voters, a judge of said court for the term of eight years from the
19 first day of January succeeding said election.

§6. Jurisdiction presumed.

1 It shall not be necessary in any case or proceeding in said
2 court of common pleas that the facts authorizing it to take
3 jurisdiction or proceeding shall be set forth upon the record,
4 but the jurisdiction shall be presumed unless the contrary
5 plainly appears from the record.

§7. Punishment for contempt.

1 The said court of common pleas shall have the same powers
2 to punish for contempt as are conferred upon the circuit
3 court by law.

§8. Grand jury for each term.

1 The said court of common pleas shall impanel at least one
2 grand jury at each term thereof, and said court, or the judge
3 thereof may, in his discretion, order a grand jury to be drawn
4 or summoned to attend at any special or adjourned term of
5 said court. Such grand jury may consider any offense against
6 the laws committed within said county of Wood, and all the
7 provisions of chapter fifty-two of the code of West Virginia, in
8 regard to grand juries in the circuit court, shall apply, so far
9 as applicable, to the grand juries in said court of common
10 pleas. The grand and petit juries serving in said court shall be
11 chosen and impaneled in the same manner as they are chosen

12 and impaneled by law in the circuit court, and shall receive
13 the same compensation as said jurors in the circuit court.

§9. Duties of county court.

1 The county court of Wood County, shall provide all record
2 books and other books and stationery that may be necessary,
3 and likewise a seal, for said court of common pleas together
4 with appropriate offices, courtroom, court stenographer and
5 secretarial assistance. Full faith and credit shall be given to
6 the records of said court and to the certificate of its judge or
7 clerk, whether the seal of the court be affixed thereto or not, in
8 like manner and with like effect as if the same were records
9 of the circuit court or certificates of the judge or clerk of the
10 circuit court similarly authenticated.

§10. Clerk; powers, duties and compensation.

1 The clerk of the circuit court of Wood County shall, ex
2 officio, be, act as and perform the duties of the clerk of the
3 said court and shall exercise the same power and duties aris-
4 ing within the jurisdiction of said court as are performed by
5 him as clerk of the circuit court. All processes, rules and
6 orders of the court, in the exercise of its jurisdiction, shall be
7 signed by the clerk thereof to be directed to the sheriffs of the
8 proper counties wherein the same are to be executed in like
9 manner and with the same effect as processes issuing from the
10 circuit court of Wood County. For his services under and pur-
11 suant to this act, the clerk shall receive no compensation in
12 addition to his annual salary as provided by general statute.

§11. Salary of judge; payment.

1 The judge of said court shall, for his services receive the
2 sum of twenty-six thousand dollars per annum, to be paid in
3 monthly installments out of the treasury of Wood County. The
4 county court shall annually make provision by appropriate
5 levy and appropriation for the payment of said salary.

§12. Terms of court.

1 There shall be four terms of said court held in each year
2 commencing on the fourth Monday in February, third Monday
3 in May, fourth Monday in August and the third Monday in
4 November. Adjourned and special terms of said court may be

5 called and held as provided for special and adjourned terms
6 of the circuit court.

§13. Seat of court.

1 The said terms of said court shall be held in Parkersburg
2 in said County of Wood at the courthouse thereof, or at such
3 other place as may be provided by the county court, pursuant
4 to chapter seven, article three, section two of the official code
5 of West Virginia, as amended.

§14. Sheriff to execute process.

1 The sheriff of Wood County and the sheriffs of the several
2 counties of the state shall by themselves or their deputies
3 execute all process of said court, or issued by the clerk there-
4 of, directed to them, respectively, and all process emanating
5 from said court, or issued by the clerk thereof, shall be direct-
6 ed to and executed by them in the same manner as is provided
7 by law as to process issuing from the circuit court or its clerk;
8 and the sheriff of Wood County shall perform the same duties
9 and services for the court of common pleas of Wood County
10 as he now by law is required to perform for the circuit court
11 of said county; and in the execution of the process, rules and
12 orders of said court the said officers shall have the same power
13 and rights, be subject to the liabilities, govern themselves by
14 the same rules and principles of law and the statutes of the
15 state, and be entitled to the same fees as though the process
16 issued from the circuit court of said county.

§15. Certification to circuit court; special judge.

1 If the judge of said court in his judgment cannot properly
2 preside at the hearing of any cause pending therein, said cause
3 may be, in his discretion, certified to, and the original papers,
4 together with a copy of the orders of the court, filed in the
5 circuit court of said county, and the cause shall be docketed
6 therein and proceeded with as though the cause had originally
7 been brought and proceedings therein had in the circuit court.
8 When for any cause the judge of said court of common pleas
9 is incapable of acting, or is absent, a special judge may be
10 elected in the same manner as a special judge of the circuit
11 court, and be governed in all respects so far as applicable by

12 the laws governing special judges of the circuit court, and he
13 shall be allowed the same per diem as a special judge of the
14 circuit court to be paid out of the county treasury.

§16. Transfer of cases.

1 And to the end that justice may be administered without
2 delay and to expedite the dispatch of the business of the cir-
3 cuit court and the court of common pleas of Wood County,
4 the circuit court may by order entered of record certify down
5 for trial by the court of common pleas, any suit or proceeding
6 at law or in equity now, or which may hereafter be, upon the
7 docket of said circuit court, and within the jurisdiction of said
8 court of common pleas, and such cause shall thereupon be
9 docketed, proceeded with, heard and determined the same in
10 all respects as though originally brought, matured and docket-
11 ed in said court of common pleas; and the court of common
12 pleas may, likewise, by and with the consent of the circuit
13 court, certify for trial by the circuit court, any cause upon its
14 docket, the same to be proceeded with in the circuit court in
15 like manner.

**§17. Indictments found or pending in circuit court may be certi-
fied to common pleas court.**

1 The circuit court of said county may in its discretion certify
2 to said common pleas court for trial all indictments and prose-
3 cutions for felonies, misdemeanors and offenses now pending
4 in said circuit court or that may hereafter be found by the
5 grand juries impaneled in said circuit court; and the said cir-
6 cuit court may in its discretion take proper recognizances from
7 the defendant inailable cases, and also from witnesses for
8 the state, for their appearance before the said court of com-
9 mon pleas.

**§18. Cases where appeals allowed to common pleas court concu-
rent with circuit court.**

1 Every person sentenced to imprisonment by the judgment of
2 a justice, or the judgment of the mayor of any incorporated
3 city, town or village, in said county, or to the payment of a
4 fine of ten dollars or more, shall be allowed an appeal, as pro-
5 vided in section ten, article eighteen, chapter fifty of the code

6 of West Virginia, to the common pleas court of said county,
7 concurrent with the circuit court of said county, and all the
8 provisions of said section shall apply to said appeal and
9 govern the proceedings thereon, and the same shall be pro-
10 ceeded in, heard and determined, and with like effect, as is
11 provided in said section ten, article eighteen, chapter fifty of
12 the code.

§19. Appeals.

1 Appeals from, or writs of error or supersedeas to, any judg-
2 ment, decree or order of said court shall be governed by and
3 subject to the provisions of article four, chapter fifty-eight of
4 the official code of West Virginia, and of all enactments and
5 reenactments thereof pertaining to the subject of "Appeals
6 from Courts of Record of Limited Jurisdiction."

**§20. Prosecuting attorney or his assistant to attend terms of court;
what duties to perform.**

1 The prosecuting attorney of Wood County shall attend the
2 terms of said common pleas court either by himself or his
3 assistant, and shall perform the duties of his office as required
4 by section one, article four, chapter seven of the code, and for
5 the compensation therein stated and provided.

**§21. Certain sections of article eight, chapter seven made applic-
able.**

1 Sections three and four, article eight, chapter seven of the
2 code of West Virginia shall apply to the court of common pleas
3 of Wood County and the judge thereof in the same manner
4 and to the same extent as they do to the circuit court of Wood
5 County and the judge thereof.

§22. Court reporter appointed; compensation.

1 The judge of said common pleas court shall appoint a court
2 reporter for said court, who shall attend the terms of said
3 common pleas court and take the evidence and transcribe the
4 same when required so to do. For his services he shall receive
5 compensation as provided by law.

§23. Contest of office of judge.

1 If the office of judge of said court be contested, the con-

2 test shall be heard and determined in the same manner as the
3 election of judges of the circuit court are determined.

§24. Vacancy; how filled.

1 If from any cause the office of judge of said court shall
2 become vacant, the vacancy shall be filled in the same man-
3 ner as in the case of a vacancy in the office of judge of the
4 circuit court.

§25. Removal proceedings.

1 The judge of said court may be removed from office for the
2 same reasons and in the same manner as judges of the circuit
3 courts.

§26. Taxing of costs.

1 In the taxation of costs in said court the clerk and court
2 shall be governed by the same rules and provisions of law as
3 are provided in the circuit court.

§27. Writs of habeas corpus.

1 The court of common pleas of Wood County and the judge
2 thereof in vacation shall, concurrent with the supreme court
3 of appeals, the circuit court of said county, or any judge of
4 either of said courts in vacation, grant the writ of habeas
5 corpus ad subjiciendum, as provided in the code of West
6 Virginia.

§28. West Virginia reports and acts.

1 The West Virginia reports and bound acts of the Legislature
2 are to be delivered to the said judge of the said court in the
3 same manner as they are required to be delivered to the circuit
4 courts of the state.

§29. Liens, executions and remedies.

1 Upon every judgment of said court the judgment creditors
2 shall be entitled to all liens, executions and remedies to secure
3 or recover the same to which they would be entitled if the
4 same were a judgment of the circuit court; judgments rendered
5 in said court of common pleas may be docketed in the judg-
6 ment lien docket kept in the county clerk's office of any

7 county in like manner and with like effect as other judgments,
8 and executions on said judgments may likewise be docketed
9 the same as executions from the circuit court.

§30. Issuance of attachments.

1 Attachments may be issued by the clerk of said court of
2 common pleas under the same regulations and in the same
3 cases as attachments are now issued by the clerks of the cir-
4 cuit courts, whenever applicable, and be served in the same
5 manner and with like effect.

§31. Severability.

1 The provisions of this act shall be construed as separable
2 and severable and should any provision or part hereof be held
3 unconstitutional or for any reason invalid the remaining pro-
4 visions or parts shall not be thereby affected.

CHAPTER 35

(Com. Sub. for H. B. 627—By Mr. Jones, of Kanawha)

[Passed March 9, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section eleven, article eight, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to obscenity; and to amend said chapter sixty-one by adding thereto a new article, designated article eight-a, relating to the preparation of or distribution or exhibition of obscene matter for or to minors; defining terms; prohibiting the preparation of or distribution or exhibition of obscene matter for or to minors; exempting certain employees; providing a presumption as to knowledge; relating to defense as to age of minor; and providing criminal offenses and penalties; and providing rule of construction to preserve rights of free speech and picketing.

Be it enacted by the Legislature of West Virginia:

That section eleven, article eight, chapter sixty-one 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 eight-a, to read as follows:

ARTICLE 8A. PREPARATION, DISTRIBUTION OR EXHIBITION OF OBSCENE MATTER TO MINORS.

§61-8A-1. Definitions.

§61-8A-2. Preparation, distribution or exhibition of obscene matter to minors; penalties.

§61-8A-3. Employees acting within scope of employment shall not be prosecuted.

§61-8A-4. Presumption of knowledge.

§61-8A-5. Reasonable belief that a minor is eighteen years of age.

§61-8A-6. Hiring, employing, etc., minor; penalty.

§61-8A-7. Free speech preserved.

§61-8A-1. Definitions.

1 When used in this article, the following words, and any
2 variations thereof required by the context, shall have the
3 meaning ascribed to them in this section:

4 (1) "Distribute" means to transfer possession of, whether
5 with or without consideration.

6 (2) "Employee" means any individual who renders per-
7 sonal services in the course of a business, who receives com-
8 pensation therefor at a fixed rate and who has no financial
9 interest in the ownership or operation of the business other
10 than his salary or wages.

11 (3) "Exhibit" means to display or offer for viewing,
12 whether with or without consideration.

13 (4) "Knowingly" means to have knowledge or to be
14 aware of the content or character of obscene matter.

15 (5) "Matter" means any book, magazine, newspaper or
16 other printed or written material, or any picture, drawing or
17 photograph, motion picture, or other visual representation, or
18 any statue or other figure, or live conduct, or any recording,
19 transcription or mechanical, chemical or electrical reproduc-
20 tion, or any other articles, equipment, machines or materials.

21 (6) "Minor" means any individual under the age of eigh-
22 teen years.

23 (7) "Obscene matter" means to the average individual, ap-
24 plying contemporary state standards, matter which:

- 25 (a) Considered as a whole, appeals to the prurient in-
26 terests;
- 27 (b) Depicts or describes in a patently offensive manner
28 ultimate sexual acts, both normal and perverted, actual or
29 simulated, masturbation, sodomy, fellatio, cunnilingus, bes-
30 tiality, sadism, excretory functions or lewd exhibition of the
31 genitals; and
- 32 (c) Considered as a whole lacks serious literary, artistic,
33 political or scientific value.
- 34 (8) "Person" means any individual, partnership, firm, as-
35 sociation, corporation or other legal entity.
- 36 (9) "Prepare" means to produce, publish or print.
- 37 (10) "Public display" means the placing of material on
38 or in a billboard, viewing screen, theatre, marquee, newsstand,
39 display rack, window, showcase, display case or similar public
40 place so that the material within the meaning of "obscene
41 matter" is easily visible from a public thoroughfare from the
42 property of others or from commercial or business premises
43 generally open to minors at the time of such placing.

§61-8A-2. Preparation, distribution or exhibition of obscene matter to minors; penalties.

1 If any person knowingly sends or causes to be sent or brings
2 or causes to be brought into this state for distribution, exhibi-
3 tion, or public display, or in this state prepares, distributes,
4 exhibits or makes a public display or offers to prepare, dis-
5 tribute, exhibit, or make a public display, or has in his
6 possession with the intent to distribute, exhibit, or make a
7 public display of any obscene matter to a minor, he shall be
8 guilty of a misdemeanor, and, upon conviction thereof, shall
9 be fined not more than five hundred dollars or imprisoned
10 in the county jail not more than six months or both fined and
11 imprisoned. A person convicted of a second or subsequent
12 offense under this section shall be guilty of a misdemeanor,
13 and, upon conviction thereof, shall be fined not more than one
14 thousand dollars or imprisoned in the county jail not more than
15 one year or both fined and imprisoned.

§61-8A-3. Employees acting within scope of employment shall not be prosecuted.

- 1 No employee shall be guilty of a violation of this article
- 2 when such employee is a projectionist, ticket taker, usher, or
- 3 when such employee distributes, prepares or exhibits obscene
- 4 matter while acting within the scope of his regular employment.

§61-8A-4. Presumption of knowledge.

- 1 Any person who distributes or exhibits obscene matter, or
- 2 possesses obscene matter with the intent to distribute or exhibit
- 3 the same in the course of his business, is presumed to do so
- 4 with knowledge of its content or character.

§61-8A-5. Reasonable belief that a minor is eighteen years of age.

- 1 No person shall be guilty of distributing or exhibiting
- 2 obscene matter to a minor when such person has reasonable
- 3 cause to believe that the minor involved was eighteen years of
- 4 age or more and such minor exhibited to such person a driver's
- 5 license, draft card or other official or apparently official
- 6 document purporting to establish that such minor was eighteen
- 7 years of age or more.

§61-8A-6. Hiring, employing, etc., minor; penalty.

- 1 Any person who, with knowledge that a person is a minor
- 2 under eighteen years of age, or who, while in possession of
- 3 such facts that he should reasonably know that such person
- 4 is a minor under eighteen years of age, hires, employs or uses
- 5 such minor to do or assist in doing any of the acts prescribed
- 6 in paragraph (b), subdivision (7), section one of this article,
- 7 shall be guilty of a misdemeanor.

§61-8A-7. Free speech preserved.

- 1 Nothing herein shall be construed to limit the free exercise of
- 2 free speech or picketing by any organization, group or in-
- 3 dividual for the purpose of upholding community standards.

CHAPTER 36

(H. B. 684—By Mr. Seibert)

[Passed March 5, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article three, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seven-a, relating to transfer of property between a husband and wife with right of survivorship without a straw party deed.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. PROPERTY, RIGHTS AND LIABILITES OF MARRIED WOMEN; HUSBAND AND WIFE.

§48-3-7a. Transfer of property between husband and wife with right of survivorship.

1 Subject to the provisions of section nine of this article,
2 any conveyance or transfer of property, or any interest therein,
3 with a right of survivorship executed by either husband or wife
4 to or in favor of the other, shall be valid to the same extent as a
5 similar transfer or conveyance from a third party to the
6 husband and wife together or by a straw party deed.

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CHAPTER 37

(H. B. 1365—By Mr. Brenda and Mr. Donley)

[Passed March 9, 1974; in effect from passage. Approved by the Governor.]

AN ACT to amend article two, chapter one 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 the duty of county courts to alter boundary lines of election

precincts so that no election precinct contains territory included in more than one delegate district.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. APPORTIONMENT OF REPRESENTATION.

§1-2-2b. Precinct boundary changes for 1974 elections.

1 Notwithstanding the provisions of subsection (c), section
 2 two of this article, if an election precinct of this state includes
 3 territory contained in more than one delegate district, as such
 4 delegate districts are established by subsection (d), section
 5 two of this article, it shall be the duty of the county court of
 6 the county in which such precinct is located, prior to the fif-
 7 teenth day of April, one thousand nine hundred seventy-four,
 8 to alter the boundary lines of its election precincts so that no
 9 precinct contains territory included in more than one delegate
 10 district. The provisions of this section shall govern and control
 11 notwithstanding any conflicting provision of section seven, ar-
 12 ticle one, chapter three of this code.

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CHAPTER 38

(H. B. 1081—By Mr. Jolliffe and Mr. Tucker)

[Passed March 9, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal sections four, five, six, seven, eight and nine, article two, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter, by adding thereto a new article, designated article one-a, relating to the state election commission; qualifications, terms of office, office and meetings, and powers and duties of said commission; filling vacancies in membership of commission; powers and duties of secretary of state as chief election official with respect to registration of voters and con-

duct of elections; and empowering appointees of secretary of state to exercise his powers and duties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1A. STATE ELECTION COMMISSION AND SECRETARY OF STATE.

- §3-1A-1. Election commission continued; composition; chairman; traveling expense.
- §3-1A-2. Qualifications of members of commission.
- §3-1A-3. Terms of office of commission members; filling vacancies.
- §3-1A-4. Office and meetings of commission.
- §3-1A-5. Powers and duties of commission.
- §3-1A-6. Election rules; powers and duties of secretary of state; exercise of powers by appointees.

§3-1A-1. Election commission continued; composition; chairman; traveling expense.

1 The "state election commission," heretofore created, is
2 hereby continued and, on and after the effective date of this
3 section, shall be composed of the secretary of state, and four
4 persons appointed by the governor, by and with the advice
5 and consent of the Senate. The commission shall, from this
6 membership elect a chairman for a term of two years. Each
7 member of the commission shall be reimbursed for all reason-
8 able and necessary expenses actually incurred in the perfor-
9 mance of his duties as a member of the commission.

§3-1A-2. Qualifications of members of commission.

1 No member of the commission appointed by the governor
2 shall be a candidate for or hold any public office other than
3 that of membership on the commission; nor shall such appoint-
4 ed member be a member of any committee of a political par-
5 ty. Any person who, directly or indirectly, (1) designs, owns,
6 manufactures, distributes or sells any voting machine, or (2)
7 owns any patent rights or contract rights thereto, or (3) has
8 any interest in any joint venture, partnership, firm, corporation

9 or association designing, owning, manufacturing, distributing
10 or selling any voting machine, or owning any patent rights or
11 contract rights thereto, shall be disqualified from serving as a
12 member of the commission. At least one member appointed by
13 the governor shall be selected with special reference to his
14 expert knowledge as a student of the problems of public elec-
15 tions. Not more than two members appointed by the governor
16 shall be members of the same political party. In case a mem-
17 ber appointed by the governor becomes a candidate for or is
18 appointed to any other public office or political committee,
19 his office as member of the commission shall be deemed im-
20 mediately vacated.

§3-1A-3. Terms of office of commission members; filling vacancies.

1 The terms of office of the members of the commission shall
2 be six years. Members in office shall continue as members
3 until their respective terms expire on the fourth day of June,
4 one thousand nine hundred sixty-nine and one thousand nine
5 hundred seventy-two. On the expiration of these terms and
6 every three years thereafter appointments shall be made for six
7 year terms. Appointments to fill vacancies shall be for the
8 unexpired term.

§3-1A-4. Office and meetings of commission.

1 The office and place of meeting of the commission shall be
2 the office of the secretary of state in the state capitol.

3 The commission shall hold such meetings as may be called
4 by the chairman, the governor or the secretary of state.

§3-1A-5. Powers and duties of commission.

1 The commission shall have the power and duty to approve
2 or disapprove applications for approval of any voting machine
3 as provided in section seven, article four of this chapter.

4 The commission also shall serve as a body advisory to the
5 secretary of state, and, as such, shall have the following powers
6 and duties;

7 (a) To recommend policies and practices pertaining to the
8 registration of voters and the conduct of elections generally;

9 (b) To review the work of the office of secretary of state

10 pertaining to the duties of that office with respect to elections,
11 and for this purpose to have access at reasonable times to
12 pertinent records, books, papers and documents;

13 (c) To consider and study the election practices of other
14 jurisdictions, with a view to determining the techniques used
15 in eliminating fraud in elections and in simplifying election
16 procedure;

17 (d) To advise or make recommendations to the governor re-
18 lative to election practices and policy in the state; and

19 (e) To keep minutes of the transactions of each meeting of
20 the commission, which shall be public records and filed with
21 the secretary of state.

22 It shall be the commissions further duty to prepare and dis-
23 tribute in its name, within available appropriations and upon
24 the recommendation of the secretary of state, (1) nonpartisan
25 educational material to inform voters of the importance of
26 voting, to encourage voters to vote, to inform voters of elec-
27 tion laws and procedures, and to inform voters of the effect
28 of any public question, constitutional amendment or bond is-
29 sue that is to be voted upon by all the voters of the state and
30 that has been authorized to be placed upon the ballot by the
31 Legislature, and (2) manuals to assist county courts, ballot
32 commissioners, circuit and county clerks and other election
33 officials in the proper performance of their duties in the con-
34 duct of elections.

**§3-1A-6. Election rules; powers and duties of secretary of state;
exercise of powers by appointees.**

1 The secretary of state shall be the chief election official
2 of the state. He shall have authority, after consultation with
3 the state election commission, of which he is a member,
4 to make, amend and rescind such rules, regulations and
5 orders as may be necessary to carry out the policy of the
6 Legislature, as contained in this chapter. It shall be the
7 duty of all election officials, county courts, clerks of county
8 courts, clerks of circuit courts, boards of ballot commis-
9 sioners, election commissioners and poll clerks to abide by
10 such rules, regulations and orders, which shall include:

11 (a) Uniform rules of procedure for registrars and other
12 registration officials in the performance of their duties, as
13 to time and manner of performance;

14 (b) Uniform rules for the purging of registration records;

15 (c) Uniform rules for challenging registrants; and

16 (d) Any other rules, regulations or directions necessary
17 to standardize and make effective the administration of the
18 provisions of this chapter.

19 The secretary of state also shall have authority to require
20 collection and report of statistical information and to require
21 other reports by county courts, clerks of county courts and
22 clerks of circuit courts.

23 It shall be his further duty to advise with election officials;
24 to furnish to the election officials a sufficient number of
25 indexed copies of the current election laws of West Virginia
26 and the administrative orders and rules and regulations
27 issued or promulgated thereunder; to investigate the ad-
28 ministration of election laws, frauds and irregularities in any
29 registration or election; to report violations of election laws
30 to the appropriate prosecuting officials; and to prepare an
31 annual report.

32 The secretary of state shall also have the power to ad-
33 minister oaths and affirmations, issue subpoenas for the
34 attendance of witnesses, issue subpoena duces tecum to compel
35 the production of books, papers, records, registration records
36 and other evidence, and fix the time and place for hearing
37 any matters relating to the administration and enforcement
38 of this chapter, or the rules, regulations and directions
39 promulgated or issued hereunder by the secretary of state
40 as the chief election official of the state. In case of disobedi-
41 ence to a subpoena or supoena duces tecum, he may invoke
42 the aid of any circuit court in requiring the attendance,
43 evidence and testimony of witnesses and the production of
44 papers, books, records, registration records and other evi-
45 dence.

46 All powers and duties vested in the secretary of state
47 under this article may be exercised by appointees of the

48 secretary of state at his discretion, but the secretary of state
49 shall be responsible for their acts.

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CHAPTER 39

(H. B. 734—By Mr. Cline)

[Passed March 9, 1974; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article five, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to nominations of candidates for the House of Delegates at primary elections.

Be it enacted by the Legislature of West Virginia:

That section four, 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.

§3-5-4. Nomination of candidates in primary elections.

1 At each primary election, the candidate or candidates of
2 each political party for all offices to be filled at the ensuing
3 general election by the voters of the entire state, of each
4 congressional district, of each state senatorial district, of each
5 delegate district, of each judicial circuit of West Virginia,
6 of each county, and of each magisterial district in the state
7 shall be nominated by the voters of the different political
8 parties, except that no presidential elector shall be nominated
9 at a primary election.

10 In primary elections a plurality of the votes cast shall
11 be sufficient for the nomination of candidates for office.
12 Where only one candidate of a political party for any office
13 in a political division, including party committeemen and
14 delegates to national conventions, is to be chosen, the can-
15 didate receiving the highest number of votes therefor in the
16 primary election shall be declared the party nominee for
17 such office. Where two or more such candidates are to be

18 chosen in the primary election, the candidates constituting
19 the proper number to be so chosen who shall receive the
20 highest number of votes cast in the political division in which
21 they are candidates shall be declared the party nominees and
22 choices for such offices, except that: (1) Candidates for
23 the office of commissioner of the county court shall be nomi-
24 nated and elected in accordance with the provisions of section
25 twenty-three, article eight of the constitution of this state;
26 (2) members of county boards of education shall be elected at
27 primary elections in accordance with the provisions of section
28 six of this article; and (3) candidates for the House of Dele-
29 gates shall be nominated and elected in accordance with the
30 residence restrictions provided in section two, article two,
31 chapter one of this code.

32 In case of tie votes between candidates for party nominations
33 or elections in primary elections, the choice of the political
34 party shall be determined by lot by the executive committee
35 of the party for the political division in which such persons
36 are candidates.

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CHAPTER 40

(S. B. 163—By Mr. Dillon)

[Passed February 4, 1974; in effect from passage. Approved by the Governor.]

AN ACT providing for the election, at the one thousand nine hundred seventy-four primary election by eligible voters of the democratic party in each congressional district, of four delegates to the one thousand nine hundred seventy-four conference on democratic party organization and policy for the purpose of adopting a permanent charter for the national democratic party; eligibility of and announcements of candidates; fees; filing period with secretary of state; primary election statutes applicable.

Be it enacted by the Legislature of West Virginia:

ELECTION OF DELEGATES TO DEMOCRATIC PARTY ORGANIZATION AND POLICY CONFERENCE.

- §1. Election by the democratic voters in congressional districts of delegates to the one thousand nine hundred seventy-four conference on democratic party organization; highest four candidates in each congressional district elected.
- §2. Eligibility and announcements of candidates; fees; filing period with secretary of state; primary election statutes applicable.

§1. Election by the democratic voters in congressional districts of delegates to the one thousand nine hundred seventy-four conference on democratic party organization; highest four candidates in each congressional district elected.

1 At the primary election, to be held in the year one thou-
2 sand nine hundred seventy-four, there shall be elected
3 by the eligible voters of the democratic party in each
4 congressional district in the state four delegates to the one
5 thousand nine hundred seventy-four conference on dem-
6 ocratic party organization and policy for the purpose of
7 considering and adopting a permanent charter for the
8 democratic party of the United States and such other mat-
9 ters as may be authorized by the democratic national
10 committee. The four candidates in each congressional
11 district receiving the highest number of votes shall be
12 elected as such delegates.

§2. Eligibility and announcements of candidates; fees; filing period with secretary of state; primary election statutes applicable.

1 Any qualified voter of the democratic party of the state
2 may become a candidate therefor within the congressional
3 district wherein such voter is a bona fide resident by filing
4 with the secretary of state a certificate of announcement,
5 declaring himself to be a candidate for election to such
6 position; which certificate shall be in form or effect and
7 filed in the manner provided in section seven, article
8 five, chapter three of the code of West Virginia, one
9 thousand nine hundred thirty-one, as amended. Each

10 person who becomes a candidate for election as such dele-
11 gate shall, at the time of filing the certificate of announce-
12 ment as herein required, pay a filing fee of ten dollars
13 in the manner and subject to the same conditions as set
14 forth in section eight, article five, chapter three of the
15 code of West Virginia, one thousand nine hundred thirty-
16 one, as amended. The secretary of state shall receive such
17 certificates of announcement and certify the same in ac-
18 cordance with the procedures set out in section nine,
19 article five, chapter three of the code of West Virginia,
20 one thousand nine hundred thirty-one, as amended. Not-
21 withstanding any other provisions of the code of West
22 Virginia, one thousand nine hundred thirty-one, as
23 amended, such certificates of announcement shall be filed
24 with the secretary of state not later than the first Saturday
25 of March next preceding the primary election day, and
26 must be received by the secretary of state before mid-
27 night, eastern daylight standard time, of that day or, if
28 mailed, shall be postmarked before that hour. All of the
29 provisions of article five, chapter three of the code of
30 West Virginia, one thousand nine hundred thirty-one, as
31 amended, relating to primary elections and nominating
32 procedures, to the extent that such provisions are ap-
33 propriate, shall be applicable to the election of such dele-
34 gates.

CHAPTER 41

(S. S. 350—By Mr. Hubbard)

[Passed March 8, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article five, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to appointment of a nonresident individual, nonresident banking institution, or corporation without principal office or place of business in this state, as executor, administrator, curator, guardian or committee; broadening said section so as to authorize certain nonresidents to qualify and serve as ad-

ministrators of the estates of resident decedents upon furnishing of bond; relating to the penalty of any such bond; relating to the removal of personal estate of a resident decedent from this state; specifying that the liability of a nonresident administrator and his surety shall be joint and several; relating to service of notice or process on nonresident administrators; providing for appointment of the clerk of county court as statutory attorney-in-fact upon whom notice or process in any action or proceeding against a nonresident administrator or with respect to estate may be served; specifying manner of, and records with respect to, service upon such clerk; requiring the forwarding of a copy of notice or process to nonresident administrator and his receipt or refusal thereof; providing limitation on time of service; providing that manner of service is cumulative; providing for fees; relating to criminal offenses; and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

That section three, article five, 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 5. GENERAL PROVISIONS AS TO FIDUCIARIES.

§44-5-3. Appointment of nonresident; bond; service of notice and process; fees; penalty.

1 Notwithstanding any other provision of law, no person
2 not a resident of this state nor any nonresident banking
3 institution nor any corporation having its principal office
4 or place of business outside this state shall be appointed or
5 act as executor, administrator, curator, guardian or com-
6 mittee, except that a testator who is a nonresident of this
7 state at the time of his death may name, and there may be
8 appointed and act, a nonresident as his executor, and ex-
9 cept that for the guardian of an infant who is a nonresi-
10 dent of this state there may be appointed and act the
11 same person who is appointed guardian at the domicile of
12 the infant: *Provided*, That whenever the will of a dece-
13 dent who was a resident of this state at the time of his
14 death, hereinafter in this section referred to as "resident

15 decedent," designates an individual, who is the husband,
16 wife, father, mother, brother, sister, child, grandchild or
17 sole beneficiary of such resident decedent, as executor,
18 then such designated individual may qualify and act as
19 such executor notwithstanding the fact that he is a non-
20 resident: *Provided further*, That a nonresident individual
21 may be appointed as administrator of an estate in accord-
22 ance with the provisions of section four, article one of this
23 chapter and act as such administrator if such individual
24 be the husband, wife, father, mother, brother, sister, child,
25 grandchild or the sole beneficiary of a decedent who was
26 a resident of this state at the time of his death, hereinafter
27 in this section also referred to as a "resident decedent,"
28 and if such individual may otherwise qualify as such ad-
29 ministrator. Nonresident executors and administrators of
30 resident decedents shall give bond with corporate surety
31 thereon, qualified to do business in this state, in such
32 penalty as may be fixed pursuant to the provisions of sec-
33 tion seven, article one of this chapter except that such
34 penalty in the case of a nonresident executor shall not
35 be less than (1) double the value of the personal estate
36 and (2) double the value of any real property authorized
37 to be sold under the will or the value of any rents and
38 profits from any real property which the will authorizes
39 such nonresident executor to receive, and except that such
40 penalty in the case of a nonresident administrator shall
41 not be less than double the value of the personal estate.
42 The personal estate of a resident decedent may not be re-
43 moved from this state until the inventory or appraisalment
44 of the resident decedent's estate has been filed and any
45 new or additional bond required to satisfy the penalty
46 specified above in this section has been furnished. The
47 liability of such nonresident executor or administrator
48 and such surety shall be joint and several and a civil ac-
49 tion on any such bond may be instituted and maintained
50 against the surety, notwithstanding any other provision of
51 this code to the contrary, even though no civil action has
52 been instituted against the nonresident executor or ad-
53 ministrator.

54 When a nonresident qualifies as an executor or admin-

55 istrator pursuant to the provisions of this section, he
56 thereby constitutes the clerk of the county court wherein
57 the will was admitted to probate or wherein he was ap-
58 pointed as administrator, or such clerk's successor in office,
59 his true and lawful attorney-in-fact upon whom may be
60 served all notices and process in any action or proceed-
61 ing against him as executor or administrator or with
62 respect to such estate, and such qualification shall be a
63 signification of such executor's or administrator's agree-
64 ment that any such notice or process, which is served in
65 the manner hereinafter in this section provided, shall be
66 of the same legal force and validity as though said execu-
67 tor or administrator were personally served with notice
68 and process within this state. Service shall be made by
69 leaving the original and two copies of any notice or pro-
70 cess, together with a fee of five dollars, with the clerk of
71 such county court, whereupon such clerk shall endorse
72 upon one copy thereof the day and hour of service and
73 shall file such copy in his office and said service shall
74 constitute personal service upon such nonresident execu-
75 tor or administrator: *Provided*, That the other copy of
76 such notice or process shall be forthwith sent by regis-
77 tered or certified mail, return receipt requested, de-
78 liver to addressee only, by said clerk to the nonresident
79 executor or administrator at the address last furnished by
80 him to said clerk and either (a) such nonresident execu-
81 tor's or administrator's return receipt signed by him or
82 (b) the registered or certified mail bearing thereon the
83 stamp of the post-office department showing that delivery
84 therefor was refused by such nonresident executor or
85 administrator is appended to the original notice or pro-
86 cess and filed therewith in the office of the clerk of the
87 court from which such notice or process was issued. No
88 notice or process shall be served on such clerk of the
89 county court or accepted by him less than twenty days
90 before the return day thereof. The clerk of such county
91 court shall keep a record in his office of all such notices
92 and process and the day and hour of service thereof. The
93 provision for service of notice or process herein provided
94 is cumulative and nothing herein contained shall be con-
95 strued as a bar to service by publication where proper or

96 to the service of notice or process in any other lawful
97 mode or manner. The fee of five dollars shall be deposited
98 in the county treasury.

99 Any nonresident executor or administrator who re-
100 moves from this state the personal estate of a resident
101 decedent without complying with the provisions of this
102 section shall be guilty of a misdemeanor, and, upon con-
103 viction thereof, shall be punished by a fine of not more
104 than one thousand dollars or by confinement in the county
105 jail for not more than one year, or, in the discretion of the
106 court, by both such fine and imprisonment.

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CHAPTER 42

(H. B. 1243—Originating in the House Committee on the Judiciary)

[Passed March 9, 1974; in effect from passage. Approved by the Governor.]

AN ACT to amend article one, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-six, all relating to fuel emergencies in this state or any part thereof; setting forth a statement of legislative purposes; defining terms; providing that when the public peace, safety, economy, revenue, health, welfare or interest of the people of this state is impaired or imperiled because of a shortage of gasoline or special fuel, and the governor so finds, he shall have the power to proclaim a fuel emergency; providing that upon the issuance of any such proclamation, the governor shall have the power and authority by orders, rules and regulations to allocate or distribute gasoline or special fuel within certain limitations and to control, restrict and regulate the sale by retail dealers of gasoline and special fuel; relating to the territorial application of such orders, rules and regulations; establishing procedures with respect to the issuance, promulgation, filing and recordation of certain such orders, rules and regulations; establishing constructive notice of such orders, rules and regulations; relating to the publication of certain notices; relating to certified copies and the

admissibility thereof into evidence; relating to the distribution of gasoline or special fuel from a producer or distributor upon the failure of such producer or distributor to comply in a timely manner with an order, rule or regulation of the governor; providing for compensation for gasoline and special fuel distributed by the governor; providing for written notice by the governor of his intent to distribute gasoline or special fuel; relating to the enforcement of all such orders, rules and regulations; relating to others who are to assist the governor in this regard; authorizing temporary restraining orders, injunctions and other remedies; providing that an injunction bond shall not be required; relating to judicial review; providing criminal offenses and penalties; relating to jurisdiction of misdemeanor offenses; relating to period of validity of all such orders, rules and regulations and the termination of any such fuel emergency; and providing that the provisions of the section shall expire on July one, one thousand nine hundred seventy-four.

Be it enacted by the Legislature of West Virginia:

That article one, chapter 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 twenty-six, to read as follows:

ARTICLE 1. THE GOVERNOR.

§5-1-26. Fuel emergency; power of the governor to declare an emergency; duties of the governor with respect to such emergency; assistance of other state agencies and local law-enforcement agencies; injunctive relief; penalties; jurisdiction.

1 (a) The Legislature hereby finds and declares that the
2 purposes of this section are to protect and promote the
3 public peace, safety, economy, revenue, health and welfare
4 and interest of the people of this state and, to do so, it is
5 necessary to ensure free and competitive access to gasoline
6 and special fuel for and to the users of gasoline or special
7 fuel in this state during the time of any fuel emergency as
8 declared by the governor pursuant to the power and authority
9 herein granted.

10 (b) As used herein or as used in any proclamation,

11 order, rule or regulation issued by the governor pursuant
12 to this section, unless the context requires a different
13 meaning, the terms or phrases "actual metered gallons," "dis-
14 tributor," "producer," "gallon," "gasoline," "importer," "per-
15 son," "petroleum carrier," "purchase," "receive," "retail deal-
16 er," "sale," "special fuel," "supply tank," "tank wagon" and
17 "user" shall have the same meanings ascribed to those terms
18 or phrases in section two, article fourteen, chapter eleven of
19 this code.

20 (c) When the public peace, safety, economy, revenue,
21 health, welfare or interest of the people of this state is impaired
22 or imperiled because of a shortage of gasoline or special fuel,
23 and the governor so finds, the governor is hereby empowered
24 and authorized and it shall be his duty to issue a proclamation
25 declaring the existence of a fuel emergency in this state or any
26 part thereof. Upon the issuance of such proclamation by the
27 governor, the governor is hereby granted plenary power and
28 authority to issue, amend, suspend or revoke orders, rules
29 and regulations to:

30 (1) Allocate or distribute gasoline or special fuel to the
31 extent permitted by any federal law relating to the allocation
32 or distribution of gasoline or special fuel and rules and regula-
33 tions promulgated thereunder or to the extent permitted by
34 the appropriate federal agency.

35 (2) Control, restrict and regulate the sale by distributors,
36 producers, importers and retail dealers of gasoline and special
37 fuel to users by any appropriate means including, but not
38 limited to, the establishment of quotas, rationing, specifications
39 that certain users may purchase gasoline or special fuel only
40 on certain days, and other conditions upon the purchase of
41 gasoline or special fuel to the extent permitted by any federal
42 law relating to the allocation or distribution of gasoline or
43 special fuel and rules and regulations promulgated thereunder
44 or to the extent permitted by the appropriate federal agency.

45 Any such order, rule or regulation shall have such statewide,
46 regional, county or other area application, as the governor shall
47 specify therein. Whenever the nature and severity of a fuel
48 emergency varies from area to area in the state, the governor
49 shall have plenary power and authority, within the limitations

50 of subdivisions (1) and (2) above, to establish different alloca-
51 tion or distribution formulae, controls, restrictions and regula-
52 tions for different areas of the state at different times.

53 (d) Any orders, rules or regulations issued pursuant to
54 this section shall be valid only during the period of any such
55 fuel emergency and may be issued or promulgated without com-
56 plying with the provisions of chapter twenty-nine-a of this
57 code: *Provided*, That a copy of every such order, rule or
58 regulation shall be filed in the office of the secretary of state
59 before the same is effective and the secretary of state shall,
60 within five days thereafter, forward a certified copy thereof
61 to the clerk of the county court of each county and every
62 such clerk shall forthwith admit such order, rule or regulation
63 to record in the miscellaneous records of the county court kept
64 in the office of each such clerk, but such filing in the office of
65 the secretary of state shall alone constitute constructive notice
66 to any person affected by such order, rule or regulation:
67 *Provided, however*, That the county court of each county shall,
68 when the first such order, rule or regulation is admitted to
69 record, forthwith cause to be published a notice to the effect
70 that such order, rule or regulation is, and that all further
71 orders, rules and regulations or record copies thereof shall be,
72 available for inspection in the office of the county clerk of
73 such county. Such notice shall be published as a Class I
74 legal advertisement in compliance with the provisions of
75 article three, chapter fifty-nine of this code, and the publica-
76 tion area for such publication shall be such county. A copy
77 of any such order, rule or regulation certified by the secretary
78 of state shall be admissible in any court in this state as proof
79 of the contents thereof.

80 (e) The governor is hereby granted plenary power and
81 authority to enforce any order, rule or regulation issued pur-
82 suant to this section and, in so doing, may secure the assistance
83 of any state agency, the attorney general or his designate, the
84 prosecuting attorneys of the several counties and any state or
85 local law-enforcement agencies or officers. Such persons shall
86 assist the governor in enforcing the provisions of any such
87 order, rule or regulation so issued and promulgated by the
88 governor when called upon to do so by the governor. The
89 governor may petition any circuit court of this state for the

90 issuance of a temporary restraining order or injunction or for
91 any other remedy, as may be appropriate, to compel any per-
92 son to comply with any such order, rule or regulation, and it
93 shall be the duty of the attorney general and the prosecuting
94 attorneys of the various counties to assist and cooperate with
95 the governor in obtaining such relief. No injunction bond shall
96 be required, and in the event of an appeal to the West Virginia
97 supreme court of appeals, the filing of such appeal shall not
98 stay enforcement of the final judgment of the circuit court
99 enforcing any such order, rule or regulation.

100 (f) Whenever it appears to the governor that there exists
101 a serious, direct and immediate threat to the health and
102 safety of any persons in this state because of the failure or
103 refusal of a producer or distributor to comply, in a timely
104 manner, with an order, rule or regulation issued pursuant to
105 the provisions of subsection (c) of this section, the governor
106 shall have the authority to distribute or cause to have dis-
107 tributed from the supplies of gasoline or special fuel owned,
108 retained or possessed by such producer or distributor a suf-
109 ficient amount of gasoline or special fuel as may be required to
110 alleviate any such emergency. Such producer or distributor
111 shall be compensated by the user, consumer or retail dealer
112 receiving such gasoline or special fuel at the then existing
113 average market value, either retail value or wholesale value,
114 as the case may be: *Provided*, That there shall be deducted
115 from such compensation the amount necessary to pay for the
116 cost of distribution of such gasoline or special fuel: *Provided*,
117 *however*, That the governor shall be required to serve written
118 notice of his intent to exercise the powers granted by this sub-
119 section to the parties involved: *Provided further*, That upon
120 the issuance of such notice, the governor shall cause to be
121 initiated those legal proceedings relevant to the enforcement
122 of any order, rule or regulation as required by and hereinbefore
123 set out in subsection (e) of this section: *And provided further*,
124 That such order, rule or regulation issued by the governor shall
125 not conflict with or be contrary to any federal law relating to
126 the allocation or distribution of gasoline or special fuel and
127 rules and regulations promulgated thereunder or to any power
128 granted the governor by any federal agency.

129 (g) Any producer or distributor violating any provision

130 of any such order, rule or regulation of the governor issued
131 or promulgated pursuant to this section, shall be guilty of a
132 misdemeanor, and, upon conviction thereof, shall be fined not
133 less than one hundred dollars nor more than twenty-five
134 thousand dollars, or imprisoned in the county jail for not more
135 than one year, or both fined and imprisoned. Any retail
136 dealer violating any provision of any such order, rule or
137 regulation of the governor issued or promulgated pursuant to
138 this section, shall be guilty of a misdemeanor, and, upon
139 conviction thereof, shall be fined not less than twenty-five
140 dollars nor more than one hundred dollars. Each day or part
141 thereof that any such violation shall take place, or continue to
142 take place, shall be deemed to constitute a distinct and separate
143 offense and shall be punishable accordingly.

144 (h) When the governor determines that any such fuel
145 emergency no longer exists, he shall issue a proclamation
146 terminating all orders, rules or regulations issued pursuant to
147 the provisions of this section.

148 (i) The provisions of this section shall expire on July one,
149 one thousand nine hundred seventy-four.

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CHAPTER 43

(H. B. 824—By Mr. Harman)

[Passed March 8, 1974; in effect July 1, 1974. Approved by the Governor.]

AN ACT to amend and reenact section two, article one, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to state board of health; appointment of members; compensation and expenses of members.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. STATE DEPARTMENT OF HEALTH.**§16-1-2. Board of health—Body corporate, etc.; membership; appointment and removal of members; compensation.**

1 There shall be a state board of health, to be known as the
2 West Virginia board of health, which shall be a corporation
3 and as such may contract and be contracted with, plead and
4 be impleaded, sue and be sued, and have and use a common
5 seal. The state board of health shall consist of nine members,
6 who shall be appointed by the governor, by and with the
7 advice and consent of the Senate. Three members of the
8 board shall be physicians or surgeons holding the degree
9 of doctor of medicine, one shall be a dentist, one shall be an
10 osteopathic physician, one shall be a pharmacist, one shall
11 be chosen as the representative of the hospitals licensed in
12 the state of West Virginia and two shall be representative
13 citizens, neither of which said representative citizens shall be
14 an employee of, or connected in any way with, any hospital
15 licensed in this state, and neither of whom shall be a member
16 of any of the professions named above.

17 All persons appointed to membership on the state board
18 of health shall be citizens of this state and shall have been
19 such citizens and residents of the state for a least five years
20 prior to the date of their appointment. Every professional
21 member of the said board shall be duly licensed to practice
22 his profession in this state on the date of his appointment
23 and shall have been so licensed and have been actively
24 practicing his profession for at least five years immediately
25 preceding the date of such appointment. Before appointing
26 any professional member, the governor shall request the state
27 professional society of the profession practiced by any pro-
28 posed appointee to furnish to the governor a full and complete
29 report concerning the qualifications and suitability of the
30 proposed appointee. All members of the board shall be
31 appointed for terms of nine years each, except that the
32 persons originally appointed, shall be appointed to serve for
33 designated terms beginning on the first day of July, one
34 thousand nine hundred forty-nine, and continuing for one, two,
35 three, four, five, six, seven, eight and nine years, respectively.
36 Upon the expiration of such initial appointments the term

37 of each new appointee shall be nine years. Any vacancy on
38 the board shall be filled by the governor by appointment for
39 the unexpired term.

40 No more than five of the members of the board shall be-
41 long to the same political party. Not less than one nor more
42 than three members shall be appointed from the same con-
43 gressional district. No person shall be eligible for appointment
44 to membership on the state board who is a member of any
45 political party executive committee, or who holds any public
46 office or public employment under the federal government
47 or under the government of this state or any of its political
48 subdivisions, or who is an appointee or employee of the
49 board. All members shall be eligible for reappointment.

50 No member may be removed from office by the governor
51 except for official misconduct, incompetence, neglect of duty
52 or gross immorality and then only in the manner prescribed
53 by law for the removal by the governor of state elective
54 officers: *Provided*, That the expiration or revocation of the
55 professional license of any professional member of the board
56 shall be cause for his removal.

57 The members of the board shall be paid the sum of thirty-
58 five dollars for each day actually served in attendance at
59 official meetings of the board. Each member shall be
60 reimbursed for travel at the rate of twelve cents per mile
61 if by private automobile and actual cost if travel is by common
62 carrier. Each member shall also be reimbursed for other
63 actual expenses incurred in the performance of the duties of
64 his office.

CHAPTER 44

(H. B. 1189—By Mr. Teets)

[Passed March 8, 1974; in effect July 1, 1974. Approved by the Governor.]

AN ACT to amend and reenact section two, article two-a, chapter sixteen of the code of West Virginia, one thousand nine hundred

thirty-one, as amended, relating to the membership and organization of county and municipal boards of health; appointment and qualification; terms; removal and compensation.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2A. ALTERNATIVE METHOD OF ORGANIZING LOCAL HEALTH AGENCIES.

§16-2A-2. Membership and organization of county and municipal boards of health; appointment and qualification; terms; removal; compensation.

1 A county board of health or municipal board of health
2 created and established under the provisions of this article
3 shall be composed of five members appointed by the county
4 court or the governing body of the municipality. Where any
5 county board of education contributes funds to a county
6 court or a municipality, which creates such board of health,
7 for health purposes, such board of education may nominate
8 one member of such local board of health. Such nominee
9 shall be appointed to such board of health by the appointing
10 authority, if otherwise qualified. In the event such nominee
11 is rejected by the appointing authority, or in the event
12 his position on the board of health is vacated during the
13 term for which he is appointed, such county board of
14 education may nominate another person, who, if otherwise
15 qualified, shall be appointed to the board of health by the
16 appointing authority. In the event such county board of
17 education fails or refuses to nominate some person for such
18 appointment within thirty days of the date of the receipt of
19 a request, in writing, from the appointing authority, for a
20 nomination, the appointing authority shall proceed to make
21 such appointment without any nomination by the county board
22 of education.

23 All members of any such board of health shall be citizens
24 and residents of the county or municipality they are ap-
25 pointed to represent. No more than three of the members

26 of such board shall belong to the same political party,
27 nor shall more than two of such members be residents of
28 the same magisterial district or municipal ward, nor shall
29 more than two such members be personally and individually
30 licensed in, engaged in, or actively participating in or carrying
31 on, the same business, profession, or occupation. All mem-
32 bers shall be eligible for reappointment.

33 All members of such board shall be appointed for terms
34 of five years each, except that the persons appointed when
35 the board is initially created shall be individually designated
36 to serve for terms of one, two, three, four and five years,
37 respectively. Upon the expiration of such initial appointments
38 the terms for each new appointee shall be five years. Each
39 member shall serve until the appointment of his duly qualified
40 successor. Any vacancy on such board shall be filled by
41 appointment for the unexpired term.

42 Such county or municipal board of health shall organize
43 by electing from its members a chairman who shall serve as
44 such for a period of one year. Such chairman shall have the
45 power to sign documents, execute contracts and otherwise act
46 for and in the name of such board in all matters within its
47 lawful powers and duly authorized by a majority of its
48 members.

49 No member of such board may be removed from office
50 during the term for which he is appointed except for official
51 misconduct, incompetence, neglect of duty or gross immorality:
52 *Provided*, That the revocation of a professional license issued
53 by this state to any such member shall be sufficient reason and
54 cause for the removal of such member from office.

55 Each member of such board shall receive a sum set by
56 the county court or governing body but not exceeding ten
57 dollars as compensation for his services in attending each
58 meeting of the board as required by law and may be reimbursed
59 for actual and necessary travel and other expenses incurred
60 by him in the performance of his duties as a member of such
61 board.

CHAPTER 45

(H. B. 705—By Mr. Savilla and Mr. Polen)

[Passed February 26, 1974; 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 four-c, relating to emergency medical service to meet certain minimum standards promulgated pursuant to the Federal Highway Safety Act of 1966; purposes of article; definitions; exemptions; persons to be in attendance in ambulances; standards for emergency medical service attendants; promulgation of rules; issuance, renewal, validity, suspension and revocation of certificates for emergency medical service attendants; and issuance of certain temporary certificates for emergency medical service attendants; setting forth appeal procedures and authorizing judicial review; creating an emergency medical service advisory council; relating to the composition, appointment, duties, meetings and payment of expenses of the council; and liability for cost of emergency medical service and providing that any patient who receives ambulance service and who is unable to give his consent to, or contract for, the service, whether he has agreed or consented to liability for the service, shall be liable in implied contract to the person providing the ambulance service for the reasonable cost thereof; setting forth violations of provisions of article, providing criminal offenses and penalty and authorizing injunctive relief; and providing limitations on private rights of action against physicians, surgeons and certified emergency service medical attendants.

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 four-c, to read as follows:

ARTICLE 4C. EMERGENCY MEDICAL SERVICE.

- §16-4C-1. Purposes of article.
- §16-4C-2. Definitions.
- §16-4C-3. Vehicles, aircraft and persons aboard them exempted from requirements of article.

- §16-4C-4. Standards for emergency medical service attendants; issuance, renewal, suspension and revocation of emergency medical service attendant certificates; issuance of temporary certificates.
- §16-4C-5. Suspension or revocation of certificate or temporary certificate.
- §16-4C-6. Notice of refusal, suspension or revocation of certificate; appeals to state board; judicial review.
- §16-4C-7. Emergency medical service advisory council created; duties, composition, appointment, meetings, expenses.
- §16-4C-8. Liability for cost of ambulance service.
- §16-4C-9. Violations; criminal penalties.
- §16-4C-10. Actions to enjoin violations; injunctive relief.
- §16-4C-11. Private rights of action.

§16-4C-1. Purposes of article.

1 The Legislature finds and declares: (1) That the safe and
2 efficient operation of life-saving and life-preserving emergency
3 medical service to meet the needs of citizens of this state is a
4 matter of general public interest and concern; (2) that, in
5 order to ensure provision of adequate emergency medical ser-
6 vice within this state for the protection of the public health,
7 safety and welfare, it is imperative that minimum standards
8 for emergency medical service attendants be established and
9 enforced by the state; (3) that emergency medical service at-
10 tendants should meet minimum training standards promulgated
11 by the state board of health; (4) that it is the public policy of
12 this state to enact legislation to carry out these purposes and
13 comply with minimum standards for emergency medical service
14 attendants specified in the Federal Highway Safety Act of
15 1966 and standards promulgated thereunder; and (5) that any
16 patient who receives emergency medical service and who is
17 unable to consent thereto should be liable for the reasonable
18 cost of such service.

§16-4C-2. Definitions.

1 As used in this article, unless the context clearly requires
2 a different meaning:

3 "Ambulance" means any privately or publicly owned ve-
4 hicle or aircraft which is designed, constructed or modified;
5 equipped or maintained; and operated for the transportation of
6 patients.

7 "Ambulance service" means the transportation, and treat-
8 ment at the site of pickup and enroute, of a patient to or from

9 a place where medical, hospital or clinical service is normally
10 available.

11 "Emergency medical service attendant" means any person
12 who is responsible for attending, caring for and giving life-
13 saving or life-preserving treatment to a patient transported in
14 an ambulance. This term includes both the driver of an am-
15 bulance and any person assigned to the ambulance to attend
16 patients.

17 "Governing body" shall have the meaning ascribed to it
18 as applied to a municipality in subsection (b), subdivision (1),
19 section two, article one, chapter eight of this code.

20 "Municipality" shall have the meaning ascribed to it in sub-
21 section (a), subdivision (1), section two, article one, chapter
22 eight of this code.

23 "Patient" means any sick, injured, wounded or otherwise
24 incapacitated or helpless person, or an expectant mother who
25 needs medical, hospital or clinical service under an existing or
26 imminent emergency situation.

27 "State board" means the state board of health.

**§16-4C-3. Vehicles, aircraft and persons aboard them exempted
from requirements of article.**

1 The following vehicles and aircraft are exempted from the
2 application of the provisions of this article and rules promul-
3 gated pursuant to it and persons aboard them are not required
4 to comply with the provisions of section four of this article:

5 (a) Privately owned vehicles and aircraft not ordinarily
6 used in the business or service of transporting patients.

7 (b) Vehicles and aircraft used as ambulances in case of a
8 catastrophe or emergency when the ambulances normally
9 staffed by certified emergency medical service attendants
10 based in the locality of the catastrophe or emergency are insuffi-
11 cient to render the service required.

12 (c) Ambulances based outside this state, except that emer-
13 gency medical service attendants aboard any such ambulance
14 receiving a patient within this state for transportation to a lo-

15 cation within this state must comply with the provisions of this
16 article and the rules promulgated pursuant to it.

17 (d) Ambulances owned by or operated under the direct
18 control of a governmental agency of the United States.

19 (e) Vehicles and aircraft designed primarily for rescue
20 operations and which do not ordinarily transport patients.

21 (f) An ambulance being used to transport a person or
22 persons not in an existing or imminent emergency situation
23 where the purpose of that mode of transportation is to
24 facilitate their movement or comfort.

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

1 After the first day of January, one thousand nine hundred
2 seventy-five, every ambulance, except those vehicles and air-
3 craft exempted in section three of this article, shall have at
4 least one physician, osteopathic physician, any state licensed
5 health provider qualified to render first aid or mobile intensive
6 care paramedic duly licensed to serve in such capacity under the
7 laws of this state or one person who possesses a valid emergency
8 medical service attendant certificate issued hereunder by the
9 state board in its patient compartment at all times when a
10 patient is being transported.

11 In accordance with the provisions of chapter twenty-nine-a of
12 this code, the state board shall promulgate rules regarding the
13 age, training and physical requirements of emergency medical
14 service attendants. As a minimum training requirement, every
15 emergency medical service attendant shall have earned and pos-
16 sess a valid American Red Cross advanced first aid certificate,
17 or an advanced first aid certificate issued by the United States
18 bureau of mines (now referred to as the mining enforcement
19 and safety administration, United States department of the in-
20 terior) or the equivalent thereof; or have successfully completed
21 the course on emergency care and transportation of the sick and
22 injured recommended by the American academy of orthopedic
23 surgeons or the equivalent thereof, before he is issued a certifi-
24 cate: *Provided*, That any member of a rescue unit organized

25 and engaged in providing ambulance service prior to the first
26 day of January, one thousand nine hundred seventy-five, which
27 is operated by a rescue squad, fire department, police depart-
28 ment, county or municipality of this state, who on that date is
29 certified by the respective county health officer of the county
30 wherein such unit is based, or, if there is no county health of-
31 ficer, by the county court or governing body of the jurisdiction
32 wherein such unit is based, that he is adequately trained and is
33 capable of performing the service required of an emergency
34 medical service attendant, shall be issued an original emergency
35 medical service attendant certificate by the state board upon his
36 submitting proper application for such certificate. The state
37 board may promulgate rules for emergency medical service at-
38 tendants which exceed this minimum training requirement, but
39 such rules must first be approved by the emergency medical ser-
40 vice advisory council provided for in section six of this article.

41 Any person desiring certification as an emergency medical
42 service attendant shall apply to the state board using forms and
43 procedures prescribed by the state board. Upon receipt of
44 such application, the state board shall determine if the appli-
45 cant meets the requirements for certification and examine the
46 applicant as, in its discretion, is necessary to make such deter-
47 mination. If it is determined that the applicant meets all of the
48 requirements, the state board shall issue an emergency medi-
49 cal service attendant certificate to the applicant. Emergency
50 medical care attendant certificates issued by the state board
51 shall be valid for two years from the date of their issuance
52 unless sooner suspended or revoked by the state board. Certifi-
53 cates may be renewed for additional two-year periods after
54 examination of the certificate holder and determination by the
55 state board that such holder meets the requirements estab-
56 lished for emergency medical service attendants: *Provided,*
57 That if any county health officer of any county, or, if there is
58 no county health officer, the county court or governing body
59 of the jurisdiction concludes that any area of that jurisdiction
60 has not been afforded the necessary training or equipment to
61 implement this section, then this section shall not apply.

62 The state board may issue a temporary emergency medical
63 service attendant certificate to an applicant, with or without
64 examination of the applicant, when it finds such issuance to

65 be in the public interest. Unless sooner suspended or revoked,
66 a temporary certificate shall be valid initially for a period not
67 exceeding one hundred twenty days and it shall not be renewed
68 thereafter unless it be in the public interest: *Provided*, That
69 the expiration date of any such temporary certificate issued
70 shall be extended until the holder of such certificate is afforded
71 at least one opportunity to take an emergency medical care
72 attendant training course within the general area where he
73 serves as an emergency medical service attendant, but the ex-
74 piration date shall not be extended for any longer period of time
75 or for any other reason.

76 There shall be no fee or other payment required of an ap-
77 plicant for original certification as an emergency medical ser-
78 vice attendant, renewal of such certificate or of an applicant
79 for temporary certification as an emergency medical service
80 attendant.

§16-4C-5. Suspension or revocation of certificate or temporary certificate.

1 (a) The board may at any time upon its own motion and
2 shall upon the verified written complaint of any person conduct
3 an investigation to determine whether there are any grounds for
4 the suspension or revocation of a certificate or temporary
5 certificate issued under the provisions of this article.

6 (b) The board shall suspend or revoke any certificate or
7 temporary certificate when it finds the holder thereof has:

8 (1) Obtained a certificate or temporary certificate by
9 means of fraud or deceit;

10 (2) Been incompetent, grossly negligent, or guilty of other
11 malpractice as defined by the board by reasonable rules and
12 regulations; or

13 (3) Failed or refused to comply with the provisions of this
14 article or any reasonable rule and regulation promulgated by
15 the board hereunder or any order or final decision of the
16 board.

17 (c) The board shall also suspend or revoke any certificate
18 or temporary certificate if it finds the existence of any grounds
19 which would justify the denial of an application for such

20 license or temporary permit if application were then being
21 made for it.

**§16-4C-6. Notice of refusal, suspension or revocation of certificate;
appeals to state board; judicial review.**

1 An application for an original emergency medical service
2 attendant certificate, for the renewal of an emergency medical
3 service attendant certificate or for a temporary emergency
4 medical service attendant certificate, shall be acted upon by
5 the state board, and the state board's certificate delivered or
6 mailed, or a copy of any order of the state board denying any
7 such application delivered or mailed to the applicant, by the
8 state board within fifteen days after the date upon which
9 such application was received from the applicant.

10 Whenever the state board shall refuse to issue an emergency
11 medical service attendant certificate or a temporary emergency
12 medical service attendant certificate, or shall suspend or revoke
13 an emergency medical service attendant certificate, or a tem-
14 porary emergency medical service attendant certificate, it
15 shall make and enter an order to that effect, which order
16 shall specify the reasons for such denial, suspension or revoca-
17 tion, and shall cause a copy of such order to be served in
18 person or by certified mail, return receipt requested, on the
19 applicant or certificate holder, as the case may be.

20 Whenever a certificate is suspended or revoked, the state
21 board shall in the order of suspension or revocation direct
22 the holder thereof to return his certificate to the state board.
23 It shall be the duty of such certificate holder to comply with
24 any such order following expiration of the period provided
25 for an appeal to the state board.

26 Any applicant or certificate holder, as the case may be,
27 adversely affected by an order made and entered by the
28 state board may appeal to the state board for an order
29 vacating or modifying such order or for such order as the
30 state board should have entered. The person so appealing
31 shall be known as the appellant. An appeal shall be perfected
32 by filing a notice of appeal with the state board within
33 ten days after the date upon which the appellant received
34 the copy of such order. Said notice of appeal shall be in

35 such form and contain such information as may be prescribed
36 by the state board, but in all cases shall contain a description
37 of any order appealed from and the grounds for said appeal.
38 The filing of the notice of appeal shall operate to auto-
39 matically stay or suspend execution of any order which is the
40 subject matter of said appeal. All of the pertinent provisions
41 of article five, chapter twenty-nine-a of this code shall apply to
42 and govern the hearing on appeal and the administrative pro-
43 cedures in connection with and following such hearing, with
44 like effect as if the provisions of said article five were set
45 forth in extenso herein.

46 The state board shall set a hearing date which shall be
47 not less than ten days after it received the notice of appeal
48 unless there is a postponement or continuance. The state
49 board may postpone or continue any hearing on its own
50 motion, or for good cause shown upon the application of the
51 appellant. The appellant shall be given notice of said hearing
52 in person or by certified mail, return receipt requested.
53 Any such hearing shall be held in Charleston, Kanawha
54 County, West Virginia, unless another place is specified by
55 the state board.

56 After such hearing and consideration of all of the testi-
57 mony, evidence and record in the case, the state board shall
58 make and enter an order affirming, modifying or vacating
59 the order of the state board, or shall make and enter such
60 order as the state board should have entered. Such order
61 shall be accompanied by findings of fact and conclusions
62 of law as specified in section three, article five, chapter twenty-
63 nine-a of this code, and a copy of such order and accompany-
64 ing findings and conclusions shall be served upon the ap-
65 pellant, in person or by certified mail, return receipt requested.
66 The order of the state board shall be final unless vacated or
67 modified upon judicial review thereof.

68 Any appellant adversely affected by a final order made
69 and entered by the state board is entitled to judicial review
70 thereof. All of the pertinent provisions of section four, article
71 five, chapter twenty-nine-a of this code shall apply to and
72 govern such review with like effect as if the provisions
73 of said section four were set forth in extenso herein. The
74 judgment of the circuit court shall be final unless reversed,

75 vacated or modified on appeal to the supreme court of appeals
76 in accordance with the provisions of section one, article six,
77 chapter twenty-nine-a of this code.

§16-4C-7. Emergency medical service advisory council created; duties, composition, appointment, meetings, expenses.

1 For the purpose of assisting the state board in developing
2 standards for emergency medical service attendants, there
3 is hereby created the emergency medical service advisory
4 council.

5 The council shall be composed of ten members appointed
6 by the governor. The governor shall appoint one representa-
7 tive each from the West Virginia Association of County Offi-
8 cials, West Virginia Council of Towns and Cities, West Vir-
9 ginia State Firemen's Association, American Red Cross, West
10 Virginia Hospital Association, West Virginia State Medical As-
11 sociation, West Virginia Funeral Directors Association, Gover-
12 nor's Highway Safety Administration, one person to represent
13 private commercial ambulance services within the state and one
14 person to represent emergency rescue squads operating within
15 the state. The person appointed from the West Virginia Funeral
16 Directors Association shall be a person who provides ambu-
17 lance service at the time of his appointment and throughout his
18 term.

19 Initially, the governor shall appoint four members of the
20 council for terms of two years and five for terms of four years.
21 Thereafter, appointments shall be for terms of four years and
22 made in a manner to preserve the representation of the council
23 as it was originally comprised.

24 The council shall choose its own chairman and meet at the
25 call of the director of the state department of health but the
26 council shall not meet more than five times in any one year.
27 Council members shall not receive any compensation for their
28 services as council members but shall be reimbursed by the state
29 board for all reasonable and necessary expenses actually in-
30 curred by them in the discharge of their official duties.

§16-4C-8. Liability for cost of ambulance service.

1 Any patient who receives ambulance service and who is
2 unable to give his consent to, or contract for, the service,

3 whether or not he has agreed or consented to liability for the
4 service, shall be liable in implied contract to the person pro-
5 viding the ambulance service for the reasonable cost thereof.

§16-4C-9. Violations; criminal penalties.

1 Any person who operates an ambulance or who provides
2 ambulance service not in compliance with the provisions of
3 this article or the rules promulgated by the state board pur-
4 suant to this article, or who operates an ambulance with un-
5 certified emergency medical service attendants aboard when
6 not lawfully permitted to do so shall be guilty of a misde-
7 meanor, and, upon conviction thereof, shall be fined not less
8 than one hundred dollars nor more than three hundred dol-
9 lars, or imprisoned in the county jail not more than one month,
10 or both fined and imprisoned.

§16-4C-10. Actions to enjoin violations; injunctive relief.

1 Whenever it appears to the state board that any person has
2 been or is violating or is about to violate any provision of this
3 article or any final order of the state board, the state board
4 may apply in the name of the state, to the circuit court of the
5 county in which the violation or violations or any part thereof
6 has occurred, is occurring or is about to occur, for an injunc-
7 tion against such person and any other persons who have
8 been, are or are about to be, involved in, or in any way parti-
9 cipating in, any practices, acts or omissions, so in violation,
10 enjoining such person or persons from any such violation or
11 violations. Such application may be made and prosecuted to
12 conclusion whether or not any such violation or violations have
13 resulted or shall result in prosecution or conviction under the
14 provisions of section eight of this article.

15 Upon application by the state board, the circuit courts of
16 this state may by mandatory or prohibitory injunction compel
17 compliance with the provisions of this article and all final
18 orders of the state board.

19 The court may issue a temporary injunction in any case
20 pending a decision on the merits of any application filed.

21 The judgment of the circuit court upon any application per-
22 mitted by the provisions of this section shall be final unless

23 reversed, vacated or modified on appeal to the supreme court
 24 of appeals. Any such appeal shall be sought in the manner and
 25 within the time provided by law for appeals from circuit courts
 26 in other civil cases.

§16-4C-11. Private rights of action.

1 No physician or surgeon who in good faith gives emergency
 2 instructions to a certified emergency service medical attendant,
 3 nor any certified emergency service medical attendant who in
 4 good faith cares for or gives life saving or life preserving treat-
 5 ment to a patient transported in an ambulance, shall be liable
 6 for any civil damage or injury resulting from such treatment,
 7 unless such damage or injury be intentionally inflicted or the
 8 result of gross negligence.

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CHAPTER 46

(Com. Sub. for H. B. 844—By Mrs. Smirl)

[Passed March 9, 1974; 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 eleven, relating to voluntary sexual sterilization; procedures; and immunity of persons or institutions refusing to perform or performing sterilization operations.

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 eleven, to read as follows:

ARTICLE 11. SEXUAL STERILIZATION.

§16-11-1. Male or female sterilization procedures.

§16-11-2. Immunity of persons performing operation.

§16-11-1. Male or female sterilization procedures.

1 It shall be lawful for any physician duly licensed by the
 2 state, when so requested by any person other than a minor, or

3 mentally incompetent person, or any other person suffering
4 from any similar disability which would affect their ability to
5 enter into a valid contractual agreement, to perform upon
6 such person, a male or female sterilization procedure: *Provided*,
7 That a request in writing is made by such person and that at
8 the time of such request a full and reasonable medical explana-
9 tion is given by the physician to such person as to the meaning
10 and consequences of such operation: *Provided, however*, That
11 the female sterilization procedure shall only take place in a
12 hospital or facility duly licensed by the state board of health
13 and authorized by said board to perform similar operations,
14 or a hospital or facility administered or owned by the state
15 and duly authorized by said board to perform such operations.

16 Nothing in this section shall require any hospital or other
17 medical facility to admit any patient for the purpose of under-
18 going a sterilization operation. No hospital shall be subject to
19 any legal or other penalty or restrictions or shall incur any civil
20 liability because of any refusal to perform, accommodate or
21 assist in any sterilization procedure for any reason. No person
22 shall be required to perform or participate in medical pro-
23 cedures which result in the sterilization of an individual, and the
24 refusal of any person to perform or participate in such medical
25 procedure shall not be a basis for any legal sanction to any
26 person. No hospital administrator or governing board of any
27 hospital shall terminate the employment of, prevent or impair
28 the practice or occupation of, or impose any other penalties or
29 restrictions upon any person who refuses to perform or partici-
30 pate in a sterilization procedure.

§16-11-2. Immunity of persons performing operation.

1 No properly licensed health care facility or any superinten-
2 dent or administrator thereof, or physician or any other person
3 legally participating in any such properly requested sterilization
4 operation shall be liable either civilly or criminally by reason
5 of such participation: *Provided*, That this section shall not
6 be construed to be in derogation of any actionable negligence
7 occurring during or tort liability arising from such operation.

CHAPTER 47

(Com. Sub. for H. B. 754—By Mr. Speaker, Mr. McManus, and Mr. Seibert)

[Passed March 8, 1974; in effect from passage. Approved by the Governor]

AN ACT to amend article sixteen, 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-b; and to amend and reenact sections one, two, three, four, five, six, seven, eight, nine, eleven, twelve, thirteen, fifteen and twenty, article two-c, chapter thirteen of said code, relating to municipalities, municipal public works and revenue bond financing; specifying that the power and authority of any municipality to lease, as lessor, space in a motor vehicle parking facility to any person for business, commercial or charitable use shall be deemed to include the power and authority to lease such space to the United States of America, the state of West Virginia, the county court of any county and any agency, board or commission of any thereof; specifying that the revenues derived from such leases may be pledged as security for and expended in payment of revenue bonds of such municipality in like manner and to the same extent as other revenues from a motor vehicle parking facility; relating to public bonded indebtedness; extending the industrial development bond act to include commercial projects; providing a new title for such act; setting forth certain legislative findings and defining terms with respect to such act; conferring powers on counties and municipalities with respect to industrial projects and commercial projects and the issuance of revenue bonds therefor; relating to the location of industrial projects and commercial projects; relating to the joint establishment of industrial projects or commercial projects or additions thereto; relating to revenue bonds issued to finance industrial projects or commercial projects; specifying that a debt of a county or municipality may not be created in connection with an industrial project or commercial project; providing details with respect to the provisions, issuance and execution of such revenue bonds; relating to the issuance of additional revenue bonds; providing a statutory mortgage lien and the pledging of revenues from such industrial project or commercial project as security for such revenue bonds; also

authorizing a trust indenture, mortgage or deed of trust as security for such revenue bonds; relating to resolutions authorizing the issuance of such revenue bonds; relating to the provisions to be contained in any such trust indenture, mortgage or deed of trust; authorizing the appointment of a receiver; relating to foreclosure proceedings; establishing certain requirements respecting the lease of an industrial project or commercial project and the contents of any such lease; relating to refunding bonds; relating to the use of proceeds from the sale of all revenue bonds issued under article two-c; prohibiting contributions by counties and municipalities from their general funds or otherwise in the establishment of an industrial project or commercial project; specifying that all such revenue bonds shall be paid solely from the revenue derived from the industrial project or commercial project; providing exemptions from taxation; and prohibiting any financial interest of public officials in any such industrial project or commercial project.

Be it enacted by the Legislature of West Virginia:

That article sixteen, 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-b; and that sections one, two, three, four, five, six, seven, eight, nine, eleven, twelve, thirteen, fifteen and twenty, article two-c, chapter thirteen of said code be amended and reenacted, all to read as follows:

Chapter

8. Municipal Law, Municipalities and Counties; Intergovernmental Relations.

13. Public Bonded Indebtedness.

CHAPTER 8. MUNICIPAL LAW, MUNICIPALITIES AND COUNTIES; INTERGOVERNMENTAL RELATIONS.

ARTICLE 16. MUNICIPAL PUBLIC WORKS; REVENUE BOND FINANCING.

§8-16-4b. Additional special provision as to the use of space in motor vehicle parking facilities.

1 For all purposes of this article, the power and authority of
2 any municipality to lease, as lessor, space in a motor vehicle

3 parking facility to any person for business, commercial or
 4 charitable use shall be deemed to include the power and
 5 authority to lease such space to the United States of America,
 6 the state of West Virginia, the county court of any county of
 7 the state of West Virginia, and any agency, board or com-
 8 mission of any thereof, and the revenues derived from such
 9 leases may be pledged as security for and expended in payment
 10 of revenue bonds of such municipality in like manner and to
 11 the same extent as other revenues from such motor vehicle
 12 parking facility.

CHAPTER 13. PUBLIC BONDED INDEBTEDNESS.

ARTICLE 2C. INDUSTRIAL DEVELOPMENT AND COMMERCIAL DEVELOPMENT BOND ACT.

- §13-2C-1. Short title.
- §13-2C-2. Legislative findings.
- §13-2C-3. Definitions.
- §13-2C-4. Powers conferred on counties and municipalities.
- §13-2C-5. Location of project.
- §13-2C-6. Joint establishment by two or more governmental bodies.
- §13-2C-7. Bonds issued to finance industrial project or commercial project.
- §13-2C-8. Security for bonds.
- §13-2C-9. Requirements respecting lease of industrial project or commercial project.
- §13-2C-11. Refunding bonds.
- §13-2C-12. Use of proceeds from sale of bonds.
- §13-2C-13. No contribution by county or municipality.
- §13-2C-15. Exemption from taxation.
- §13-2C-20. Prohibition of financial interest of public officials.

§13-2C-1. Short title.

1 This article may be known as and may be cited as the
 2 "Industrial Development and Commercial Development Bond
 3 Act."

§13-2C-2. Legislative findings.

1 It is hereby determined and declared as a matter of
 2 legislative finding (a) that critical conditions of unemploy-
 3 ment exist in many areas of this state; (b) that lack of em-
 4 ployment and business opportunities have resulted in thousands
 5 of people leaving this state to find employment elsewhere,
 6 and this exodus has adversely affected the tax base of

7 counties and municipalities within this state, resulting in an
8 impairment of their ability to support local government; (c)
9 that the development of new commercial, mining, industrial
10 and manufacturing projects are essential to relieve unem-
11 ployment and establish a balanced economy within the
12 state; (d) that the present and prospective health, happiness,
13 safety, right of gainful employment and general welfare
14 of the citizens of each of the counties and municipalities of
15 this state will be promoted by the establishment of industrial
16 projects and commercial projects as herein provided; (e) that
17 the means and measures herein authorized for the promotion
18 of industrial projects and commercial projects are, as a matter
19 of public policy, for the public purpose of the several counties,
20 municipalities and the state of West Virginia; (f) that the
21 abatement or control of pollution of the environment of the
22 state is necessary to protect the health and welfare of the
23 citizens of the state, to protect the natural resources of
24 the state and to encourage the economic development of the
25 state; and (g) that in addition to the development of new
26 industrial projects and commercial projects the retention of
27 existing industrial projects and commercial projects within the
28 state through the means and measures herein authorized is vital
29 to the maintenance of a balanced economy and for the preser-
30 vation of employment within the state and is for the public
31 purpose of the several counties, municipalities and the state
32 of West Virginia.

§13-2C-3 Definitions.

1 Unless the context clearly indicates otherwise, as used
2 in this article:

3 (a) "Commercial project" means real or personal property
4 or both, including any buildings, improvements, additions,
5 extensions, replacements, appurtenances, lands, rights in land,
6 water rights, franchises, machinery, equipment, furnishings,
7 landscaping, utilities, railroad spurs and sidings, parking facili-
8 ties, parking wharfs, approaches and roadways or any number
9 or combination of the foregoing necessary or desirable in con-
10 nection therewith or incidental thereto and includes, without
11 limiting the generality of the foregoing, hotels and motels and
12 related facilities, nursing homes and other health care facilities,

13 facilities for participatory or spectator sports, conventions or
14 trade show facilities, airport facilities, shopping centers, office
15 buildings, residential real property for family units, and mass
16 commuting facilities.

17 (b) "County court" means the governmental body created
18 by section twenty-two, article eight of the West Virginia con-
19 stitution.

20 (c) "Governmental body" means the county court, a town
21 or city council or any other governing body in lieu thereof.

22 (d) "Industrial project" means any site, structure, building,
23 industrial park, water dock, wharf or port facilities, fixtures,
24 machinery, equipment and related facility, including real and
25 personal property, or any combination thereof, suitable as a
26 factory, mill or shop, or processing, assembly, manufacturing
27 or fabricating project, or warehouse or distribution facility, or
28 facilities for the extraction, production or distribution of mineral
29 resources and related facilities, or sewage or solid waste dis-
30 posal facilities, or facilities for the local furnishing of electric
31 energy or gas, or facilities for the furnishing of water, if
32 available on reasonable demand to members of the general
33 public, or storage or training facilities related to any of the
34 foregoing, or research or development facility or pollution
35 abatement or control facility and includes the reconstruction,
36 modernization and modification of any existing industrial proj-
37 ect for the abatement or control of industrial pollution.

38 (e) "Industrial pollution" means any gaseous, liquid or
39 solid waste substances or adverse thermal effects or combina-
40 tions thereof resulting from any process of industry, manu-
41 facturing, trade or business or from the development, pro-
42 cessing or recovery of any natural resources which pollute the
43 land, water or air of this state.

§13-2C-4. Powers conferred on counties and municipalities.

1 In addition to any other powers which a county or muni-
2 cipality may now have, each county, by and through its county
3 court, and each municipality, by and through its council or
4 other governing body in lieu thereof, shall have the following
5 powers: (1) to acquire, whether by purchase, construction,
6 or gift, one or more industrial projects or commercial projects,

7 or additions thereto, which shall be located within this state;
8 (2) to lease to others any or all of its industrial projects or
9 commercial projects for such rentals and upon such terms and
10 conditions as the governing body may deem advisable and such
11 governmental body may grant unto its lessee an option to pur-
12 chase said industrial project or commercial project, at the ex-
13 piration of the term of said lease, upon such terms as may be
14 agreed upon; (3) to issue revenue bonds for the purpose of
15 defraying the cost of acquiring, by construction and purchase,
16 or by either, an industrial project or commercial project, or an
17 addition, extension, or improvement thereto, and to secure the
18 payment of such bonds, all as hereinafter provided; and (4) to
19 issue and deliver revenue bonds in exchange for an industrial
20 project or commercial project.

§13-2C-5. Location of project.

1 Any industrial project or commercial project acquired by a
2 county, by construction and purchase, or by either, shall be
3 located within the county issuing such revenue bonds and any
4 industrial project or commercial project acquired by a municipi-
5 tality, by construction and purchase, or by either, may be
6 situated without or within the corporate bounds of such municipi-
7 tality, but it shall be located within the county in which said
8 municipality is situated, except where a part of such municipi-
9 tality is situated within two or more counties, then said indus-
10 trial project or commercial project may be located within either
11 county of which said municipality forms a part and when an
12 industrial project or commercial project is so acquired by a
13 municipality the same shall not be located within the corporate
14 bounds of another municipality without the consent of the
15 governing body of such municipality and such industrial project
16 or commercial project shall also not be located at a distance
17 greater than ten miles from the corporate boundary of the
18 municipality acquiring the same.

§13-2C-6. Joint establishment by two or more governmental bodies.

1 Any two or more governmental bodies may jointly acquire
2 by purchase, construction or gift, one or more industrial proj-
3 ects or commercial projects or additions thereto by the issuance
4 and delivery of revenue bonds in which case such governmental
5 bodies shall jointly exercise all the rights, authority, power and

6 duties herein conferred upon a county court or a municipality
7 when acting singly and they shall also be subject to the same
8 limitations, restrictions and conditions as are herein imposed on
9 a single governmental body in connection with the acquisition
10 of an industrial project or commercial project. The respective
11 governing bodies, acting jointly, may provide by agreement
12 among themselves, the terms and conditions of such joint partic-
13 ipation.

§13-2C-7. Bonds issued to finance industrial project or commercial project.

1 All bonds issued by a county court or by a municipality
2 under the authority of this article shall be limited obligations
3 of the county, or of the municipality. The principal and interest
4 on such bonds shall be payable out of the revenues derived from
5 the leasing of the project for which the bonds are issued, or any
6 other revenue derived from such industrial project or commer-
7 cial project. The bonds and interest coupons issued under the
8 authority of this article shall never constitute an indebtedness
9 of the county, or of the municipality issuing the same, within
10 the meaning of any constitutional provision or statutory
11 limitation and shall never constitute or give rise to a pecuniary
12 liability of the county, or of the municipality issuing the
13 same. Neither shall such bond nor interest thereon be a
14 charge against the general credit or taxing powers of the
15 county, or the municipality and such fact shall be plainly
16 stated on the face of each such bond. Such bonds may be
17 executed, issued and delivered at any time and from time
18 to time, may be in such form and denomination; may be of
19 such tenor, must be negotiable but may be registered as to
20 the principal thereof or as to the principal and interest thereof,
21 may be payable in such amounts and at such time or times;
22 may be payable at such place or places, may bear interest
23 at such rate or rates payable at such place or places and
24 evidenced in such manner, and may contain such provisions
25 therein not inconsistent herewith, all as shall be provided in
26 the proceedings of the governing body whereunder the bonds
27 shall be authorized to be issued. Said bonds may be sold by
28 the governing body at public or private sale at, above or
29 below par as the governing body shall authorize. The said
30 bonds may also be issued and delivered to the owner of an in-

31 industrial project or commercial project in exchange therefor and
32 in partial or complete payment of the purchase price thereof.

33 The bonds issued pursuant to this article by a county
34 court shall be signed by the president and attested by the
35 clerk of the county court under the seal of the court and
36 the bonds issued by a municipality shall be signed by the
37 mayor or other chief officer thereof and attested by the
38 clerk, recorder or other official custodian of the records
39 of said municipality and under the seal of the municipality.
40 The coupons attached thereto shall bear the facsimile signa-
41 ture of the president of the county court or the mayor or
42 other chief officer of the municipality. In case any of
43 the officials whose signatures appear on the bonds or coupons
44 shall cease to be such officers before the delivery of such
45 bonds, such signatures shall, nevertheless, be valid and
46 sufficient for all purposes to the same extent as if they had
47 remained in office until such delivery.

48 If the proceeds of such bonds by error of calculation
49 or otherwise, shall be less than the cost of the industrial
50 project or commercial project, additional bonds may in like
51 manner be issued to provide the amount of the deficiency, and
52 unless otherwise provided for in the trust agreement, mortgage
53 or deed of trust, shall be deemed to be of the same issue, and
54 shall be entitled to payment from the same fund, without pre-
55 ference or priority, and shall be of equal priority as to any
56 security.

§13-2C-8. Security for bonds.

1 There is hereby created a statutory mortgage lien upon
2 all real estate, buildings, structures, improvements and per-
3 sonal property included as a part of an industrial project
4 or commercial project which was acquired, purchased, con-
5 structed or built or improved with the proceeds of the bonds
6 authorized to be issued under this article, for the purpose of
7 securing the principal of said bonds and the interest thereon.
8 The principal of and interest on any bonds issued under the
9 authority of this article shall be secured by a pledge of the in-
10 come and revenues derived from the lease of the industrial proj-
11 ect, and also be secured by a pledge of the proceeds of any sale
12 thereof. In the discretion and at the option of the county

13 court or municipality, such revenue bonds may also be
14 secured by a trust indenture by and between the county court
15 or the municipality and a corporate trustee, which may
16 be a trust company or bank having trust powers, within
17 or without the state of West Virginia. The governing body
18 may authorize the issuance of such revenue bonds by resolu-
19 tion. The resolution authorizing the revenue bonds and
20 fixing the details thereof may provide that such trust in-
21 denture may contain such provisions for the protection and
22 enforcing the rights and remedies of the bondholders as may
23 be reasonable and proper, not in violation of law, including
24 covenants setting forth the duties of the county court or
25 the municipality in relation to the construction or acquisition of
26 an industrial project or commercial project, or part thereof, or
27 an addition thereto, and the improvement, repair, maintenance
28 and insurance thereof, and for the custody, safeguarding and
29 application of all moneys, and may provide that the industrial
30 project or commercial project shall be constructed and paid for
31 under the supervision and approval of the consulting en-
32 gineers or architects employed and designated by the governing
33 body and satisfactory to the purchasers of the bonds, their suc-
34 cessors, assigns or nominees, and the lessee or either thereof,
35 who may require the security given by any contractor or any
36 depository of the proceeds of the bonds or the revenues received
37 from the lease or sale of the industrial project or commercial
38 project be satisfactory to such purchasers, their successors, as-
39 signs or nominees, or be satisfactory to the lessee or purchaser
40 of the industrial project or commercial project. Such indenture
41 may set forth the rights and remedies of the bondholders, the
42 county or municipality or such trustee and may provide for ac-
43 celerating the maturity of the revenue bonds, at the option of
44 the bondholders or the governmental body issuing the same, up-
45 on default by the lessee in the payment of rentals, or for other
46 cause. The governing body may also provide by resolution and
47 in such trust indenture for the payment of the proceeds of the
48 sale of the bonds and the revenues from the industrial project or
49 commercial project to such depository as it may determine, for
50 the custody thereof and for the method of distribution thereof,
51 with such safeguards and restrictions as it may determine to be
52 necessary or advisable for the protection thereof and upon the
53 filing of a certified copy of such resolution or of the indenture

54 for record in the office of the clerk of the county court of the
55 county in which an industrial project or commercial project is
56 located, the same shall have the same effect, as to notice, as the
57 recordation of a deed of trust or other recordable instrument.

58 In lieu of the indenture provided for hereinabove the princi-
59 pal of and interest on said bonds may be secured by a mortgage
60 or deed of trust covering all or any part of the industrial project
61 or commercial project from which the revenues so pledged may
62 be derived, and the same may be secured by an assignment of
63 the lease on said industrial project or commercial project and by
64 assignment or pledge of the income received by virtue of said
65 lease. The proceedings under which such bonds are authorized
66 to be issued, when secured by a mortgage or deed of trust, may
67 contain the same terms, conditions and provisions provided for
68 herein when an indenture is entered into between the governing
69 body and a trustee and any such mortgage or deed of trust may
70 contain any agreements and provisions customarily contained in
71 instruments securing bonds, including, without limiting the gen-
72 erality of the foregoing, provisions respecting the fixing and col-
73 lection of rents for any industrial project or commercial project
74 covered by such proceedings or mortgage, the terms to be incor-
75 porated in the lease of such industrial project or commercial
76 project, the improvement, repair, maintenance and insurance of
77 such industrial project or commercial project, the creation and
78 maintenance of special funds from the revenues received from
79 the lease of such industrial project or commercial project and
80 the rights and remedies available in event of default to the
81 bondholders, the governmental body, or to the trustee under an
82 agreement, indenture, mortgage, or deed of trust, all as the
83 governing body shall deem advisable and as shall not be in con-
84 flict with the provisions of this article or any existing law: *Pro-*
85 *vided*, That in making any such agreements or provisions a
86 county or municipality shall not have the power to obligate it-
87 self by indenture, ordinance, resolution, mortgage or deed of
88 trust, except with respect to the industrial project or commer-
89 cial project and the application of the revenues therefrom, and
90 shall not have the power to incur a pecuniary liability or a
91 charge upon its general credit or against its taxing powers. The
92 proceedings authorizing any bonds hereunder and any inden-
93 ture, mortgage or deed of trust securing such bonds may provide

94 that, in the event of default in payment of the principal of or the
95 interest on such bonds or in the performance of any agreement
96 contained in such proceedings, indenture, mortgage or deed of
97 trust, such payment and performance may be enforced by the
98 appointment of a receiver in equity with power to charge and
99 collect rents and to apply the revenues from the industrial proj-
100 ect or commercial project in accordance with such proceedings
101 or the provisions of such agreement, indenture, mortgage or
102 deed of trust. Any such agreement, indenture, mortgage or deed
103 of trust may provide also that, in the event of default in such
104 payment or the violation of any agreement contained in the
105 mortgage or deed of trust, the agreement, indenture, mortgage
106 or deed of trust may be foreclosed either by sale at public out-
107 cry or by proceedings in equity and may provide that the holder
108 or holders of any of the bonds secured thereby may become the
109 purchaser at any foreclosure sale, if the highest bidder therefor.
110 No breach of any such agreement, indenture, mortgage or deed
111 of trust shall impose any pecuniary liability upon a county or
112 municipality or any charge upon its general credit or against its
113 taxing powers.

§13-2C-9. Requirements respecting lease of industrial project or commercial project.

1 Prior to the issuance of any bonds, the county court or the
2 municipality shall lease the industrial project or commercial
3 project to a lessee under an agreement providing for payment to
4 the county court or municipality or designated depository of
5 such rentals as will be sufficient (a) to pay the principal of and
6 interest on the bonds issued to finance the project as such prin-
7 cipal and interest respectively mature, (b) to build up and
8 maintain any reserves deemed by the governing body to be ad-
9 visable in connection therewith, and (c) unless the agreement
10 of lease obligates the lessee to pay for the cost of maintaining,
11 repairing and insuring of the project, to pay the costs of main-
12 taining the project in good repair and keeping it properly in-
13 sured. The said lease shall contain a provision for the revision
14 of the lease from time to time, so as to produce sufficient
15 revenue to pay the interest and create a sinking fund sufficient
16 to pay the principal of said bonds when due and to provide for
17 the maintenance, repair and insurance of the industrial project
18 or commercial project unless the latter be assumed by the

19 lessee. The said lease shall also contain such other provisions
20 relating to the industrial project or commercial project and the
21 operation, maintenance and improvement thereof and as to the
22 rights of the lessor and lessee thereof as shall be deemed neces-
23 sary and advisable by the governmental body.

§13-2C-11. Refunding bonds.

1 Any bonds issued hereunder and at any time outstanding
2 may at any time and from time to time be refunded by a coun-
3 ty or municipality by the issuance of its refunding bonds in
4 such amount as the governing body may deem necessary to
5 refund the principal of the bonds so to be refunded, together
6 with any unpaid interest thereon; to make any improvements
7 or alterations in the industrial project or commercial project;
8 and any premiums and commissions necessary to be paid in
9 connection therewith. Any such refunding may be effected
10 whether the bonds to be refunded shall have then matured or
11 shall thereafter mature, either by sale of the refunding bonds
12 and the application of the proceeds thereof for the redemption
13 of the bonds to be refunded thereby, or by exchange of the re-
14 funding bonds for the bonds to be refunded thereby: *Provided,*
15 That the holders of any bonds so to be refunded shall not be
16 compelled without their consent to surrender their bonds for
17 payment or exchange prior to the date on which they are pay-
18 able or, if they are called for redemption, prior to the date on
19 which they are by their terms subject to redemption. Any re-
20 funding bonds issued under the authority of this article shall be
21 payable from the revenues out of which the bonds to be re-
22 funded thereby were payable, and shall be subject to the pro-
23 visions contained in section seven of this article and shall be
24 secured in accordance with the provisions of section eight of this
25 article.

§13-2C-12. Use of proceeds from sale of bonds.

1 The proceeds from the sale of any bonds issued under
2 authority of this article shall be applied only for the purpose
3 for which the bonds were issued: *Provided,* That any accrued
4 interest and premium received in any such sale shall be
5 applied to the payment of the principal of or the interest on
6 the bonds sold: *Provided, however,* That if for any reason
7 any portion of such proceeds shall not be needed for the

8 purpose for which the bonds were issued, then such unneeded
9 portion of said proceeds shall be applied to the payment
10 of the principal of or the interest on said bonds, or held
11 in reserve for the payment thereof. The cost of acquiring
12 any industrial project or commercial project shall be deemed to
13 include the following: The cost of acquiring any real estate
14 deemed necessary, the actual cost of the construction of any
15 part of an industrial project or commercial project which may
16 be constructed, including architects', engineers', financial or
17 other consultants' and legal fees, the purchase price of any part
18 of a project that may be acquired by purchase, all expense in-
19 curred in connection with the authorization, sale and issuance of
20 the bonds to finance such acquisition, and the interest on such
21 bonds for a reasonable time prior to construction, during con-
22 struction, and for not exceeding twelve months after completion
23 of construction and any other cost and expense reasonably
24 necessary in the establishment and acquisition of such industrial
25 project or commercial project and the financing thereof.

§13-2C-13. No contribution by county or municipality.

1 No county court or municipality shall have the power to
2 pay out of its general funds, or otherwise contribute, any
3 of the costs of acquiring or constructing an industrial project or
4 commercial project, to be financed out of the proceeds from the
5 sale of revenue bonds issued under the authority of this article:
6 *Provided*, That this provision shall not be construed to prevent
7 a county or municipality from accepting donations of property
8 to be used as a part of an industrial project or commercial proj-
9 ect or to be used for defraying any part of the cost of any such
10 project. The bonds issued pursuant to this article shall be pay-
11 able solely from the revenue derived from the industrial project
12 or commercial project and shall not constitute an indebtedness
13 of the county or of the municipality within the meaning of any
14 constitutional provision and it shall be plainly stated on the face
15 of each bond that it has been issued under the provisions of this
16 article and that it does not constitute an indebtedness of the
17 county or municipality within the meaning of the constitution of
18 West Virginia.

19 No county court or municipality shall have the authority
20 under this article to levy any taxes for the purpose of paying

21 any part of the cost of acquiring an industrial project or com-
22 mercial project. However, all necessary preliminary expenses
23 actually incurred by a county court or a municipality in the
24 making of surveys, taking options, preliminary planning, and all
25 other expenses necessary to be paid prior to the issuance, sale
26 and delivery of the revenue bonds, may be paid by such govern-
27 mental body out of any surplus contained in any item of
28 budgetary appropriation or any revenues collected in excess of
29 anticipated revenues, which shall be reimbursed and repaid out
30 of the proceeds of the sale of the revenue bonds.

§13-2C-15. Exemption from taxation.

1 The revenue bonds issued pursuant to this article and the
2 income therefrom shall be exempt from taxation except
3 inheritance, estate and transfer taxes; and the real and
4 personal property which a county court or a municipality may
5 acquire to be leased to an industrial project or commercial proj-
6 ect according to the provisions of this article, shall be exempt
7 from taxation by the state, or any county, municipality, or other
8 levying body, as public property, so long as the same is owned
9 by such county or municipality.

§13-2C-20. Prohibition of financial interest of public officials.

1 No member of a county court or the governing body of a
2 municipality issuing revenue bonds under the provisions of
3 this article shall have any financial interest, directly or
4 indirectly, in the leasing of an industrial project or commercial
5 project acquired or constructed pursuant to this article.

CHAPTER 48

(H. B. 1044—By Mrs. Withrow and Mr. Haynes)

[Passed March 7, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article three, chapter twenty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to industrial home for girls and deleting from the code the requirement that all

officers, agents and servants for the internal management of the home shall be women.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. INDUSTRIAL HOME FOR GIRLS.

§28-3-1. Continuation; management.

1 The West Virginia industrial home for girls, heretofore
2 established and located at Industrial, in Harrison County,
3 shall be continued, and shall be exclusively charged with the
4 care, training and reformation of girls committed to its
5 custody. It shall be managed, directed and controlled as
6 prescribed in article one, chapter twenty-five of this code.

CHAPTER 49

(S. B. 329—By Mr. Williams)

[Passed March 8, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty, article five, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to borrowing by insurers.

Be it enacted by the Legislature of West Virginia:

That section twenty, article five, 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 5. ORGANIZATION AND PROCEDURES OF DOMESTIC STOCK AND MUTUAL INSURERS.

§33-5-20. Borrowing by insurers.

1 (a) A domestic stock or mutual insurer may borrow
2 money to defray the expenses of its organization, pro-

3 vide it with surplus funds, or for any purpose required by
4 its business, upon a written agreement that such money
5 is required to be repaid only out of the insurer's surplus
6 in excess of that stipulated in such agreement. The agree-
7 ment may provide for interest at the rate agreed upon by
8 such insurer and its lender. Such interest shall not con-
9 stitute a liability of the insurer as to its funds other than
10 such excess of surplus unless so stipulated in the agree-
11 ment.

12 (b) Money so borrowed, together with the interest
13 thereon if so stipulated in the agreement, shall not form
14 a part of the insurer's legal liabilities except as to its
15 surplus in excess of the amount thereof stipulated in the
16 agreement, or be the basis of any setoff; but until repaid,
17 financial statements filed or published by the insurer shall
18 show as a footnote thereto the amount thereof then unpaid
19 together with any interest thereon accrued but unpaid.

20 (c) Such insurer in advance of any such loan shall file
21 with the commissioner a statement of the purposes of the
22 loan and a copy of the proposed loan agreement, which
23 shall be subject to the commissioner's approval. The loan
24 and agreement shall be deemed approved thirty days after
25 date of filing with the commissioner, unless within such
26 thirty-day period the insurer is notified in writing of the
27 commissioner's disapproval and the reasons therefor.
28 The commissioner shall so disapprove any such proposed
29 loan or agreement if he finds that the loan is reasonably
30 unnecessary or excessive for the purpose intended, or that
31 the terms of the loan agreement are not fair and equitable
32 to the parties, and to other similar lenders, if any, to the
33 insurer, or is not fair to policyholders, or that the in-
34 formation so filed by the insurer is inadequate.

35 (d) Any such loan to a mutual insurer or substantial
36 portion thereof shall be repaid by the insurer when no
37 longer reasonably necessary for the purpose originally in-
38 tended. No repayment of such a loan shall be made by a
39 mutual insurer unless in advance approved by the com-
40 missioner.

41 (e) This section shall not apply to loans obtained by
 42 the insurer in ordinary course of business from banks and
 43 other financial institutions, nor to loans secured by pledge
 44 of assets.

CHAPTER 50

(Com. Sub. for S. B. 337—By Mr. Nealey and Mr. Poffenbarger)

[Passed March 5, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article seven, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the standard valuation law for life insurance policies and annuity contracts; and to amend and reenact section thirty, article thirteen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the standard nonforfeiture law for life insurance.

Be it enacted by the Legislature of West Virginia:

That section nine, article seven, chapter thirty-three and section thirty, article thirteen, 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

7. **Assets and Liabilities.**

13. **Life Insurance.**

ARTICLE 7. ASSETS AND LIABILITIES.

§33-7-9. Standard valuation law for life policies.

1 (1) The commissioner shall annually value, or cause
 2 to be valued, the reserve liabilities (hereinafter called
 3 reserves) for all outstanding life insurance policies and
 4 annuity and pure endowment contracts of every life in-
 5 surer transacting insurance in this state, except that in the
 6 case of an alien insurer such valuation shall be limited to
 7 its United States business, and may certify the amount
 8 of any such reserves, specifying the mortality table or

9 tables, rate or rates of interest and methods (net level
10 premium method or other) used in the calculation of such
11 reserves.

12 All valuations made by him or by his authority shall
13 be made upon the net premium basis.

14 In every case the standard of valuation employed shall
15 be stated in his annual report.

16 In calculating such reserves, he may use group methods
17 and approximate averages for fractions of a year or other-
18 wise. In lieu of the valuation of the reserves herein
19 required of any foreign or alien insurer, he may accept
20 any valuation made, or caused to be made, by the in-
21 surance supervisory official of any state or other jurisdic-
22 tion when such valuation complies with the minimum
23 standard herein provided and if the official of such state
24 or jurisdiction accepts as sufficient and valid for all legal
25 purposes the certificate of valuation of the commissioner
26 when such certificate states the valuation to have been
27 made in a specified manner according to which the aggre-
28 gate reserves would be at least as large as if they had
29 been computed in the manner prescribed by the law of
30 that state or jurisdiction.

31 Any such insurer which at any time shall have adopted
32 any standard of valuation producing greater aggregate
33 reserves than those calculated according to the minimum
34 standard herein provided may, with the approval of the
35 commissioner, adopt any lower standard of valuation,
36 but not lower than the minimum herein provided.

37 (2) This subsection shall apply to only those policies
38 and contracts issued prior to the original operative date
39 of the Standard Nonforfeiture Law (now section thirty of
40 article thirteen of this chapter). All valuations shall be
41 according to the standard of valuations adopted by the
42 insurer for the obligations to be valued. Any insurer may
43 adopt different standards for obligations of different dates
44 or classes, but if the total value determined by any such
45 standard for the obligation for which it has been adopted
46 shall be less than that determined by the legal minimum
47 standard hereinafter prescribed, or if the insurer adopts

48 no standard, said legal minimum standard shall be
49 used.

50 Except as otherwise provided in subdivision (a) (B) of
51 subsection (3), the legal minimum standard for contracts
52 issued before the first day of January, in the year one
53 thousand nine hundred one, shall be actuaries' or com-
54 bined experience table of mortality with interest at four
55 percent per annum, and for contracts issued on or after
56 said date shall be the "American Experience Table" of
57 mortality with interest at three and one-half percent per
58 annum. Policies issued by insurers doing business in this
59 state may provide for not more than one-year preliminary
60 term insurance: *Provided, however,* That if the premium
61 charged for term insurance under a limited payment life
62 preliminary term policy providing for the payment of
63 all premiums thereof in less than twenty years from the
64 date of the policy, or under an endowment preliminary
65 term policy, exceeds that charged for like insurance under
66 twenty payment life preliminary term policies of the same
67 insurer, the reserve thereon at the end of any year, in-
68 cluding the first, shall not be less than the reserve on a
69 twenty payment life preliminary term policy issued in the
70 same year and at the same age, together with an amount
71 which shall be equivalent to the accumulation of a net
72 level premium sufficient to provide for a pure endowment
73 at the end of the premium payment period, equal to the
74 difference between the value at the end of such period of
75 such a twenty payment life preliminary term policy and
76 a full reserve at such time of such a limited payment life
77 or endowment policy.

78 The commissioner may vary the standards of interest
79 and mortality in the case of alien insurers and in particu-
80 lar cases of invalid lives and other extra hazards.

81 Reserves for all such policies and contracts may be
82 calculated, at the option of the insurer, according to any
83 standards which produce greater aggregate reserves for
84 all such policies and contracts than the minimum reserves
85 required by this subsection.

86 (3) Except as otherwise provided in subdivision (a)
87 (B) of this subsection, this subsection shall apply to only

88 those policies and contracts issued on or after the original
89 operative date of the Standard Nonforfeiture Law (now
90 section thirty of article thirteen of this chapter).

91 (a) (A) Except as otherwise provided in paragraph (B)
92 of this subdivision, the minimum standard for the valua-
93 tion of all such policies and contracts shall be the com-
94 missioners reserve valuation method defined in subdivi-
95 sion (b), three and one-half percent interest, or in the
96 case of policies and contracts, other than annuity and pure
97 endowment contracts, issued on or after the effective date
98 of this amendatory act of 1974 and prior to the first day of
99 January, nineteen hundred eighty-six, four percent in-
100 terest, and the following tables:

101 (i) For all ordinary policies of life insurance issued on
102 the standard basis, excluding any disability and accidental
103 death benefits in such policies—the Commissioners 1941
104 Standard Ordinary Mortality Table for such policies is-
105 sued prior to the operative date of subsection four-a of
106 section thirty, article thirteen of this chapter, and the
107 Commissioners 1958 Standard Ordinary Mortality Table
108 for such policies issued on or after such operative date:
109 *Provided*, That for any category of such policies issued
110 on female risks all modified net premiums and present
111 values referred to in this section may be calculated accord-
112 ing to an age not more than three years younger than the
113 actual age of the insured.

114 (ii) For all industrial life insurance policies issued on
115 the standard basis, excluding any disability and accidental
116 death benefits in such policies—the 1941 Standard Indus-
117 trial Mortality Table for such policies issued prior to the
118 operative date of subsection four-b of section thirty, article
119 thirteen of this chapter, and the Commissioners 1961
120 Standard Industrial Mortality Table for such policies is-
121 sued on or after such operative date.

122 (iii) For individual annuity and pure endowment con-
123 tracts, excluding any disability and accidental death
124 benefits in such policies—the 1937 Standard Annuity
125 Mortality Table or, at the option of the company, the
126 Annuity Mortality Table for 1949, ultimate, or any modi-

127 fication of either of these tables approved by the commis-
128 sioner.

129 (iv) For group annuity and pure endowment contracts,
130 excluding any disability and accidental death benefits in
131 such policies—the Group Annuity Mortality Table for
132 1951, any modification of such table approved by the
133 commissioner, or, at the option of the company, any of the
134 tables or modification of tables specified for individual
135 annuity and pure endowment contracts.

136 (v) For total permanent disability benefits in or supple-
137 mentary to ordinary policies or contracts—for policies or
138 contracts issued on or after the first day of January, one
139 thousand nine hundred sixty-six, the tables of period two
140 disablement rates and the one thousand nine hundred
141 thirty to one thousand nine hundred fifty termination
142 rates of the one thousand nine hundred fifty-two disability
143 study of the society of actuaries, with due regard to the
144 type of benefit; for policies or contracts issued on or after
145 the first day of January, one thousand nine hundred sixty-
146 one and prior to the first day of January, one thousand
147 nine hundred sixty-six, either such tables or, at the option
148 of the company, the Class (3) Disability Table (1926);
149 and for policies issued prior to the first day of January,
150 one thousand nine hundred sixty-one, the Class (3) Disa-
151 bility Table (1926). Any such table shall, for active lives,
152 be combined with a mortality table permitted for calculat-
153 ing the reserves for life insurance policies.

154 (vi) For accidental death benefits in or supplementary
155 to policies—for policies issued on or after the first day of
156 January, one thousand nine hundred sixty-six, the 1959
157 Accidental Death Benefits Table; for policies issued on or
158 after the first day of January, one thousand nine hundred
159 sixty-one and prior to the first day of January, one thou-
160 sand nine hundred sixty-six, either such table or, at the
161 option of the company, the Inter-Company Double Indem-
162 nity Mortality Table; and for policies issued prior to the
163 first day of January, one thousand nine hundred sixty-
164 one, the Inter-Company Double Indemnity Mortality
165 Table. Either table shall be combined with a mortality

166 table permitted for calculating the reserves for life insur-
167 ance policies.

168 (vii) For group life insurance, life insurance issued on
169 the substandard basis and other special benefits—such
170 tables as may be approved by the commissioner.

171 (B) The minimum standard for the valuation of all
172 individual annuity and pure endowment contracts issued
173 on or after the operative date of this paragraph (B), as
174 defined herein, and for all annuities and pure endowments
175 purchased on or after such operative date under group
176 annuity and pure endowment contracts, shall be the com-
177 missioners reserve valuation method defined in subdivi-
178 sion (b) and the following tables and interest rates:

179 (i) For individual annuity and pure endowment con-
180 tracts issued prior to the first day of January, nineteen
181 hundred eighty-six, excluding any disability and acciden-
182 tal death benefits in such contracts—the 1971 Individual
183 Annuity Mortality Table, or any modification of this table
184 approved by the commissioner, and six percent interest
185 for single premium immediate annuity contracts, and four
186 percent interest for all other individual annuity and pure
187 endowment contracts.

188 (ii) For individual annuity and pure endowment con-
189 tracts issued on or after the first day of January, nineteen
190 hundred eighty-six, excluding any disability and acciden-
191 tal death benefits in such contracts—the 1971 Individual
192 Annuity Mortality Table, or any modification of this
193 table approved by the commissioner, and three and one-
194 half percent interest.

195 (iii) For all annuities and pure endowments purchased
196 prior to the first day of January, nineteen hundred eighty-
197 six under group annuity and pure endowment contracts,
198 excluding any disability and accidental death benefits
199 purchased under such contracts—the 1971 Group Annuity
200 Mortality Table, or any modification of this table ap-
201 proved by the commissioner, and six percent interest.

202 (iv) For all annuities and pure endowments purchased
203 on or after the first day of January, nineteen hundred
204 eight-six under group annuity and pure endowment

205 contracts, excluding any disability and accidental death
206 benefits purchased under such contracts—the 1971 Group
207 Annuity Mortality Table, or any modification of this
208 table approved by the commissioner, and three and one-
209 half percent interest.

210 After the effective date of this amendatory act of 1974,
211 any company may file with the commissioner a written
212 notice of its election to comply with the provisions of this
213 paragraph (B) after a specified date before the first day
214 of January, nineteen hundred and seventy-nine, which
215 shall be the operative date of this paragraph (B) for
216 such company, provided that a company may elect a
217 different operative date for individual annuity and pure
218 endowment contracts from that elected for group annuity
219 and pure endowment contracts. If a company makes no
220 such election, the operative date of this paragraph (B)
221 for such company shall be the first day of January, nine-
222 teen hundred and seventy-nine.

223 (b) Reserves according to the commissioners reserve
224 valuation method, for the life insurance and endowment
225 benefits of policies providing for a uniform amount of
226 insurance and requiring the payment of uniform pre-
227 miums shall be the excess, if any, of the present value,
228 at the date of valuation, of such future guaranteed bene-
229 fits provided for by such policies, over the then present
230 value of any future modified net premium therefor. The
231 modified net premiums for any such policy, shall be such
232 uniform percentage of the respective contract premiums
233 for such benefits that the present value, at the date of
234 issue of the policy of all such modified net premiums shall
235 be equal to the sum of the then present value of such
236 benefits provided for by the policy and the excess of (A)
237 over (B), as follows:

238 (A) A net level annual premium equal to the present
239 value, at the date of issue, of such benefits provided for
240 after the first policy year, divided by the present value,
241 at the date of issue, of an annuity of one per annum pay-
242 able on the first and each subsequent anniversary of
243 such policy or which the premium falls due: *Provided,*
244 *however,* That such net level annual premium shall not

245 exceed the net level annual premium on the nineteen-
246 year premium whole life plan for insurance of the same
247 amount at an age one year higher than the age at issue
248 of such policy.

249 (B) A net one-year term premium for such benefits
250 provided for in the first policy year.

251 Reserves according to the commissioners reserve valu-
252 ation method for (i) life insurance policies providing for
253 a varying amount of insurance or requiring the payment
254 of varying premiums, (ii) annuity and pure endowment
255 contract (iii) disability and accidental death benefits in
256 all policies and contracts, and (iv) all other benefits,
257 except life insurance and endowment benefits in life insur-
258 ance policies, shall be calculated by a method consistent
259 with the principles of this subdivision (b), except that
260 any extra premiums charged because of impairments or
261 special hazards shall be disregarded in the determination
262 of modified net premiums.

263 (c) In no event shall an insurer's aggregate reserves for
264 all life insurance policies, excluding disability and acci-
265 dental death benefits, be less than the aggregate reserves
266 calculated in accordance with the method set forth in
267 subdivision (b) and the mortality table or tables and
268 rate or rates of interest used in calculating nonforfeiture
269 benefits for such policies.

270 (d) Reserves for any category of policies, contracts or
271 benefits as established by the commissioner may be calcu-
272 lated, at the option of the insurer, according to any stan-
273 dards which produce greater aggregate reserves for such
274 category than those calculated according to the minimum
275 standard herein provided, but the rate or rates of interest
276 used shall not be higher than the corresponding rate or
277 rates of interest used in calculating any nonforfeiture
278 benefits provided for therein: *Provided, however,* That
279 reserves for participating life insurance policies may, with
280 the consent of the commissioner, be calculated according
281 to a rate of interest lower than the rate of interest used
282 in calculating the nonforfeiture benefits in such policies,
283 with the further proviso that if such lower rate differs
284 from the rate used in the calculation of the nonforfeiture

285 benefits by more than one-half percent the insurer issuing
286 such policies shall file with the commissioner a plan pro-
287 viding for such equitable increases, if any, in the cash
288 surrender values and nonforfeiture benefits in such poli-
289 cies as the commissioner shall approve.

290 (e) If the gross premium charged by any life insurer
291 on any policy or contract is less than the net premium for
292 the policy or contract according to the mortality table,
293 rate of interest and method used in calculating the re-
294 serve thereon, there shall be maintained on such policy
295 or contracts a deficiency reserve in addition to all other
296 reserves required by law. For each such policy or con-
297 tract the deficiency reserve shall be the present value,
298 according to such standard, of an annuity of the difference
299 between such net premium and the premium charged for
300 such policy or contract, running for the remainder of the
301 premium-paying period.

ARTICLE 13. LIFE INSURANCE.

§33-13-30. Standard nonforfeiture law.

1 (1) In the case of policies issued on or after
2 the original operative date of this provision, no
3 policy of life insurance, except as stated in sub-
4 section six, shall be delivered or issued for de-
5 livery in this state unless it shall contain in
6 substance the following provisions, or correspond-
7 ing provisions which in the opinion of the com-
8 missioner are at least as favorable to the de-
9 faulting or surrendering policyholder:

10 (a) That, in the event of default in any premium pay-
11 ment, the insurer will grant, upon proper request not
12 later than sixty days after the due date of the premium
13 in default, a paid-up nonforfeiture benefit on a plan
14 stipulated in the policy, effective as of such due date, of
15 such value as may be hereinafter specified;

16 (b) That, upon surrender of the policy within sixty
17 days after the due date of any premium payment in de-
18 fault after premiums have been paid for at least three
19 full years, the insurer will pay, in lieu of any paid-up

20 nonforfeiture benefit, a cash surrender value of such
21 amount as may be hereinafter specified;

22 (c) That a specified paid-up nonforfeiture benefit shall
23 become effective as specified in the policy unless the per-
24 son entitled to make such election elects another avail-
25 able option not later than sixty days after the due date
26 of the premium in default;

27 (d) That, if the policy shall have become paid up by
28 completion of all premium payments or if it is con-
29 tinued under any paid-up nonforfeiture benefit which
30 became effective on or after the third policy anniversary
31 the insurer will pay, upon surrender of the policy within
32 thirty days after any policy anniversary, a cash surrender
33 value of such amount as may be hereinafter specified;

34 (e) A statement of the mortality table and interest
35 rate used in calculating the cash surrender values and
36 the paid-up nonforfeiture benefits available under the
37 policy, together with a table showing the cash surrender
38 value, if any, and paid-up nonforfeiture benefits, if any,
39 available under the policy on each policy anniversary
40 either during the first twenty policy years or during the
41 term of the policy, whichever is shorter, such values and
42 benefits to be calculated upon the assumption that there
43 are no dividends or paid-up additions credited to the
44 policy and that there is no indebtedness to the insurer on
45 the policy;

46 (f) A statement that the cash surrender values and
47 the paid-up nonforfeiture benefits available under the
48 policy are not less than the minimum values and benefits
49 required by or pursuant to the insurance law of the state
50 in which the policy is delivered; an explanation of the
51 manner in which the cash surrender values and the paid-
52 up nonforfeiture benefits are altered by the existence of
53 any paid-up additions credited to the policy or any in-
54 debtedness to the company on the policy; if a detailed
55 statement of the method of computation of the values
56 and benefits shown in the policy is not stated therein
57 a statement that such method of computation has been
58 filed with the insurance supervisory official of the state

59 in which the policy is delivered; and a statement of the
60 method to be used in calculating the cash surrender value
61 and paid-up nonforfeiture benefit available under the
62 policy on any policy anniversary beyond the last an-
63 niversary for which such values and benefits are con-
64 secutively shown in the policy.

65 Any of the foregoing provisions or portions thereof,
66 not applicable by reason of the plan of insurance may,
67 to the extent inapplicable, be omitted from the policy.

68 The insurer shall reserve the right to defer the pay-
69 ment of any cash surrender value for a period of six
70 months after demand therefor with surrender of the
71 policy.

72 (2) Any cash surrender value available under the
73 policy in the event of default in a premium payment due
74 on any policy anniversary, whether or not required by
75 subsection one, shall be an amount not less than the
76 excess, if any, of the present value, on such anniversary,
77 of the future guaranteed benefits which would have been
78 provided for by the policy, including any existing paid-
79 up additions, if there had been no default, over the sum
80 of (i) the then present value of the adjusted premiums
81 as defined in subsections four, four-a and four-b, cor-
82 responding to premiums which would have fallen due on
83 and after such anniversary, and (ii) the amount of any
84 indebtedness to the insurer on the policy. Any cash
85 surrender value available within thirty days after any
86 policy anniversary under any policy paid up by com-
87 pletion of all premium payments or any policy con-
88 tinued under any paid-up nonforfeiture benefit, whether
89 or not required by subsection one, shall be an amount
90 not less than the present value, on such anniversary, of
91 the future guaranteed benefits provided for by the
92 policy, including any existing paid-up additions decreased
93 by any indebtedness to the insurer on the policy.

94 (3) Any paid-up nonforfeiture benefit available un-
95 der the policy in the event of default in a premium
96 payment due on any policy anniversary shall be such
97 that its present value as of such anniversary shall be
98 at least equal to the cash surrender value then pro-

99 vided for by the policy or, if none is provided for that
100 cash surrender value which would have been required
101 by this section in the absence of the condition that pre-
102 miums shall have been paid for at least a specific
103 period.

104 (4) Except as provided in the third paragraph of this
105 subsection, the adjusted premiums for any policy shall
106 be calculated on an annual basis and shall be such
107 uniform percentage of the respective premiums speci-
108 fied in the policy for each policy year, excluding extra
109 premiums on a substandard policy, that the present
110 value, at the date of issue of the policy, of all such ad-
111 justed premiums shall be equal to the sum of (i) the
112 then present value of the future guaranteed benefits
113 provided for by the policy; (ii) two percent of the amount
114 of insurance, if the insurance be uniform in amount, or
115 of the equivalent uniform amount, as hereinafter
116 defined, if the amount of insurance varies with dura-
117 tion of the policy; (iii) forty percent of the adjusted
118 premium for the first policy year; (iv) twenty-five per-
119 cent of either the adjusted premium for the first policy
120 year or the adjusted premium for a whole life policy
121 of the same uniform or equivalent uniform amount with
122 uniform premiums for the whole of life issued at the
123 same age for the same amount of insurance, whichever
124 is less: *Provided, however,* That in applying the per-
125 centages specified in (iii) and (iv) above, no adjusted
126 premium shall be deemed to exceed four percent of the
127 amount of insurance or uniform amount equivalent there-
128 to. The date of issue of a policy for the purpose of this
129 subsection shall be the date as of which the rated age of
130 the insured is determined.

131 In the case of a policy providing an amount of in-
132 surance varying with duration of the policy, the equiva-
133 lent uniform amount thereof for the purpose of this
134 subsection shall be deemed to be the uniform amount
135 of insurance provided by an otherwise similar policy,
136 containing the same endowment benefit or benefits, if
137 any, issued at the same age and for the same term, the
138 amount of which does not vary with duration and the

139 benefits under which have the same present value at
140 the date of issue as the benefits under the policy: *Pro-*
141 *vided, however,* That in the case of a policy providing
142 a varying amount of insurance issued on the life of a
143 child under age ten, the equivalent uniform amount
144 may be computed as though the amount of insurance
145 provided by the policy prior to the attainment of age
146 ten were the amount provided by such policy at age
147 ten.

148 The adjusted premiums for any policy providing term
149 insurance benefits by rider or supplemental policy pro-
150 vision shall be equal to (a) the adjusted premiums for
151 an otherwise similar policy issued at the same age with-
152 out such term insurance benefits, increased, during the
153 period for which premiums for such term insurance
154 benefits are payable, by (b) the adjusted premiums for
155 such term insurance, the foregoing items (a) and (b)
156 being calculated separately and as specified in the first
157 two paragraphs of this subsection except that, for the
158 purposes of (ii), (iii) and (iv) of the first such paragraph,
159 the amount of insurance or equivalent uniform amount
160 of insurance used in the calculation of the adjusted pre-
161 miums referred to in (b) shall be equal to the excess of
162 the corresponding amount determined for the entire
163 policy over the amount used in the calculation of the
164 adjusted premiums in (a).

165 Except as otherwise provided in subsection four-a and
166 four-b, all adjusted premiums and present values re-
167 ferred to in this section shall for all policies of ordinary
168 insurance be calculated on the basis of the Commis-
169 sioners 1941 Standard Ordinary Mortality Table: *Pro-*
170 *vided,* That for any category of ordinary insurance is-
171 sued on female risks, adjusted premiums and present
172 values may be calculated according to an age not more
173 than three years younger than the actual age of the
174 insured, and such calculations for all policies of in-
175 dustrial insurance shall be made on the basis of the
176 1941 Standard Industrial Mortality Table. All calcula-
177 tions shall be made on the basis of the rate of interest,
178 not exceeding three and one-half percent per annum,

179 specified in the policy for calculating cash surrender
180 values and paid-up nonforfeiture benefits: *Provided*, That
181 in calculating the present value of any paid-up term in-
182 surance with accompanying pure endowment, if any,
183 offered as a nonforfeiture benefit, the rate of mortality
184 assumed may be not more than one hundred and thirty
185 percent of the rates of mortality according to such ap-
186 plicable table: *Provided further*, That for insurance is-
187 sued on a substandard basis, the calculation of any
188 such adjusted premiums and present values may be
189 based on such other table of mortality as may be spec-
190 ified by the insurer and approved by the commis-
191 sioner.

192 (4a) In the case of ordinary policies issued on or
193 after the operative date of this subsection four-a as
194 defined herein, all adjusted premiums and present values
195 referred to in this section shall be calculated on the
196 basis of the Commissioners 1958 Standard Ordinary Mor-
197 tality Table and the rate of interest not exceeding
198 three and one-half percent per annum specified in
199 the policy for calculating cash surrender values and
200 paid-up nonforfeiture benefits provided that such rate
201 of interest shall not exceed three and one-half per-
202 cent per annum except that a rate of interest not ex-
203 ceeding four percent per annum may be used for policies
204 issued on or after the effective date of this amendatory
205 act of 1974 and prior to the first day of January, one
206 thousand nine hundred eighty-six: *Provided*, That for
207 any category of ordinary insurance issued on female
208 risks, adjusted premiums and present values may be
209 calculated according to an age not more than three years
210 younger than the actual age of the insured: *Provided*,
211 *however*, That in calculating the present value of any
212 paid-up term insurance with accompanying pure en-
213 dowment, if any, offered as a nonforfeiture benefit, the
214 rates of mortality assumed may be not more than those
215 shown in the Commissioners 1958 Extended Term In-
216 surance Table: *Provided, further*, That for insurance is-
217 sued on a substandard basis, the calculation of any
218 such adjusted premiums and present values may be
219 based on such other table of mortality as may be spec-

220 ified by the company and approved by the commis-
221 sioner.

222 After the third day of June, one thousand nine hundred
223 fifty-nine, any company may file with the commissioner
224 a written notice of its election to comply with the pro-
225 visions of this subsection after a specified date before
226 the first day of January, one thousand nine hundred
227 sixty-six. After the filing of such notice, then upon such
228 specified date (which shall be the operative date of this
229 subsection for such company), this subsection shall be-
230 come operative with respect to the ordinary policies
231 thereafter issued by such company. If a company makes
232 no such election, the operative date of this subsection for
233 such company shall be the first day of January, one
234 thousand nine hundred sixty-six.

235 (4b) In the case of industrial policies issued on or
236 after the operative date of this subsection four-b as de-
237 fined herein, all adjusted premiums and present values
238 referred to in this section shall be calculated on the
239 basis of the Commissioners 1961 Standard Industrial
240 Mortality Table and the rate of interest not exceed-
241 ing three and one-half percent per annum specified
242 in the policy for calculating cash surrender values and
243 paid-up nonforfeiture benefits provided that such rate
244 of interest shall not exceed three and one-half percent
245 per annum except that a rate of interest not exceeding
246 four percent per annum may be used for policies is-
247 sued on or after the effective date of this amendatory
248 act of 1974 and prior to the first day of January, nine-
249 teen hundred eighty-six: *Provided, however,* That in
250 calculating the present value of any paid-up term in-
251 surance with accompanying pure endowment, if any,
252 offered as a nonforfeiture benefit, the rates of mor-
253 tality assumed may be not more than those shown in
254 the Commissioners 1961 Industrial Extended Term In-
255 surance Table: *Provided further,* That for insurance is-
256 sued on a substandard basis, the calculation of any such
257 adjusted premiums and present values may be based
258 on such other table of mortality as may be specified by
259 the company and approved by the commissioner.

260 After the thirty-first day of May, one thousand nine
261 hundred sixty-five, any company may file with the com-
262 missioner a written notice of its election to comply with
263 the provisions of this subsection after a specified date
264 before the first day of January, one thousand nine
265 hundred sixty-eight. After the filing of such notice, then
266 upon such specified date (which shall be the operative
267 date of this subsection for such company), this subsec-
268 tion shall become operative with respect to the industrial
269 policies thereafter issued by such company. If a com-
270 pany makes no such election, the operative date of
271 this subsection for such company shall be the first day
272 of January, one thousand nine hundred sixty-eight.

273 (5) Any cash surrender value and any paid-up non-
274 forfeiture benefit, available under the policy in the event
275 of default in a premium payment due at any time other
276 than on the policy anniversary, shall be calculated with
277 allowance for the lapse of time and the payment of
278 fractional premiums beyond the last preceding policy
279 anniversary. All values referred to in subsections two,
280 three, four, four-a and four-b may be calculated upon
281 the assumption that any death benefit is payable at the
282 end of the policy year of death. The net value of any
283 paid-up additions, other than paid-up term additions,
284 shall be not less than the dividends paid to provide such
285 additions. Notwithstanding the provisions of subsection
286 two, additional benefits payable (a) in the event of
287 death or dismemberment by accident or accidental means,
288 (b) in the event of total and permanent disability, (c)
289 as reversionary or deferred reversionary annuity benefits,
290 (d) as term insurance benefits provided by a rider or
291 supplemental policy provision to which, if issued as a
292 separate policy, this subsection would not apply, (e) as
293 term insurance on the life of a child or on the lives
294 of children provided in a policy on the life of a parent
295 of the child, if such term insurance expires before the
296 child's age is twenty-six, is uniform in amount after
297 the child's age is one, and has not become paid up by
298 reason of the death of a parent of the child, and (f) as
299 other policy benefits additional to life insurance and
300 endowment benefits, and premiums for all such addi-

301 tional benefits, shall be disregarded in ascertaining cash
302 surrender values and nonforfeiture benefits required by
303 this section, and no such additional benefits shall be
304 required to be included in any paid-up nonforfeiture
305 benefits.

306 (6) This section shall not apply to any reinsurance,
307 group insurance, pure endowment, annuity or reversion-
308 ary annuity contract, nor to any term policy of uniform
309 amount, or renewal thereof, of fifteen years or less ex-
310 piring before age sixty-six, for which uniform premiums
311 are payable during the entire term of the policy, nor
312 to any term policy of decreasing amount on which each
313 adjusted premium, calculated as specified in subsections
314 four, four-a and four-b, is less than the adjusted pre-
315 mium so calculated on a policy issued at the same age
316 and for the same initial amount of insurance for a term
317 defined as follows—for ages at issue fifty and under,
318 the term shall be fifteen years, thereafter, the terms
319 shall decrease one year for each year of age beyond
320 fifty, nor to any policy which shall be delivered out-
321 side this state through an agent or other representative
322 of the insurer issuing the policy.

CHAPTER 51

(H. B. 718—By Mr. Speaker, Mr. McManus, and Mr. Seibert)

[Passed March 1, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact article eleven, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to unfair methods of competition and unfair and deceptive acts and practices in the business of insurance; penalties for violations; severability.

Be it enacted by the Legislature of West Virginia:

That article eleven, 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 11. UNFAIR TRADE PRACTICES.

- §33-11-1. Declaration of purpose.
- §33-11-2. Definitions.
- §33-11-3. Unfair methods of competition and unfair or deceptive acts or practices prohibited.
- §33-11-4. Unfair methods of competition and unfair or deceptive acts or practices defined.
- §33-11-5. Favored agent or insurer; coercion of debtors.
- §33-11-6. Violations, cease and desist and penalty orders and modifications thereof.
- §33-11-7. Undefined acts or practices.
- §33-11-8. Penalty for violation of cease and desist orders.
- §33-11-9. Provisions of article additional to existing law.
- §33-11-10. Severability.

§33-11-1. Declaration of purpose.

1 The purpose of this article is to regulate trade practices in
2 the business of insurance in accordance with the intent of
3 Congress as expressed in the act of Congress of March ninth,
4 one thousand nine hundred forty-five (Public Law fifteen, sev-
5 enty-ninth Congress), by defining, or providing for the deter-
6 mination of, all such practices in this state which constitute
7 unfair methods of competition or unfair or deceptive acts or
8 practices and by prohibiting the trade practices so defined or
9 determined.

§33-11-2. Definitions.

1 As used in this article:

2 (a) "Person" includes any individual, company, insurer,
3 association, organization, society, reciprocal, business trust,
4 corporation, or any other legal entity, including agents and
5 brokers. "Person" also includes hospital service corporations,
6 medical service corporations and dental service corporations as
7 defined in article twenty-four of this chapter, and health care
8 corporations as defined in article twenty-five of this chapter.
9 For purposes of this article hospital service corporations, medi-
10 cal service corporations, dental service corporations, and health
11 care corporations shall be deemed to be in the business of in-
12 surance.

13 (b) "Commissioner" means the insurance commissioner of
14 West Virginia.

15 (c) "Insurance policy" or "insurance contract" means the
16 contract effecting insurance, or the certificate thereof, by
17 whatever name called, and includes all clauses, riders, en-
18 dorsements and papers attached thereto and a part thereof.

§33-11-3. Unfair methods of competition and unfair or deceptive acts or practices prohibited.

1 No person shall engage in this state in any trade practice
2 which is defined in this article as, or determined pursuant to
3 section seven of this article to be, an unfair method of compe-
4 tition or an unfair or deceptive act or practice in the business
5 of insurance.

§33-11-4. Unfair methods of competition and unfair or deceptive acts or practices defined.

1 The following are hereby defined as unfair methods of
2 competition and unfair or deceptive acts or practices in the
3 business of insurance:

4 (1) *Misrepresentation and false advertising of insurance*
5 *policies.*—No person shall make, issue, circulate, or cause to
6 be made, issued or circulated, any estimate, circular, state-
7 ment, sales presentation, omission, or comparison which:

8 (a) Misrepresents the benefits, advantages, conditions, or
9 terms of any insurance policy; or

10 (b) Misrepresents the dividends or share of the surplus to
11 be received on any insurance policy; or

12 (c) Make any false or misleading statements as to the
13 dividends or share of surplus previously paid on any insurance
14 policy; or

15 (d) Is misleading or is a misrepresentation as to the
16 financial condition of any person, or as to the legal reserve
17 system upon which any life insurer operates; or

18 (e) Uses any name or title of any insurance policy or
19 class of insurance policies misrepresenting the true nature
20 thereof; or

21 (f) Is a misrepresentation for the purpose of inducing
22 or tending to induce the lapse, forfeiture, exchange, conver-
23 sion, or surrender of any insurance policy; or

24 (g) Is a misrepresentation for the purpose of effecting
25 a pledge or assignment of or effecting a loan against any
26 insurance policy; or

27 (h) Misrepresents any insurance policy as being shares of
28 stock.

29 (2) *False information and advertising generally.*—No per-
30 son shall make, publish, disseminate, circulate or place before
31 the public, or cause, directly or indirectly, to be made,
32 published, disseminated, circulated, or placed before the
33 public, in a newspaper, magazine or other publication, or
34 in the form of a notice, circular, pamphlet, letter or poster
35 or over any radio or television station, or in any other way,
36 an advertisement, announcement or statement containing any
37 assertion, representation or statement with respect to the
38 business of insurance or with respect to any person in the
39 conduct of his insurance business, which is untrue, deceptive
40 or misleading.

41 (3) *Defamation.*—No person shall make, publish, dissem-
42 inate, or circulate, directly or indirectly, or aid, abet or
43 encourage the making, publishing, disseminating or circulating
44 of any oral or written statement or any pamphlet, circular,
45 article or literature which is false, or maliciously critical
46 of or derogatory to the financial condition of any person and
47 which is calculated to injure such person.

48 (4) *Boycott, coercion and intimidation.*—No person shall
49 enter into any agreement to commit, or by any concerted
50 action commit, any act of boycott, coercion or intimidation
51 resulting in or tending to result in unreasonable restraint of,
52 or monopoly in, the business of insurance.

53 (5) *False statements and entries.*—(a) No person shall
54 knowingly file with any supervisory or other public official,
55 or knowingly make, publish, disseminate, circulate or deliver
56 to any person, or place before the public, or knowingly
57 cause directly or indirectly, to be made, published, dis-
58 seminated, circulated, delivered to any person, or placed
59 before the public, any false material statement of fact as to
60 the financial condition of a person.

61 (b) No person shall knowingly make any false entry of a

62 material fact in any book, report or statement of any person
63 or knowingly omit to make a true entry of any material fact
64 pertaining to the business of such person in any book, report
65 or statement of such person.

66 (6) *Stock operations and advisory board contracts.*—No
67 person shall issue or deliver or permit agents, officers or
68 employees to issue or deliver, agency company stock or other
69 capital stock, or benefit certificates or shares in any com-
70 mon-law corporation, or securities or any special or advisory
71 board contracts or other contracts of any kind promising
72 returns and profits as an inducement to insurance.

73 (7) *Unfair discrimination.*—(a) No person shall make
74 or permit any unfair discrimination between individuals of
75 the same class and equal expectation of life in the rates
76 charged for any contract of life insurance or of life annuity
77 or in the dividends or other benefits payable thereon, or
78 in any other of the terms and conditions of such contract.

79 (b) No person shall make or permit any unfair dis-
80 crimination between individuals of the same class and of
81 essentially the same hazard in the amount of premium policy
82 fees, or rates charged for any policy or contract of accident
83 and sickness insurance or in the benefits payable thereunder,
84 or in any of the terms or conditions of such contract, or in
85 any other manner whatever.

86 (c) As to kinds of insurance other than life and accident
87 and sickness, no person shall make or permit any unfair
88 discrimination in favor of particular persons, or between in-
89 sureds or subjects of insurance having substantially like
90 insuring, risk and exposure factors or expense elements, in the
91 terms or conditions of any insurance contract, or in the rate
92 or amount of premium charge therefor. This paragraph shall
93 not apply as to any premium or premium rate in effect pursuant
94 to article twenty of this chapter.

95 (8) *Rebates.*—(a) Except as otherwise expressly provided
96 by law, no person shall knowingly permit or offer to make
97 or make any contract of life insurance, life annuity, or
98 accident and sickness insurance, or agreement as to such
99 contract other than as plainly expressed in the insurance

100 contract issued thereon, or pay or allow or give or offer
101 to pay, allow or give, directly or indirectly, as inducement
102 to such insurance or annuity, any rebate of premiums payable
103 on the contract, or any special favor or advantage in the
104 dividends or other benefits thereon, or any valuable con-
105 sideration or inducement whatever not specified in the contract;
106 or give or sell, or purchase or offer to give, sell or purchase
107 as inducement to such insurance contract or annuity or in
108 connection therewith, any stocks, bonds, or other securities
109 of any insurance company or other corporation, association,
110 or partnership, or any dividends or profits accrued thereon,
111 or anything of value whatsoever not specified in the contract.

112 (b) Nothing in subdivision seven or paragraph (a) of sub-
113 division eight of this section shall be construed as including
114 within the definition of unfair discrimination or rebates any
115 of the following practices:

116 (i) In the case of any contract of life insurance or life
117 annuity, paying bonuses to policyholders or otherwise abating
118 their premiums in whole or in part out of surplus accumulated
119 from nonparticipating insurance: *Provided*, That any such
120 bonuses or abatement of premiums shall be fair and equitable
121 to policyholders and for the best interests of the insurer and
122 its policyholders;

123 (ii) In the case of life insurance policies issued on the
124 industrial debit plan, making allowance to policyholders who
125 have continuously for a specified period made premium
126 payments directly to an office of the insurer in an amount
127 which fairly represents the saving in collection expenses;

128 (iii) Readjustment of the rate of premium for a group
129 insurance policy based on the loss or expense thereunder, at
130 the end of the first or any subsequent policy year of insurance
131 thereunder, which may be made retroactive only for such
132 policy year;

133 (iv) Issuing life or accident and sickness policies on a
134 salary savings or payroll deduction plan at a reduced rate
135 commensurate with the savings made by the use of such plan.

136 (c) With respect to insurance other than life, accident and
137 sickness, ocean marine or marine protection and indemnity in-

138 surance, no person shall knowingly charge, demand or receive
139 a premium for such insurance except in accordance with an ap-
140 plicable filing on file with the commissioner. No such person
141 shall pay, allow or give, directly or indirectly, either as an
142 inducement to insurance or after insurance has been effected,
143 any rebate, discount, abatement, credit or reduction of the pre-
144 mium named in a policy of insurance, or any special favor
145 or advantage in the dividends or other benefits to accrue there-
146 on, or any valuable consideration or inducement whatever, not
147 specified in the policy of insurance, except to the extent
148 provided for in an applicable filing. No insured named in a
149 policy of insurance, nor any relative, representative or employee
150 of such insured shall knowingly receive or accept directly or
151 indirectly, any such rebate, discount, abatement, credit or re-
152 duction of premium, or any such special favor or advantage
153 or valuable consideration or inducement. Nothing in this
154 section shall be construed as prohibiting the payment of com-
155 missions or other compensation to duly licensed agents and
156 brokers, nor as prohibiting any insurer from allowing or re-
157 turning to its participating policyholders, members or sub-
158 scribers, dividends, savings or unabsorbed premium deposits.
159 As used in this section the word "insurance" includes suretyship
160 and the word "policy" includes bond.

161 (9) *Unfair claim settlement practices.*—No person shall
162 commit or perform with such frequency as to indicate a general
163 business practice any of the following:

164 (a) Misrepresenting pertinent facts or insurance policy
165 provisions relating to coverages at issue;

166 (b) Failing to acknowledge and act reasonably promptly
167 upon communications with respect to claims arising under
168 insurance policies;

169 (c) Failing to adopt and implement reasonable standards
170 for the prompt investigation of claims arising under insurance
171 policies;

172 (d) Refusing to pay claims without conducting a reason-
173 able investigation based upon all available information;

174 (e) Failing to affirm or deny coverage of claims within
175 a reasonable time after proof of loss statements have been
176 completed;

177 (f) Not attempting in good faith to effectuate prompt,
178 fair and equitable settlements of claims in which liability
179 has become reasonably clear;

180 (g) Compelling insureds to institute litigation to recover
181 amounts due under an insurance policy by offering sub-
182 stantially less than the amounts ultimately recovered in actions
183 brought by such insureds, when such insureds have made
184 claims for amounts reasonably similar to the amounts ulti-
185 mately recovered;

186 (h) Attempting to settle a claim for less than the amount
187 to which a reasonable man would have believed he was
188 entitled by reference to written or printed advertising ma-
189 terial accompanying or made part of an application;

190 (i) Attempting to settle claims on the basis of an applica-
191 tion which was altered without notice to, or knowledge or
192 consent of the insured;

193 (j) Making claims payments to insureds or beneficiaries
194 not accompanied by a statement setting forth the coverage
195 under which payments are being made;

196 (k) Making known to insureds or claimants a policy of
197 appealing from arbitration awards in favor of insureds or
198 claimants for the purpose of compelling them to accept settle-
199 ments or compromises less than the amount awarded in
200 arbitration;

201 (l) Delaying the investigation or payment of claims by
202 requiring an insured, claimant, or the physician of either
203 to submit a preliminary claim report and then requiring the
204 subsequent submission of formal proof of loss forms, both of
205 which submissions contain substantially the same information;

206 (m) Failing to promptly settle claims, where liability has
207 become reasonably clear, under one portion of the insurance
208 policy coverage in order to influence settlements under other
209 portions of the insurance policy coverage;

210 (n) Failing to promptly provide a reasonable explanation
211 of the basis in the insurance policy in relation to the facts
212 or applicable law for denial of a claim or for the offer of a
213 compromise settlement.

214 (10) *Failure to maintain complaint handling procedures.*
215 —No insurer shall fail to maintain a complete record of all
216 the complaints which it has received since the date of its
217 last examination under section nine, article two of this
218 chapter. This record shall indicate the total number of
219 complaints, their classification by line of insurance, the
220 nature of each complaint, the disposition of these complaints,
221 and the time it took to process each complaint. For purposes
222 of this subsection, “complaint” shall mean any written com-
223 munication primarily expressing a grievance.

224 (11) *Misrepresentation in insurance applications.*—No per-
225 son shall make false or fraudulent statements or representations
226 on or relative to an application for an insurance policy, for
227 the purpose of obtaining a fee, commission, money or other
228 benefit from any insurer, agent, broker or individual.

§33-11-5. Favored agent or insurer; coercion of debtors.

1 (a) No person may:

2 (1) Require, as a condition precedent to the lending of
3 money or extension of credit, or any renewal thereof, that
4 the person to whom such money or credit is extended or whose
5 obligation the creditor is to acquire or finance, negotiate
6 any policy or contract of insurance through a particular
7 insurer or group of insurers or agent or broker or group of
8 agents or brokers;

9 (2) Unreasonably disapprove the insurance policy provided
10 by a borrower for the protection of the property securing the
11 credit or lien;

12 (3) Require directly or indirectly that any borrower,
13 mortgagor, purchaser, insurer, broker, or agent pay a separate
14 charge, in connection with the handling of any insurance
15 policy required as security for a loan on real estate, or pay
16 a separate charge to substitute the insurance policy of one
17 insurer for that of another; or

18 (4) Use or disclose information resulting from a require-
19 ment that a borrower, mortgagor or purchaser furnish in-
20 surance of any kind on real property being conveyed or used
21 as collateral security to a loan, when such information is

22 to the advantage of the mortgagee, vendor, or lender, or
23 is to the detriment of the borrower, mortgagor, purchaser,
24 insurer, or the agent or broker complying with such a
25 requirement.

26 (b) (1) Subdivision (3), subsection (a) does not include
27 the interest which may be charged on premium loans or pre-
28 mium advancements in accordance with the security instrument.

29 (2) For purposes of subdivision (2), subsection, (a) such
30 disapproval shall be deemed unreasonable if it is not based
31 solely on reasonable standards uniformly applied, relating
32 to the extent of coverage required and the financial soundness
33 and the services of an insurer. Such standards shall not dis-
34 criminate against any particular type of insurer, nor shall such
35 standards call for the disapproval of an insurance policy be-
36 cause such policy contains coverage in addition to that required.

37 (3) The commissioner may investigate the affairs of any
38 person to whom this subsection applies to determine whether
39 such person has violated this subsection. If a violation of
40 the subsection is found, the person in violation shall be
41 subject to the same procedures and penalties as are applicable
42 to other provisions of this article.

43 (4) For purposes of this section, "person" includes any
44 individual, corporation, association, partnership, or other legal
45 entity.

**§33-11-6. Violations, cease and desist and penalty orders and mod-
fications thereof.**

1 If, after notice and hearing, the commissioner determines
2 that any person has engaged in or is engaging in any method of
3 competition, act or practice in violation of the provisions of
4 this article or any rules or regulations promulgated by the com-
5 missioner thereunder, the commissioner shall issue an order
6 directing such person to cease and desist from engaging in
7 such method of competition, act or practice, and in addition
8 thereto, the commissioner may at his discretion order any one
9 or more of the following:

10 (a) Require the payment to the state of West Virginia of a
11 penalty in a sum not exceeding one thousand dollars for each

12 and every act or violation, but not to exceed an aggregate pen-
13 alty of ten thousand dollars, unless the person knew or reason-
14 ably should have known he was in violation of this article, in
15 which case the penalty shall be not more than five thousand
16 dollars for each and every act or violation, but not to exceed
17 an aggregate penalty of fifty thousand dollars in any six
18 month period.

19 (b) Revoke or suspend the license of such person if he
20 knew or reasonably should have known that he was in viola-
21 tion of this article.

22 (c) No order of the commissioner pursuant to this article
23 or order of court to enforce it, or holding of a hearing, shall in
24 any manner relieve or absolve any person affected by such
25 order or hearing from any other liability, penalty or forfeiture
26 under law.

§33-11-7. Undefined acts or practices.

1 If, after notice and hearing, the commissioner determines
2 that any person transacting insurance is engaging in this state
3 in any method of competition or act or practice in the trans-
4 action of such insurance which is not defined in this article,
5 and that such method of competition is unfair or such act or
6 practice is unfair or deceptive, the commissioner shall issue an
7 order directing such person to cease and desist from engaging
8 in such method of competition, act or practice.

§33-11-8. Penalty for violation of cease and desist orders.

1 If, after notice and hearing, the commissioner determines
2 that any person has violated a cease and desist order issued by
3 the commissioner and which such order is still in effect, the
4 commissioner may at his discretion order any one or more of
5 the following:

6 (a) Require the payment to the state of West Virginia of a
7 penalty in a sum not exceeding ten thousand dollars for each
8 and every act or violation.

9 (b) Revoke or suspend the license of such person.

§33-11-9. Provisions of article additional to existing law.

1 The powers vested in the commissioner by this article, shall

- 2 be additional to any other powers to enforce any penalties, fines
- 3 or forfeitures authorized by law with respect to the methods,
- 4 acts and practices hereby declared to be unfair or deceptive.

§33-11-10. Severability.

- 1 In the event any provision of this article, or the application
- 2 of such provision to any person or circumstance, shall be held
- 3 unconstitutional or otherwise invalid by any court of compe-
- 4 tent jurisdiction, the remainder of this article or the applica-
- 5 tion of the provisions to other persons or circumstances shall
- 6 not be affected thereby.



CHAPTER 52

(H. B. 697—By Mr. Speaker, Mr. McManus, and Mr. Seibert)

[Passed March 2, 1974; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-four, article twelve, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the payment of commissions on insurance; payment of commissions to partnerships or corporations.

Be it enacted by the Legislature of West Virginia:

That section twenty-four, article twelve, 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 12. AGENTS, BROKERS, SOLICITORS AND EXCESS LINE.

§33-12-24. Payment of commissions.

- 1 (a) The entire commission payable by any insurer licensed
- 2 to transact insurance in this state on any insurance policy
- 3 shall be paid directly to the licensed resident agent who
- 4 countersigns the policy. The countersigning agent shall not
- 5 pay any part of such commission to any person other than
- 6 a licensed agent or broker: *Provided*, That the portion of such
- 7 commission retained by the countersigning resident agent
- 8 shall not be less than ten percent of the gross policy premium

9 or fifty percent of the commission payable by the insurer as
10 provided herein, whichever is the lesser amount. The term
11 "commission" as used herein shall include engineering fees,
12 service fees or any other compensation incident to the
13 issuance of a policy payable by or to any insurer, agent or
14 broker.

15 (b) It shall be unlawful for any insurer or agent to
16 pay, and any person to accept, directly or indirectly, any
17 commission except as provided in this section: *Provided,*
18 That any licensed resident agent may pay his commissions, or
19 direct that his commissions be paid, to a partnership of
20 which he is a member, employee or agent, or to a corporation
21 of which he is an officer, employee or agent, if:

22 (1) The commissioner finds that such partnership or
23 corporation is engaged, through its licensed resident agents, in
24 conducting an insurance agency business with respect to the
25 general public.

26 (2) If a partnership, each partner satisfies the commis-
27 sioner that he meets the licensing qualifications as set forth in
28 section two of this article.

29 (3) If a corporation, each officer, employee or any one or
30 more stockholders owning, directly or indirectly, the controlling
31 interest in such corporation satisfies the commissioner that he
32 meets the licensing qualifications as set forth in section two
33 of this article. The requirements set forth in this subdivi-
34 sion shall not apply to clerical employees, or other em-
35 ployees not directly engaged in the selling or servicing of
36 insurance.

37 (c) This section shall not apply to reinsurance, life in-
38 surance or accident or health insurance; nor to excess
39 line insurance procured in accordance with the provisions
40 of this article relating thereto; nor to credit insurance,
41 any contract of insurance covering the rolling stock of
42 any railroad or covering any vessel, aircraft or motor
43 carrier used in interstate or foreign commerce, any liability
44 or other risks incident to the ownership, maintenance
45 or operation thereof, any contract of insurance covering any
46 property in interstate or foreign commerce, or any liability
47 or risks incident thereto.

CHAPTER 53

(S. B. 403—By Mr. Kusic)

[Passed March 5, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article twenty-four, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter thirty-three by adding thereto a new article, designated article twenty-eight, relating to insurance; individual accident and sickness insurance minimum standards; short title; purpose; definitions; standards for policy provisions; minimum standards for benefits; outline of coverage; preexisting conditions.

Be it enacted by the Legislature of West Virginia:

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

Article

- 24. Hospital Service Corporations, Medical Service Corporations and Dental Service Corporations.
- 28. Individual Accident and Sickness Insurance Minimum Standards.

ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS AND DENTAL SERVICE CORPORATIONS.

§33-24-4. Exemptions; applicability of other laws.

1 Every such corporation is hereby declared to be a
2 scientific, nonprofit institution and as such exempt from
3 the payment of all property and other taxes. Every such
4 corporation, to the same extent such provisions are ap-
5 plicable to insurers transacting similar kinds of insurance
6 and not inconsistent with the provisions of this article,
7 shall be governed by and be subject to the provisions of
8 the following articles of this chapter: Article two (insur-
9 ance commissioner) except that under section nine of
10 article two examinations shall be conducted at least once

11 every four years, article four (general provisions) except
 12 that section sixteen of article four shall not be applicable
 13 thereto, article ten (rehabilitation and liquidation), article
 14 eleven (unfair practices and frauds), article twelve
 15 (agents, brokers and solicitors) except that the agent's
 16 license fee shall be one dollar and article twenty-eight (in-
 17 dividual accident and sickness insurance minimum stan-
 18 dards); and no other provision of this chapter shall apply
 19 to such corporations unless specifically made applicable by
 20 the provisions of this article. If, however, any such cor-
 21 poration shall be converted into a corporation organized
 22 for a pecuniary profit, or if it shall transact business with-
 23 out having obtained a license as required by section five of
 24 this article, it shall thereupon forfeit its right to these
 25 exemptions.

**ARTICLE 28. INDIVIDUAL ACCIDENT AND SICKNESS INSURANCE
 MINIMUM STANDARDS.**

- §33-28-1. Short title.
- §33-28-2. Purpose of article.
- §33-28-3. Definition of terms used in article.
- §33-28-4. Standards for policy provisions.
- §33-28-5. Minimum standards for benefits.
- §33-28-6. Outline of coverage.
- §33-28-7. Preexisting conditions.

§33-28-1. Short title.

1 This article shall be known and cited as the "West Vir-
 2 ginia Individual Accident and Sickness Insurance Mini-
 3 mum Standards Act."

§33-28-2. Purpose of article.

1 The purpose of this article is to provide reasonable
 2 standardization and simplification of terms and coverages
 3 of individual accident and sickness insurance policies and
 4 subscriber contracts of hospital and medical service cor-
 5 porations in order to facilitate public understanding and
 6 comparison and to eliminate provisions contained in in-
 7 dividual accident and sickness insurance policies and sub-
 8 scriber contracts of hospital and medical service corpora-
 9 tions which may be misleading or confusing in connection
 10 either with the purchase of such coverages or with the

11 settlement of claims and to provide for full disclosure in
12 the sale of such coverages.

§33-28-3. Definition of terms used in article.

1 As used in this article, unless used in a context that
2 clearly requires a different meaning, the term:

3 (a) "Form" means a policy, contract, rider, endorse-
4 ment or application as provided in section eight, article
5 six of this chapter when used to describe an individual
6 accident and sickness policy form, and means a contract,
7 application, rider or endorsement as provided in section
8 six, article twenty-four of this chapter when used to de-
9 scribe a hospital or medical service corporation subscrib-
10 er's contract.

11 (b) "Accident and sickness insurance" means insur-
12 ance written under article fifteen of this chapter, other
13 than credit accident and sickness insurance, and coverages
14 written under article twenty-four of this chapter. For pur-
15 poses of this article, hospital, medical and dental service
16 corporations shall be deemed to be engaged in the business
17 of insurance.

18 (c) "Policy" means the entire contract between an in-
19 surer and an individual insured, including the policy,
20 riders, endorsements and the application, if attached. The
21 term "policy" shall not include coverages issued pursuant
22 to a conversion privilege under a policy or contract of
23 group insurance.

24 (d) "Subscriber contract" means the entire subscriber
25 contract issued by a hospital, medical or dental service
26 corporation to an individual subscriber, including the con-
27 tract, riders, endorsements and the application, if attached.
28 The term "subscriber contract" shall not include coverages
29 issued pursuant to a conversion privilege under a policy
30 or contract of group insurance.

31 (e) "Direct response insurance product" means an
32 individual policy of accident and sickness insurance or a
33 subscriber contract of a hospital, medical or dental service
34 corporation, the sale of which is effected through direct
35 contact between an insurer and an individual insured or

36 between a hospital, medical or dental service corporation
37 and a subscriber, without employing the intermediary
38 services of an agent, broker or solicitor.

§33-23-4. Standards for policy provisions.

1 (a) The commissioner shall promulgate rules and
2 regulations, in accordance with chapter twenty-nine-a of
3 the code, to establish specific standards, including stan-
4 dards of full and fair disclosure, that set forth the manner,
5 content and required disclosure for the sale of individual
6 policies of accident and sickness insurance and subscriber
7 contracts of hospital, medical and dental service corpora-
8 tions which shall be in addition to, and in accordance with,
9 applicable laws of this state. Such rules and regulations
10 may cover, but shall not be limited to:

- 11 (1) Terms of renewability;
- 12 (2) Initial and subsequent conditions of eligibility;
- 13 (3) Nonduplication of coverage provisions;
- 14 (4) Coverage of dependents;
- 15 (5) Preexisting conditions;
- 16 (6) Termination of insurance;
- 17 (7) Probationary periods;
- 18 (8) Limitations;
- 19 (9) Exceptions;
- 20 (10) Reductions;
- 21 (11) Elimination periods;
- 22 (12) Requirements for replacement;
- 23 (13) Recurrent conditions; and
- 24 (14) The definition of terms including, but not limited
25 to, hospital, accident, sickness, injury, physician, accident-
26 tal means, total disability, permanent disability, partial
27 disability, nervous disorder, guaranteed renewable and
28 noncancelable.

29 (b) The commissioner may promulgate rules and
30 regulations, in accordance with chapter twenty-nine-a of
31 the code, specifying prohibited provisions of policies and
32 subscriber contracts not otherwise specifically authorized
33 by statute which in the opinion of the commissioner are
34 unjust, unfair or unfairly discriminatory either to the
35 policyholder, subscriber, beneficiary or any person insured
36 under the policy.

§33-28-5. Minimum standards for benefits.

1 (a) The commissioner shall promulgate rules and reg-
2 ulations, in accordance with chapter twenty-nine-a of the
3 code, to establish minimum standards for benefits under
4 each of the following categories of coverage in individual
5 policies of accident and sickness insurance and subscriber
6 contracts of hospital, medical, dental and service corpora-
7 tions:

- 8 (1) Basic hospital expense coverage;
- 9 (2) Basic medical-surgical expense coverage;
- 10 (3) Hospital confinement indemnity coverage;
- 11 (4) Major medical expense coverage;
- 12 (5) Disability income protection coverage;
- 13 (6) Accident only coverage; and
- 14 (7) Specified disease or specified accident coverage.

15 (b) Nothing in this section shall preclude the issuance
16 of any policy or subscriber contract which combines
17 two or more of the categories of coverage enumerated in
18 subdivisions (1) through (6) of subsection (a) of this
19 section.

20 (c) No policy or subscriber contract shall be delivered
21 or issued for delivery in this state which does not meet
22 the prescribed minimum standards for the categories of
23 coverage listed in subdivisions (1) through (7) of subsec-
24 tion (a) of this section unless the commissioner finds that
25 such policy or subscriber contract will be in the public
26 interest and that such policy or subscriber contract con-
27 tains benefits which are reasonable in relation to the pre-
28 mium charged.

29 (d) The commissioner shall prescribe the method of
30 identification of policies and subscriber contracts based
31 upon coverages provided.

§33-28-6. Outline of coverage.

1 (a) In order to provide for full and fair disclosure in
2 the sale of individual accident and sickness insurance
3 policies or subscriber contracts of hospital, medical and
4 dental service corporations, no such policy or subscriber
5 contract shall be delivered or issued for delivery in this
6 state unless:

7 (1) In the case of a direct response insurance product,
8 the outline of coverage described in subsection (b) of this
9 section accompanies the policy or subscriber contract; and

10 (2) In all other cases, the outline of coverage described
11 in subsection (b) of this section is delivered to the appli-
12 cant at the time application is made and an acknowledg-
13 ment of receipt or certificate of delivery of such outline
14 is provided the insurer or hospital, medical or dental ser-
15 vice corporation with the application. In the event the
16 policy or subscriber contract is issued on a basis other
17 than that applied for, the outline of coverage properly
18 describing the policy or subscriber contract must ac-
19 company the policy or subscriber contract when it is de-
20 livered and clearly state that it is not the policy or
21 subscriber contract for which application was made.

22 (b) The commissioner shall, by promulgation of ap-
23 propriate rules and regulations in accordance with chap-
24 ter twenty-nine-a of the code, prescribe the format and
25 content of the outline of coverage required by subsection
26 (a) of this section. "Format" means style, arrangement
27 and overall appearance, including such items as the size,
28 color and prominence of type and the arrangement of
29 text and captions. Such outline of coverage shall in-
30 clude:

31 (1) A statement identifying the applicable category
32 or categories of coverage provided by the policy or sub-
33 scriber contract as prescribed in section five of this ar-
34 ticle;

35 (2) A description of the principal benefits and cover-
36 age provided in the policy or subscriber contract;

37 (3) A statement of the exceptions, reductions and
38 limitations contained in the policy or subscriber contract;

39 (4) A statement of the renewal provisions, including
40 any reservation by the insurer or hospital, medical or den-
41 tal service corporation of a right to change premiums;
42 and

43 (5) A statement that the outline of coverage is a
44 summary of the policy or subscriber contract issued or
45 applied for and that the terms of the policy or subscriber
46 contract should be consulted to determine governing con-
47 tractual provisions.

§33-28-7. Preexisting conditions.

1 Notwithstanding the provisions of section four, ar-
2 ticle fifteen of this chapter if an insurer or a hospital,
3 medical or dental service corporation elects to use a
4 simplified application form containing no questions con-
5 cerning the applicant's health history or medical treat-
6 ment history, the policy or contract applied for must
7 cover any loss occurring after twelve months from the
8 inception date of coverage which loss is traceable to a
9 preexisting condition not specifically excluded from cov-
10 erage by the terms of the policy, and, except as so pro-
11 vided, the policy or contract shall not include wording
12 which would permit a defense based upon preexisting
13 conditions.

CHAPTER 54

(S. B. 521—Originating in the Committee on Insurance and Corporations)

[Passed March 5, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article twenty-four, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating

to insurance; hospital service corporations and medical service corporations; investments; bonds of corporate officers and employees.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS AND DENTAL SERVICE CORPORATIONS.

§33-24-10. Investments; bonds of corporate officers and employees.

1 (a) The funds of any such corporation shall be in-
2 vested only as follows:

3 (1) Fifty percent of such funds shall be in cash or
4 government securities of the type described in section
5 seven of article eight of this chapter.

6 (2) The balance of such funds may be in cash or in-
7 vested in the classes of investments described in the
8 following sections of article eight of this chapter: Section
9 nine (certificates of deposit of federally insured institu-
10 tions), section eleven (corporate obligations), section
11 twelve (building and savings and loan shares, inter-
12 national bank), section thirteen (preferred or guaranteed
13 stock), section fourteen (common stock), section sixteen
14 (real property) and section eighteen (revenue bonds).
15 All such investments shall be subject to all the restric-
16 tions and conditions contained in said article eight as
17 applying to similar investments of insurers generally.

18 (b) Every officer or employee of any such corporation,
19 who is entrusted with the handling of its funds, shall
20 furnish, in such amount as may with the approval of the
21 commissioner be fixed by the board of directors of the cor-
22 poration, a bond with corporate surety, conditioned upon
23 the faithful performance of all his duties.

CHAPTER 55

(H. B. 740—By Mr. Seibert)

[Passed March 5, 1974; In effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-seven, relating to insurance holding company systems; short title; definitions; filing requirements; statements; hearings; registration; examination; confidentiality; criminal proceedings; receivership; revocation, suspension and renewal of licenses; criminal offenses and penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 27. INSURANCE HOLDING COMPANY SYSTEMS.

- §33-27-1. Short title.
- §33-27-2. Definitions.
- §33-27-3. Acquisition of control of or merger with domestic insurer.
- §33-27-4. Registration of insurers.
- §33-27-5. Standards.
- §33-27-6. Examination.
- §33-27-7. Confidential treatment.
- §33-27-8. Injunctions; prohibitions against voting securities; sequestration of voting securities.
- §33-27-9. Criminal proceedings.
- §33-27-10. Receivership.
- §33-27-11. Revocation, suspension or nonrenewal of insurer's license.
- §33-27-12. Conflict with other laws.

§33-27-1. Short title.

- 1 This article may be cited as the "West Virginia Insurance
- 2 Holding Company Systems Act."

§33-27-2. Definitions.

- 1 As used in this article:
- 2 (a) An "affiliate" of, or person "affiliated" with, a specific
- 3 person, is a person that, directly or indirectly through one

4 or more intermediaries, controls, or is controlled by, or is
5 under common control with, the person specified.

6 (b) "Commissioner" means the insurance commissioner,
7 his deputies, or the insurance department, as appropriate.

8 (c) "Control" (including the terms "controlling," "con-
9 trolled by" and "under common control with") means the
10 possession, direct or indirect, of the power to direct or
11 cause the direction of the management and policies of a
12 person, whether through the ownership of voting securities,
13 by contract other than a commercial contract for goods or
14 nonmanagement services, or otherwise, unless the power is
15 the result of an official position with or corporate office
16 held by the person. Control shall be presumed to exist if
17 any person, directly or indirectly, owns, controls, holds
18 with the power to vote, or holds proxies representing ten
19 percent or more of the voting securities of any other person.
20 This presumption may be rebutted by a showing made in
21 the manner provided by subsection (b)(i), section four of
22 this article that control does not exist in fact. The com-
23 missioner may determine, after furnishing all persons in
24 interest notice and opportunity to be heard and making
25 specific findings of fact to support such determination, that
26 control exists in fact, notwithstanding the absence of a pre-
27 sumption to that effect.

28 (d) "Insurance holding company system" consists of two
29 or more affiliated persons, one or more of which is an
30 insurer.

31 (e) "Insurer" means any person or persons or corporation,
32 partnership or company authorized by the laws of this state
33 to transact the business of insurance in this state, except that
34 it shall not include agencies, authorities or instrumentalities
35 of the United States, its possessions and territories, the com-
36 monwealth of Puerto Rico, the District of Columbia, or a
37 state or political subdivision of a state.

38 (f) A "person" is an individual, a corporation, a part-
39 nership, an association, a joint stock company, a trust, an
40 unincorporated organization, any similar entity or any com-
41 bination of the foregoing acting in concert, but shall not

42 include any securities broker performing no more than the
43 usual and customary broker's function.

44 (g) A "security holder" of a specified person is one who
45 owns any security of such person, including common stock,
46 preferred stock, debt obligations and any other security
47 convertible into or evidencing the right to acquire any of
48 the foregoing.

49 (h) A "subsidiary" of a specified person is an affiliate
50 controlled by such person directly or indirectly through one
51 or more intermediaries.

52 (i) "Voting security" includes any security convertible
53 into or evidencing a right to acquire a voting security.

§33-27-3. Acquisition of control of or merger with domestic insurer.

1 (a) *Filing requirements.*—No person other than the issuer
2 shall make a tender offer for or a request or invitation
3 for tenders of, or enter into any agreement to exchange
4 securities for, seek to acquire or acquire, in the open market
5 or otherwise, any voting security of a domestic insurer if,
6 after the consummation thereof, such person would, directly
7 or indirectly (or by conversion or by exercise of any right
8 to acquire) be in control of such insurer, and no person shall
9 enter into an agreement to merge with or otherwise to acquire
10 control of a domestic insurer unless, at the time any such
11 offer, request or invitation is made or any such agreement
12 is entered into, or prior to the acquisition of such securities if
13 no offer or agreement is involved, such person has filed with
14 the commissioner and has sent to such insurer, and, to the
15 extent permitted by applicable federal laws, rules and regu-
16 lations, such insurer has sent to its shareholders a statement
17 containing the information required by this section and such
18 offer, request, invitation, agreement or acquisition has been
19 approved by the commissioner in the manner hereinafter
20 prescribed.

21 For purposes of this section: A domestic insurer shall
22 include any other person controlling a domestic insurer
23 unless such other person is either directly or through its
24 affiliates primarily engaged in business other than the business
25 of insurance.

26 (b) *Content of statement.*—The statement to be filed with
27 the commissioner hereunder shall be made under oath or
28 affirmation and shall contain the following information:

29 (1) The name and address of each person by whom or
30 on whose behalf the merger or other acquisition of control
31 referred to in subsection (a) is to be effected (hereinafter
32 called “acquiring party”), and

33 (i) If such person is an individual, his principal occupa-
34 tion and all offices and positions held during the past five
35 years, and any conviction of crimes other than minor traffic
36 violations during the past ten years;

37 (ii) If such person is not an individual, a report of
38 the nature of its business operations during the past five
39 years or for such lesser period as such person and any
40 predecessors thereof shall have been in existence; an informa-
41 tive description of the business intended to be done by such
42 person and such person’s subsidiaries; and a list of all
43 individuals who are or who have been selected to become
44 directors or executive officers of such person, or who perform
45 or will perform functions appropriate to such positions. Such
46 list shall include for each such individual the information
47 required by paragraph (i) of this subsection.

48 (2) The source, nature and amount of the consideration
49 used or to be used in effecting the merger or other acquisition
50 of control, a description of any transaction wherein funds were
51 or are to be obtained for any such purpose, and the identity
52 of persons furnishing such consideration: *Provided*, That where
53 a source of such consideration is a loan made in the lender’s
54 ordinary course of business, the identity of the lender shall
55 remain confidential, if the person filing such statement so
56 requests.

57 (3) Fully audited financial information as to the earnings
58 and financial condition of each acquiring party for the
59 preceding five fiscal years of each such acquiring party
60 (or for such lesser period as such acquiring party and any
61 predecessors thereof shall have been in existence), and similar
62 unaudited information as of a date not earlier than ninety
63 days prior to the filing of the statement.

64 (4) Any plans or proposals which each acquiring party
65 may have to liquidate such insurer, to sell its assets or
66 merge or consolidate it with any person, or to make any
67 other material change in its business or corporate structure or
68 management.

69 (5) The number of shares of any security referred to
70 in subsection (a) which each acquiring party proposes to
71 acquire, and the terms of the offer, request, invitation,
72 agreement or acquisition referred to in subsection (a), and
73 a statement as to the method by which the fairness of the
74 proposal was arrived at.

75 (6) The amount of each class of any security referred
76 to in subsection (a) which is beneficially owned or concerning
77 which there is a right to acquire beneficial ownership by
78 each acquiring party.

79 (7) A full description of any contracts, arrangements or
80 understanding with respect to any security referred to in
81 subsection (a) in which any acquiring party is involved,
82 including but not limited to transfer of any of the securities,
83 joint ventures, loan or option arrangements, puts or calls,
84 guarantees of loans, guarantees against loss or guarantees of
85 profits, division of losses or profits, or the giving or with-
86 holding of proxies. Such description shall identify the persons
87 with whom such contracts, arrangements or understandings
88 have been entered into.

89 (8) A description of the purchase of any security re-
90ferred to in subsection (a) during the twelve calendar months
91 preceding the filing of the statement, by any acquiring
92 party, including the dates of purchase, names of the pur-
93 chasers, and consideration paid or agreed to be paid therefor.

94 (9) A description of any recommendations to purchase
95 any security referred to in subsection (a) made during the
96 twelve calendar months preceding the filing of the statement,
97 by any acquiring party, or by anyone based upon inter-
98 views or at the suggestion of such acquiring party.

99 (10) Copies of all tender offers for, requests or invita-
100 tions for tenders of, exchange offers for, and agreements to

101 acquire or exchange any securities referred to in subsection
102 (a), and (if distributed) of additional soliciting material
103 relating thereto.

104 (11) The terms of any agreement, contract or under-
105 standing made with any broker-dealer as to solicitation of
106 securities referred to in subsection (a) for tender, and the
107 amount of any fees, commissions or other compensation to
108 be paid to broker-dealers with regard thereto.

109 (12) Such additional information as the commissioner may
110 by rule or regulation prescribe as necessary or appropriate
111 for the protection of policyholders and security holders of the
112 insurer or in the public interest.

113 If the person required to file the statement referred to
114 in subsection (a) is a partnership, limited partnership, syndi-
115 cate or other group, the commissioner may require that
116 the information called for by subdivisions (1) through (12)
117 of this subsection shall be given with respect to each partner
118 of such partnership or limited partnership, each member of
119 such syndicate or group, and each person who controls such
120 partner or member. If any partner, member or person is
121 a corporation or the person required to file the statement
122 referred to in subsection (a) is a corporation, the com-
123 missioner may require that the information called for by
124 subdivisions (1) through (12) shall be given with respect
125 to such corporation, and each person who is directly or
126 indirectly the beneficial owner of more than ten percent of
127 the outstanding voting securities of such corporation.

128 If any material change occurs in the facts set forth in
129 the statement filed with the commissioner and sent to such
130 insurer pursuant to this section, an amendment setting forth
131 such change, together with copies of all documents and other
132 material relevant to such change, shall be filed with the
133 commissioner and sent to such insurer within two business
134 days after the person learns of such change. Such insurer
135 shall send such amendment to its shareholders.

136. (c) *Alternative filing materials.*—If any offer, request, in-
137 vitation, agreement or acquisition referred to in subsection
138 (a) is proposed to be made by means of a registration state-

139 ment under the Securities Act of 1933 or in circumstances
140 requiring the disclosure of similar information under the
141 Securities Exchange Act of 1934, or under a state law
142 requiring similar registration or disclosure, the person required
143 to file the statement referred to in subsection (a) may utilize
144 such documents in furnishing the information called for by
145 that statement.

146 (d) *Approved by commissioner; hearings.*—(1) The com-
147 missioner shall approve any merger or other acquisition
148 of control referred to in subsection (a) unless, after a public
149 hearing thereon, he finds that any of the following con-
150 ditions exist:

151 (i) After the change of control the domestic insurer
152 referred to in subsection (a) would not be able to satisfy
153 the requirements for the issuance of a license to write the
154 line or lines of insurance for which it is presently authorized;

155 (ii) the effect of the merger or other acquisition of
156 control would be substantially to lessen competition in in-
157 surance in this state or tend to create a monopoly therein;

158 (iii) the financial condition of any acquiring party is such
159 as might jeopardize the financial stability of the insurer,
160 or prejudice the interest of its policyholders or the interests
161 of any remaining security holders who are unaffiliated with
162 such acquiring party;

163 (iv) the terms of the offer, request, invitation, agreement
164 or acquisition referred to in subsection (a) are unfair and
165 unreasonable to the security holders of the insurer;

166 (v) the plans or proposals which the acquiring party has
167 to liquidate the insurer, sell its assets or consolidate or
168 merge it with any person, or to make any other material
169 change in its business or corporate structure or management,
170 are unfair and unreasonable to policyholders of the insurer
171 and not in the public interest; or

172 (vi) the competence, experience and integrity of those
173 persons who would control the operation of the insurer are
174 such that it would not be in the interest of policyholders of

175 the insurer and of the public to permit the merger or other
176 acquisition of control.

177 (2) The public hearing referred to in subdivision (1), sub-
178 section (d) of this section shall be held within sixty days after
179 the statement required by subsection (a) is filed, and at least
180 fifteen days' notice thereof shall be given by the commissioner
181 to the person filing the statement. Not less than seven days'
182 notice of such public hearing shall be given by the person
183 filing the statement to the insurer and to such other persons
184 as may be designated by the commissioner. The insurer
185 shall give such notice to its security holders. The commissioner
186 shall make a determination within forty-five days after the
187 conclusion of such hearing.

188 (e) *Mailings to shareholders; payment of expenses.*—To
189 the extent permitted by applicable federal laws, rules and
190 regulations, all statements, amendments, or other material
191 filed pursuant to subsections (a) or (b) of this section, and
192 all notices of public hearings held pursuant to subsection
193 (d) of this section, shall be mailed by the insurer to its
194 shareholders within five business days after the insurer has
195 received such statements, amendments, other material, or
196 notices. The expenses of mailing shall be borne by the
197 person making the filing. As security for the payment of
198 such expenses, such person shall file with the commissioner
199 an acceptable bond or other deposit in an amount to be
200 determined by the commissioner.

201 (f) *Exemptions.*—The provisions of this section shall not
202 apply to:

203 (i) Any offers, requests, invitations, agreements or ac-
204 quisitions by the person referred to in subsection (a) of
205 this section of any voting security referred to in said sub-
206 section (a) which, immediately prior to the consummation
207 of such offer, request, invitation, agreement or acquisition,
208 was not issued and outstanding;

209 (ii) any offer, request, invitation, agreement or acquisi-
210 tion which the commissioner by order shall exempt therefrom
211 as (1) not having been made or entered into for the purpose
212 and not having the effect of changing or influencing the

213 control of a domestic insurer, or (2) as otherwise not com-
214 prehended within the purposes of this section.

215 (g) *Violations.*—The following shall be violations of this
216 section:

217 (i) The failure to file any statement, amendment or other
218 material required to be filed pursuant to subsection (a) or
219 (b) of this section; or

220 (ii) the effectuation or any attempt to effectuate an
221 acquisition of control of, or merger with, a domestic insurer
222 unless the commissioner has given his approval thereto.

223 (h) *Jurisdiction; consent to service of process.*—The courts
224 of this state are hereby vested with jurisdiction over every
225 person not resident, domiciled or authorized to do business
226 in this state who files a statement with the commissioner
227 under this section, and over all actions involving such person
228 arising out of violations of this section, and each such person
229 shall be deemed to have performed acts equivalent to and
230 constituting an appointment by such a person of the auditor
231 of the state to be his true and lawful attorney upon whom
232 may be served all lawful process in any action, suit or
233 proceeding arising out of violations of this section. Copies
234 of all such lawful process shall be served on the auditor and
235 transmitted by registered or certified mail by the auditor
236 to such person at his last known address.

§33-27-4. Registration of insurers.

1 (a) *Registration.*—Every insurer which is authorized to do
2 business in this state and which is a member of an insurance
3 holding company system shall register with the commissioner,
4 except a foreign insurer subject to disclosure requirements and
5 standards adopted by statute or regulation in the jurisdiction of
6 its domicile which are substantially similar to those contained
7 in this section. Any insurer which is subject to registration un-
8 der this section shall register within sixty days after the effec-
9 tive date of this article or fifteen days after it becomes subject
10 to registration, whichever is later, unless the commissioner for
11 good cause shown extends the time for registration, and then
12 within such extended time. The commissioner may require any

13 authorized insurer which is a member of a holding company
14 system which is not subject to registration under this section
15 to furnish a copy of the registration statement or other infor-
16 mation filed by such insurance company with the insurance
17 regulatory authority of domiciliary jurisdiction.

18 (b) *Information and form required.*—Every insurer subject
19 to registration shall file a registration statement on a form pro-
20 vided by the commissioner, which shall contain current infor-
21 mation about:

22 (i) The capital structure, general financial condition, own-
23 ership and management of the insurer and any person control-
24 ling the insurer.

25 (ii) The identity of every member of the insurance holding
26 company system.

27 (iii) The following agreements in force, relationships sub-
28 sisting, and transactions currently outstanding between such
29 insurer and its affiliates:

30 (1) Loans, other investments, or purchases, sales or ex-
31 changes of securities of the affiliates by the insurer or of the
32 insurer by its affiliates:

33 (2) Purchases, sales or exchanges of assets;

34 (3) Transactions not in the ordinary course of business;

35 (4) Guarantees or undertakings for the benefit of an affiliate
36 which result in an actual contingent exposure of the insurer's
37 assets to liability, other than insurance contracts entered into
38 in the ordinary course of the insurer's business;

39 (5) All management and service contracts and all cost-
40 sharing arrangements, other than cost allocation arrangements
41 based upon generally accepted accounting principals; and

42 (6) Reinsurance agreements covering all or substantially
43 all of one or more lines of insurance of the ceding company.

44 (iv) Other matters concerning transactions between regis-
45 tered insurers and any affiliates as may be included from time
46 to time in any registration forms adopted or approved by the
47 commissioner.

48 (c) *Materiality.*—No information need be disclosed on the
49 registration statement filed pursuant to subsection (b) of this
50 section if such information is not material for the purposes of
51 this section. Unless the commissioner by rule, regulation or
52 order provides otherwise, sales, purchases, exchanges, loans
53 or extensions of credit, or investments, involving one half of
54 one percent or less of an insurer's admitted assets as of the
55 thirty-first day of December next preceding shall not be deemed
56 material for purposes of this section.

57 (d) *Amendments to registration statements.*—Each regis-
58 tered insurer shall keep current the information required to be
59 disclosed in its registration statement by reporting all material
60 changes or additions on amendment forms provided by the
61 commissioner within fifteen days after the end of the month in
62 which it learns of each such change or addition: *Provided,*
63 That, subject to subsection (c) of section five of this article,
64 each registered insurer shall so report all dividends and other
65 distributions to shareholders within two business days follow-
66 ing the declaration thereof.

67 (e) *Termination of registration.*—The commissioner shall
68 terminate the registration of any insurer which demonstrates
69 that it no longer is a member of an insurance holding com-
70 pany system.

71 (f) *Consolidated filing.*—The commissioner may require or
72 allow two or more affiliated insurers subject to registration
73 hereunder to file a consolidated registration statement or con-
74 solidated reports amending their consolidated registration state-
75 ment or their individual registration statements.

76 (g) *Alternative registration.*—The commissioner may allow
77 an insurer which is authorized to do business in this state and
78 which is part of an insurance holding company system to regis-
79 ter on behalf of any affiliated insurer which is required to
80 register under subsection (a) of this section and to file all in-
81 formation and material required to be filed under this section.

82 (h) *Exemptions.*—The provisions of this section shall not
83 apply to any insurer, information or transaction if and to the
84 extent that the commissioner by rule, regulation or order shall
85 exempt the same from the provisions of this section.

86 (i) *Disclaimer*.—Any person may file with the commis-
87 sioner a disclaimer of affiliation with any authorized insurer or
88 such a disclaimer may be filed by such insurer or any member
89 of an insurance holding company system. The disclaimer shall
90 fully disclose all material relationships and bases for affilia-
91 tion between such person and such insurer as well as the basis
92 for disclaiming such affiliation. After a disclaimer has been
93 filed, the insurer shall be relieved of any duty to register or
94 report under this section which may arise out of the insurer's
95 relationship with such person unless and until the commis-
96 sioner disallows such a disclaimer. The commissioner shall dis-
97 allow such a disclaimer only after furnishing all parties in in-
98 terest with notice and opportunity to be heard and after mak-
99 ing specific findings of fact to support such disallowance.

100 (j) *Violations*.—The failure to file a registration statement
101 or any amendment thereto required by this section within the
102 time specified for such filing shall be a violation of this sec-
103 tion.

§33-27-5. Standards.

1 (a) *Transactions with affiliates*.—Material transactions by
2 registered insurers with their affiliates shall be subject to the
3 following standards:

4 (1) The terms shall be fair and reasonable;

5 (2) The books, accounts and records of each party shall be
6 so maintained as to clearly and accurately disclose the precise
7 nature and details of the transactions; and

8 (3) The insurer's surplus as regards policyholders following
9 any dividends or distributions to shareholder affiliates shall be
10 reasonable in relation to the insurer's outstanding liabilities
11 and adequate to its financial needs.

12 (b) *Adequacy of surplus*.—For purposes of this article, in
13 determining whether an insurer's surplus as regards policy-
14 holders is reasonable in relation to the insurer's outstanding
15 liabilities and adequate to its financial needs, the following
16 factors, among others, shall be considered:

17 (1) The size of the insurer as measured by its assets, capi-

18 tal and surplus, reserves, premium writings, insurance in force
19 and other appropriate criteria;

20 (2) The extent to which the insurer's business is diversified
21 among the several lines of insurance;

22 (3) The number and size of risks insured in each line of
23 business;

24 (4) The extent of the geographical dispersion of the in-
25 surer's insured risks;

26 (5) The nature and extent of the insurer's reinsurance pro-
27 gram;

28 (6) The quality, diversification and liquidity of the insur-
29 er's investment portfolio;

30 (7) The recent past and projected future trend in the size
31 of the insurer's surplus as regards policyholders;

32 (8) The surplus as regards policyholders maintained by
33 other comparable insurers; and

34 (9) The adequacy of the insurer's reserves.

35 (c) *Dividends and other distributions.*—No insurer subject
36 to registration under section four of this article shall pay any
37 extraordinary dividend or make any other extraordinary dis-
38 tribution to its shareholders until (i) thirty days after the com-
39 missioner has received notice of the declaration thereof and
40 has not within such period disapproved such payment, or (ii)
41 the commissioner shall have approved such payment within
42 such thirty-day period.

43 For purposes of this section, an extraordinary dividend or
44 distribution includes any dividend or distribution of cash or
45 other property, whose fair market value together with that of
46 other dividends or distributions made within the preceding
47 twelve months exceeds the greater of (i) ten percent of such
48 insurer's surplus as regards policyholders as of the thirty-first
49 day of December next preceding, or (ii) the net gain from
50 operations of such insurer, if such insurer is a life insurer, or
51 the net investment income, if such insurer is not a life insurer,
52 for the twelve-month period ending the thirty-first day of De-

53 cember next preceding, but shall not include pro rata distri-
54 butions of any class of the insurer's own securities.

55 Notwithstanding any other provision of law, an insurer may
56 declare an extraordinary dividend or distribution which is con-
57 ditional upon the commissioner's approval thereof, and such a
58 declaration shall confer no rights upon shareholders until (i)
59 the commissioner has approved the payment of such dividend
60 or distribution or (ii) the commissioner has not disapproved
61 such payment within the thirty-day period referred to above.

§33-27-6. Examination.

1 (a) *Power of commissioner.*—Subject to the limitation con-
2 tained in this section and in addition to the powers which the
3 commissioner has under other articles of this chapter relating to
4 the examination of insurers, the commissioner shall also have
5 the power to order any insurer registered under section four of
6 this article to produce such records, books or other informa-
7 tion papers in the possession of the insurer or its affiliates as
8 shall be necessary to ascertain the financial condition or legal-
9 ity of conduct of such insurer. In the event that such insurer
10 fails to comply with such order, the commissioner shall have
11 the power to examine such affiliates to obtain such informa-
12 tion.

13 (b) *Purpose and limitation of examination.*—The commis-
14 sioner shall exercise his power under subsection (a) above only
15 if the examination of the insurer under other articles of this
16 chapter is inadequate or the interests of the policyholders of
17 such insurer may be adversely affected.

18 (c) *Use of consultants.*—The commissioner may retain at
19 the registered insurer's expense such attorneys, actuaries, ac-
20 countants and other experts not otherwise a part of the com-
21 missioner's staff as shall be reasonably necessary to assist in
22 the conduct of the examination under subsection (a) above.
23 Any person so retained shall be under the direction and con-
24 trol of the commissioner and shall act in a purely advisory
25 capacity.

26 (d) *Expenses.*—Each registered insurer producing for ex-
27 amination records, books and papers pursuant to subsection

28 (a) above shall be liable for and shall pay the expense of such
29 examination in accordance with applicable laws of this state.

§33-27-7. Confidential treatment.

1 All information, documents and copies thereof obtained by
2 or disclosed to the commissioner or any other person in the
3 course of an examination or investigation made pursuant to
4 section six of this article and all information reported pursuant
5 to section four of this article, shall be given confidential treat-
6 ment and shall not be subject to subpoena and shall not be
7 made public by the commissioner or any other person, except
8 to insurance departments of other states, without the prior
9 written consent of the insurer to which it pertains unless the
10 commissioner, after giving the insurer and its affiliates who
11 would be affected thereby, notice and opportunity to be heard,
12 determines that the interests of policyholders, shareholders or
13 the public will be served by the publication thereof, in which
14 event he may publish all or any part thereof in such manner
15 as he may deem appropriate.

**§33-27-8. Injunctions; prohibitions against voting securities; se-
questration of voting securities.**

1 (a) *Injunctions.*—Whenever it appears to the commissioner
2 that any person or any director, officer, employee or agent
3 thereof has committed or is about to commit a violation of this
4 article or of any rule, regulation or order issued by the com-
5 missioner hereunder, the commissioner may apply to the cir-
6 cuit court for an order enjoining such person or such director,
7 officer, employee or agent thereof from violating or continuing
8 to violate this chapter or any such rule, regulation or order,
9 and for such other equitable relief as the nature of the case
10 and the interests of the insurer's policyholders, creditors and
11 shareholders or the public may require.

12 (b) *Voting of securities; when prohibited.*—No security
13 which is the subject of any agreement or arrangement regard-
14 ing acquisition, or which is acquired or to be acquired, in
15 contravention of the provisions of this article or of any rule,
16 regulation or order issued by the commissioner hereunder may
17 be voted at any shareholders' meeting, or may be counted for
18 quorum purposes, and any action of shareholders requiring the

19 affirmative vote of a percentage of shares may be taken as
20 though such securities were not issued and outstanding; but
21 no action taken at any such meeting shall be invalidated by
22 the voting of such securities, unless the action would materially
23 affect control of the insurer or unless the courts of this state
24 have so ordered. If an insurer or the commissioner has reason
25 to believe that any security of the insurer has been or is about
26 to be acquired in contravention of the provisions of this article
27 or of any rule, regulation or order issued by the commissioner
28 hereunder the insurer or the commissioner may apply to the
29 circuit court to enjoin any offer, request, invitation, agreement
30 or acquisition made in contravention of section four of this
31 article, or any rule, regulation or order issued by the commis-
32 sioner thereunder to enjoin the voting of any security so ac-
33 quired, to void any vote of such security already cast at any
34 meeting of shareholders, and for such other equitable relief
35 as the nature of the case and the interests of the insurer's
36 policyholders, creditors and shareholders or the public may
37 require.

38 (c) *Sequestration of voting securities.*—In any case where a
39 person has acquired or is proposing to acquire any voting se-
40 curities in violation of this article or any rule, regulation or
41 order issued by the commissioner hereunder, the circuit court
42 may, on such notice as the court deems appropriate, upon the
43 application of the insurer or the commissioner seize or seques-
44 ter any voting securities of the insurer owned directly or in-
45 directly by such person, and issue such orders with respect
46 thereto as may be appropriate to effectuate the provisions of
47 this article. Notwithstanding any other provisions of law, for
48 the purposes of this article, the situs of the ownership of the
49 securities of domestic insurers shall be deemed to be in this
50 state.

§33-27-9. Criminal proceedings.

1 Whenever it appears to the commissioner that any person
2 or any director, officer, employee or agent thereof has com-
3 mitted a willful violation of this article, the commissioner may
4 cause criminal proceedings to be instituted against such per-
5 son or the responsible director, officer, employee or agent
6 thereof. Any insurer who willfully violates this article shall be

7 guilty of a misdemeanor, and, upon conviction thereof, shall be
8 fined not more than ten thousand dollars. Any individual who
9 willfully violates this article shall be guilty of a misdemeanor,
10 and, upon conviction thereof, shall be fined not more than
11 ten thousand dollars or, if such willful violation involves the
12 deliberate perpetration of a fraud upon the commissioner, be
13 imprisoned not more than two years or both fined and im-
14 prisoned.

§33-27-10. Receivership.

1 Whenever it appears to the commissioner that any person
2 has committed a violation of this article which so impairs
3 the financial condition of a domestic insurer as to threaten
4 insolvency or make the further transaction of business by it
5 hazardous to its policyholders, creditors, shareholders or
6 the public, then the commissioner may take possession of the
7 property of such domestic insurer and proceed as provided
8 in article ten of this chapter.

§33-27-11. Revocation, suspension or nonrenewal of insurer's license.

1 Whenever it appears to the commissioner that any person
2 has committed a violation of this article which makes the
3 continued operation of an insurer contrary to the interests
4 of policyholders or the public, the commissioner may, after
5 giving notice and an opportunity to be heard, determine to
6 suspend, revoke or refuse to renew such insurer's license or
7 authority to do business in this state for such period as he
8 finds is required for the protection of policyholders or the
9 public.

§33-27-12. Conflict with other laws.

1 All laws and parts of laws of this state inconsistent with
2 this article are hereby superseded with respect to matters
3 covered by this article.

CHAPTER 56

(H. B. 1072—By Mr. Tonkovich)

[Passed March 8, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article eleven, chapter fifty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to expansion of the membership of the judicial council to include a judge of a court of limited jurisdiction.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. JUDICIAL COUNCIL FOR STUDY OF PROCEDURE AND PRACTICE.

§56-11-1. Created; purpose; composition; qualifications, appointment and political affiliation of members.

1 There is hereby created a judicial council for the continu-
 2 ous study of the organization, rules and methods of procedure
 3 and practice of the judicial system of the state. It shall be
 4 composed of one judge of the supreme court of appeals,
 5 three circuit judges, one judge of a statutory court of record
 6 and four practicing attorneys and one member of the faculty
 7 of the college of law of West Virginia University, who shall
 8 be appointed by the governor. Not more than three judges and
 9 two attorneys shall be members of any one political party.

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CHAPTER 57

(H. B. 725—By Mr. Kopp and Mr. Kopselman)

[Passed March 9, 1974; in effect July 1, 1974. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three and four, article five-c, chapter twenty-one of the code of West Virginia,

one thousand nine hundred thirty-one, as amended, relating to reducing number of employees in definition of employer; increasing minimum wage and reducing maximum hours for overtime compensation standards for employees; allowing and fixing certain credits.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5C. MINIMUM WAGE AND MAXIMUM HOURS STANDARDS FOR EMPLOYEES.

§21-5C-1. Definitions.

§21-5C-2. Minimum wages.

§21-5C-3. Maximum hours; overtime compensation.

§21-5C-4. Credits.

§21-5C-1. Definitions.

1 As used in this article:

2 (a) "Commissioner" means the commissioner of labor or
3 his duly authorized representatives.

4 (b) "Wage and hour director" means the wage and hour
5 director appointed by the commissioner of labor as chief of
6 the wage and hour division.

7 (c) "Wage" means compensation due an employee by rea-
8 son of his employment.

9 (d) "Employ" means to hire or permit to work.

10 (e) "Employer" includes the state of West Virginia, its
11 agencies, departments and all its political subdivisions, any
12 individual, partnership, association, public or private corpora-
13 tion, or any person or group of persons acting directly
14 or indirectly in the interest of any employer in relation to an
15 employee; and who employs during any calendar week
16 six or more employees as herein defined in any one separate,
17 distinct and permanent location or business establishment:
18 *Provided*, That the term "employer" shall not include any
19 individual, partnership, association, corporation, person or
20 group of persons or similar unit if eighty percent of the persons

21 employed by him are subject to any federal act relating to
22 minimum wage, maximum hours and overtime compensation.

23 (f) "Employee" includes any individual employed by an
24 employer but shall not include: (1) Any individual employed
25 by the United States; (2) any individual engaged in the
26 activities of an educational, charitable, religious, fraternal
27 or nonprofit organization where the employer-employee rela-
28 tionship does not in fact exist, or where the services rendered
29 to such organizations are on a voluntary basis; (3) newsboys,
30 shoeshine boys, golf caddies, pin boys and pin chasers in
31 bowling lanes; (4) traveling salesmen and outside salesmen;
32 (5) services performed by an individual in the employ of his
33 parent, son, daughter or spouse; (6) any individual employed
34 in a bona fide professional, executive or administrative capa-
35 city; (7) any person whose employment is for the purpose of
36 on-the-job training; (8) any person having a physical or
37 mental handicap so severe as to prevent his employment or
38 employment training in any training or employment facility
39 other than a nonprofit sheltered workshop; (9) any in-
40 dividual employed in a boys or girls summer camp; (10) any
41 person sixty-two years of age or over who receives old-age or
42 survivors benefits from the social security administration;
43 (11) any individual employed in agriculture as the word
44 agriculture is defined in the Fair Labor Standards Act of
45 1938, as amended; (12) any individual employed as a fire-
46 fighter by the state or agency thereof; (13) ushers in theaters;
47 (14) any individual employed on a part-time basis who is a
48 student in any recognized school or college; (15) any in-
49 dividual employed by a local or interurban motorbus carrier;
50 (16) so far as the maximum hours and overtime compensation
51 provisions of this article are concerned, any salesman, parts-
52 man or mechanic primarily engaged in selling or servicing auto-
53 mobiles, trailers, trucks, farm implements, or aircraft if
54 employed by a nonmanufacturing establishment primarily en-
55 gaged in the business of selling such vehicles to ultimate
56 purchasers; (17) any employee with respect to whom the
57 United States Department of Transportation has statutory
58 authority to establish qualifications and maximum hours of
59 service.

60 (g) "Workweek" means a regularly recurring period of

61 one hundred sixty-eight hours in the form of seven consecutive
62 twenty-four-hour periods, need not coincide with the calendar
63 week, and may begin any day of the calendar week and any
64 hour of the day.

65 (h) "Hours worked," in determining for the purposes of
66 sections two and three of this article, the hours for which
67 an employee is employed, there shall be excluded any time
68 spent in changing clothes or washing at the beginning or end
69 of each workday, time spent in walking, riding or traveling
70 to and from the actual place of performance of the principal
71 activity or activities which such employee is employed to
72 perform and activities which are preliminary to or postliminary
73 to said principal activity or activities, subject to such exceptions
74 as the commissioner may by rules and regulations define.

§21-5C-2. Minimum wages.

1 On and after the first day of July, one thousand nine hun-
2 dred seventy-four and until the thirtieth day of June, one
3 thousand nine hundred seventy-five, every employer shall pay
4 to each of his employees wages at a rate not less than one dol-
5 lar and eighty cents per hour; on and after the first day of
6 July, one thousand nine hundred seventy-five, every employer
7 shall pay to each of his employees wages at a rate not less
8 than two dollars per hour.

§21-5C-3. Maximum hours; overtime compensation.

1 (a) On and after the first day of July, one thousand nine
2 hundred seventy-four, and until the thirtieth day of June, one
3 thousand nine hundred seventy-five, no employer shall employ
4 any of his employees for a workweek longer than forty-six
5 hours, unless such employee receives compensation for his
6 employment in excess of the hours above specified at a rate of
7 not less than one and one-half times the regular rate at which he
8 is employed; on and after the first day of July, one thousand
9 nine hundred seventy-five, no employer shall employ any of
10 his employees for a workweek longer than forty-four hours,
11 unless such employee receives compensation for his employment
12 in excess of the hours above specified at a rate not less than one
13 and one-half times the regular rate at which he is employed.

14 (b) As used in this section the "regular rate" at which an

15 employee is employed shall be deemed to include all remuneration for employment paid to, or on behalf of, the employee,
16 but shall not be deemed to include:
17

18 (1) Sums paid as gifts; payments in the nature of gifts made
19 at Christmas time or on other special occasions, as a reward
20 for service, the amounts of which are not measured by or
21 dependent on hours worked, production, or efficiency;

22 (2) Payments made for occasional periods when no work is
23 performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause;
24 reasonable payments for traveling expenses, or other expenses,
25 incurred by an employ~~ee~~ in the furtherance of his employer's
26 interests and properly reimbursable by the employer, and other
27 similar payments to an employee which are not made as compensation for his hours of employment;
28
29

30 (3) Sums paid in recognition of services performed during
31 a given period if either, (a) both the fact that payment is to
32 be made and the amount of the payment are determined at the
33 sole discretion of the employer at or near the end of the period
34 and not pursuant to any prior contract, agreement or promise
35 causing the employee to expect such payments regularly; or (b)
36 the payments are made pursuant to a bona fide profit-sharing
37 plan or trust or bona fide thrift or savings plan, meeting the
38 requirements of the commissioner set forth in appropriate
39 regulation which he shall issue, having due regard among other
40 relevant factors, to the extent to which the amounts paid to
41 the employee are determined without regard to hours of work,
42 production or efficiency; or (c) the payments are talent fees
43 (as such talent fees are defined and delimited by regulations of
44 the commissioner) paid to performers, including announcers,
45 on radio and television programs;

46 (4) Contributions irrevocably made by an employer to a
47 trustee or third person pursuant to a bona fide plan for providing old-age, retirement, life, accident, or health insurance or
48 similar benefits for employees;
49

50 (5) Extra compensation provided by a premium rate paid
51 for certain hours worked by the employee in any day or work-
52 week because such hours are hours worked in excess of eight

53 in a day or in excess of the maximum workweek applicable to
54 such employee under subsection (a) or in excess of the em-
55 ployee's normal working hours or regular working hours, as
56 the case may be;

57 (6) Extra compensation provided by a premium rate paid
58 for work by the employee on Saturdays, Sundays, holidays or
59 regular days of rest, or on the sixth or seventh day of the work-
60 week, where such premium rate is not less than one and one-
61 half times the rate established in good faith for like work per-
62 formed in nonovertime hours on other days; or

63 (7) Extra compensation provided by a premium rate paid
64 to the employee, in pursuance of an applicable employment
65 contract or collective bargaining agreement, for work outside
66 of the hours established in good faith by the contract or agree-
67 ment as the basic, normal or regular workweek where such
68 premium rate is not less than one and one-half times the rate
69 established in good faith by the contract or agreement for like
70 work performed during such workweek.

71 (c) No employer shall be deemed to have violated subsec-
72 tion (a) by employing any employee for a workweek in excess
73 of the maximum workweek applicable to such employee under
74 subsection (a) if such employee is employed pursuant to a
75 bona fide individual contract, or pursuant to an agreement
76 made as a result of collective bargaining by representatives of
77 employees, if the duties of such employee necessitate irregular
78 hours of work, and the contract or agreement (1) specifies a
79 regular rate of pay of not less than the minimum hourly rate
80 provided in section two and compensation at not less than one
81 and one-half times such rate for all hours worked in excess
82 of such maximum workweek, and (2) provides a weekly guar-
83 anty of pay for not more than sixty hours based on the rates
84 so specified.

85 (d) No employer shall be deemed to have violated subsec-
86 tion (a) by employing any employee for a workweek in excess
87 of the maximum workweek applicable to such employee under
88 such subsection if, pursuant to an agreement or understanding
89 arrived at between the employer and the employee before per-
90 formance of the work, the amount paid to the employee for
91 the number of hours worked by him in such workweek in ex-

92 cess of the maximum workweek applicable to such employee
93 under such subsection:

94 (1) In the case of an employee employed at piece rates, is
95 computed at piece rates not less than one and one-half times
96 the bona fide piece rates applicable to the same work when
97 performed during nonovertime hours; or

98 (2) In the case of an employee performing two or more
99 kinds of work for which different hourly or piece rates have
100 been established, is computed at rates not less than one and
101 one-half times such bona fide rates applicable to the same
102 work when performed during nonovertime hours; or

103 (3) Is computed at a rate not less than one and one-half
104 times the rate established by such agreement or understanding
105 as the basic rate to be used in computing overtime compensa-
106 tion thereunder: *Provided*, That the rate so established shall
107 be authorized by regulation by the commissioner as being sub-
108 stantially equivalent to the average hourly earnings of the em-
109 ployee, exclusive of overtime premiums, in the particular work
110 over a representative period of time; and if (i) the employee's
111 average hourly earnings for the workweek exclusive of pay-
112 ments described in subdivisions (1) through (7) of subsection
113 (b) are not less than the minimum hourly rate required by ap-
114 plicable law, and (ii) extra overtime compensation is proper-
115 ly computed and paid on other forms of additional pay re-
116 quired to be included in computing the regular rate.

117 (e) Extra compensation paid as described in subdivisions
118 (5), (6) and (7) of subsection (b) shall be creditable toward
119 overtime compensation payable pursuant to this section.

§21-5C-4. Credits.

1 In determining whether an employer is paying an employee
2 wages and overtime compensation as provided in sections two
3 and three of this article, there shall be provided in accordance
4 with the regulations which shall be promulgated by the com-
5 missioner a credit to the employer of twenty percent of the
6 hourly rate of the amount paid an employee customarily re-
7 ceiving gratuities, and a reasonable credit for board and lodging
8 furnished to an employee. The commissioner shall prom-
9 ulgate regulations relating to maximum allowances to em-

10 ployers for room and board furnished to employees: *Pro-*
11 *vided*, That the employer shall be required to furnish to the
12 commissioner upon request, documentary evidence that the
13 employee is receiving at least twenty percent of the minimum
14 wage in gratuities or is receiving room and lodging in accord-
15 ance with the rules and regulations promulgated by the com-
16 missioner.

CHAPTER 58

(Com. Sub. for H. B. 694—By Mr. Speaker, Mr. McManus, and Mr. Belknap)

[Passed February 27, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter twenty-one 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 safety standards for mobile homes; granting authority to the department of labor for the enforcement of standards; defining certain terms relating thereto; requiring the department of labor to promulgate rules and regulations with respect thereto; regulating the sale, rental, leasing and manufacturing of mobile homes; requiring department seal to be placed on all mobile homes rented or sold in this state; providing for reciprocity with other states; establishing fees to be paid by mobile home manufacturers; exempting certain mobile homes and persons from the provisions of this article; prescribing certain unlawful acts; granting the department certain powers to enforce the provisions hereof; and providing for the penalties for violations.

Be it enacted by the Legislature of West Virginia:

That chapter twenty-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 nine, to read as follows:

ARTICLE 9. MOBILE HOME SAFETY ACT.

§21-9-1. Short title.

§21-9-2. Definitions.

§21-9-3. Duties of department, adoption of safety standards for mobile homes; rules and regulations; fees.

- §21-9-4. Sale, rental or transfer of mobile home in violation of article prohibited; exceptions.
- §21-9-5. Department seals; issuance and requirements therefor; form; suspension of issuance and repossession of seals.
- §21-9-6. Inspections by the department.
- §21-9-7. Reciprocity with other states.
- §21-9-8. Certain acts prohibited.
- §21-9-9. Violations of article, rules or regulations; penalties.

§21-9-1. Short title.

- 1 This article shall be known as "The West Virginia Mobile
2 Home Safety Act."

§21-9-2. Definitions.

- 1 Unless clearly indicated otherwise by the context, the fol-
2 lowing words and terms when used in this article, for the pur-
3 pose of this article, shall have the following meanings:
- 4 (1) "Dealer" means any person, other than a manufacturer,
5 as defined in this article, who sells three or more mobile homes
6 in any consecutive twelve-month period.
- 7 (2) "Department" means the department of labor.
- 8 (3) "Manufacturer" means any person who manufactures
9 mobile homes.
- 10 (4) "Mobile home" means a moveable or portable unit, de-
11 signed and constructed to be towed on its own chassis (com-
12 prised of frame and wheels), and designed to be connected to
13 utilities for year-round occupancy. The term includes: (1) Units
14 containing parts that may be folded, collapsed or telescoped
15 when being towed and that may be expanded to provide addi-
16 tional cubic capacity, and (2) units composed of two or more
17 separately towable components designed to be joined into
18 one integral unit capable of being separated again into the
19 components for repeated towing. The term includes units de-
20 signed to be used for residential, commercial, educational or
21 industrial purposes, excluding, however, recreational vehicles,
22 as defined in this article.
- 23 (5) "Mobile home dweller" shall mean one or more individ-
24 uals who own a single mobile home and who are using such
25 mobile home as their residence and dwelling.

26 (6) "National standards" shall mean the "standard for mo-
27 bile homes" as adopted and approved by the American Na-
28 tional Standards Institute on the eighth day of February, one
29 thousand nine hundred seventy-two.

30 (7) "Person" means a person, partnership, corporation, as-
31 sociation or other legal entity.

32 (8) "Recreational vehicle" means a vehicular portable struc-
33 ture built on a chassis designed to be used as a temporary
34 dwelling for travel, recreational and vacation uses, permanent-
35 ly identified "travel trailer" by the manufacturer of the trailer
36 and when factory equipped for the road, having a body width
37 not exceeding eight feet and a body length not exceeding
38 thirty-two feet.

39 (9) "Safety code" shall mean the safety rules and regula-
40 tions adopted and promulgated by the department with re-
41 spect to the body and frame design requirements and construc-
42 tion requirements for mobile homes, as well as the standards
43 for the installation of plumbing, heating and electrical systems
44 in such mobile homes, the standards for glazing and the in-
45 stallation of glass and other similar materials in or upon such
46 mobile homes and the installation of insulation in the con-
47 struction of such mobile homes. Nothing contained in the
48 definition shall be construed to limit the authority of the de-
49 partment to promulgate rules and regulations with respect to
50 the general subject of mobile home safety and the enumer-
51 ation of subjects in this definition shall not be construed to limit
52 the generality of that subject or of the department's authority
53 with respect thereto.

54 (10) "Seal" means a device or insignia issued by the de-
55 partment to be displayed on the exterior of the mobile home to
56 evidence compliance with the safety code.

§21-9-3. Duties of department, adoption of safety standards for mobile homes; rules and regulations; fees.

1 The department is hereby charged with the administration
2 and enforcement of the provisions of this article and shall
3 promulgate and adopt a safety code, which shall substantially
4 conform to the national standards and any amendments

5 thereto. Nothing herein shall prevent the department from
6 adopting a safety code of more rigid standards than those
7 contained in the national standards. The department may
8 adopt such other rules and regulations as it may deem necessary
9 and appropriate for the enforcement of the provisions of this
10 article.

11 All rules and regulations adopted by the department pur-
12 suant to this article shall be so adopted and promulgated in
13 accordance with the provisions of article three, chapter twenty-
14 nine-a of this code and the provisions of said article three
15 shall apply to this article to the same extent as if said article
16 three were set forth in extenso herein. The department may,
17 from time to time, adopt such revisions in the safety code as
18 it deems necessary to protect the health, safety and welfare
19 of the public against unsafe and substandard mobile homes.

20 The department shall collect a fee of five dollars for each
21 seal issued by it, pursuant to section five of this article,
22 which shall be collected from each mobile home manufacturer.
23 All sums collected by the department pursuant to this article
24 shall be paid into the treasury of the state.

**§21-9-4. Sale, rental or transfer of mobile home in violation of
article prohibited; exceptions.**

1 (a) Subject to the provisions of subsection (c) of this
2 section, and except as provided in subsection (b) of this
3 section, it shall be unlawful, from and after the effective date
4 of this article, for any person to rent, sell, transfer or lease
5 in this state or offer for rent, sale, transfer or lease in this
6 state any mobile home unless such mobile home complies with
7 the safety code adopted and promulgated by the department,
8 nor shall any person so rent, sell, transfer or lease any such
9 mobile home in this state unless it bears a seal issued by
10 the department pursuant to section five of this article evi-
11 dencing certification of the manufacturer that the mobile
12 home so sold, rented, transferred or leased complies with
13 the safety code.

14 (b) The provisions of this article shall not apply to the
15 sale or transfer of a mobile home by a mobile home dweller
16 if such mobile home were purchased by him in good faith in

17 another state, territory or foreign country which does not
18 have in existence at the time of the purchase by such mobile
19 home dweller mobile home safety statutes, rules and regula-
20 tions squal to those in existence in this state and such mobile
21 home dweller does not sell more than one mobile home in any
22 consecutive eighteen-month period.

23 (c) The provisions of this article shall not apply to any
24 mobile home manufactured prior to the first day of January,
25 one thousand nine hundred seventy-five.

**§21-9-5. Department seals; issuance and requirements therefor;
form; suspension of issuance and repossession of seals.**

1 The department shall issue its seals to any manufacturer upon
2 application upon forms approved by the department. Such
3 applications shall be supported by affidavit or such other
4 evidence as the department may deem necessary in order to
5 satisfy itself that such seals shall be affixed to only those
6 mobile homes which conform to the requirements of the
7 safety code. Such seals shall be in the form prescribed by
8 the department.

9 All seals shall remain the property of the department, and
10 may be repossessed by the department, if placed upon a mobile
11 home which does not conform to the safety code. Compliance
12 with the safety code is the responsibility of the manufacturer.

13 Neither the state nor the department shall be liable for
14 the issuance of any seal which is thereafter placed upon a
15 mobile home which does not conform with the safety code.

16 The issuance of seals may be suspended as to any manu-
17 facturer who manufactures mobile homes that do not conform
18 with the safety code and issuance of seals shall not be resumed
19 until such manufacturer submits proof satisfactory to the de-
20 partment that the conditions which caused the nonconformity
21 to the safety code have been remedied.

§21-9-6. Inspections by the department.

1 The department is authorized to perform inspections from
2 time to time as it may deem necessary of the facilities and
3 products of manufacturers and dealers. In order to carry out
4 such inspections the department may and is hereby authorized

5 to appoint nongovernmental individuals or agencies to perform
6 such inspections under such terms and conditions as the de-
7 partment deems appropriate. The department shall at all times
8 maintain supervisory control over all such nongovernmental
9 individuals or agencies performing such inspections and shall
10 take such steps as may be necessary to insure effective and
11 uniform enforcement of the safety code. Such inspections shall
12 be performed in accordance with the rules and regulations
13 promulgated by the department. No person shall interfere with
14 or obstruct or hinder the inspection by or on behalf of the
15 department.

§21-9-7. Reciprocity with other states.

1 If any other state has a safety code for mobile homes the
2 minimum requirements of which conform to the safety code of
3 this state and the department determines that such safety code
4 of such other state is being enforced by such other state, the
5 department shall place such other state upon a reciprocity list,
6 which list shall be available to any interested person. Such list
7 shall be conspicuously posted at the place of business of every
8 dealer in this state. Any mobile home which bears the seal of
9 any state which has been placed on the reciprocity list, or
10 which bears a seal approved by such state as sufficient evidence
11 or compliance, shall not be required to affix the seal of this
12 state. If any mobile home bears a seal or similar device of
13 another state having a safety code not meeting the minimum
14 requirements of the safety code of this state, such mobile home
15 shall not be sold, rented, leased or transferred unless it also
16 bears the seal of the department issued pursuant to section five
17 of this article.

§21-9-8. Certain acts prohibited.

1 It shall be unlawful for any person:

2 (1) To duplicate or create any facsimile of the seal issued
3 by the department or to attach any seal or similar device or
4 duplicate or facsimile to any mobile home in order to indicate
5 that such mobile home conforms with the safety code when
6 such is not the case; or

7 (2) To make any alteration of any mobile home to which
8 the seal of the department has been affixed or to which has

9 been affixed the seal of another state on the reciprocity list
10 provided for in section seven of this article if such alterations
11 cause such mobile home to be in nonconformity with the safe-
12 ty code.

§21-9-9. Violations of article, rules or regulations; penalties.

1 Any person, dealer or manufacturer who shall violate any of
2 the provisions of this article or who shall violate any rule or
3 regulation promulgated by the department pursuant to this
4 article, shall be guilty of a misdemeanor, and, upon conviction
5 thereof, shall be fined not less than one hundred dollars nor
6 more than one thousand dollars, or imprisoned in the county
7 jail for a term not to exceed one year, or both such fine and
8 imprisonment. Each sale of a mobile home in violation of the
9 provisions of this article or of such rules and regulations shall
10 constitute a separate offense.

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CHAPTER 59

(H. B. 1115—By Mr. Paterno)

[Passed March 9, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article three, chapter two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to legal capacity; and relating to earlier termination of child support under a decree or order of divorce or separate maintenance or order in any nonsupport or bastardy proceeding.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. LEGAL CAPACITY.

§2-3-1. Legal capacity; saving provisions.

1 On and after June nine, one thousand nine hundred
2 seventy-two, except as otherwise specifically provided in

3 this code, no person who is eighteen years of age or older
4 shall lack legal capacity, by reason of his age, to enter into
5 contracts, sell or purchase real or personal property, create
6 a lien, execute any legal or other written instrument, prosecute
7 or defend legal actions, assert claims or deal in his own
8 affairs in any manner whatsoever.

9 The provisions of this section, and the provisions of chapter
10 sixty-one, acts of the Legislature, regular session, one thousand
11 nine hundred seventy-two, reducing various prescribed age
12 requirements to eighteen years of age, shall not, however,
13 by operation of law affect any rights, duties, obligations or
14 interests accruing or vesting by virtue of any statute, act,
15 event, transaction, order, judgment or decree prior to June
16 nine, one thousand nine hundred seventy-two, or any cause
17 of action which arose or any civil action or claim instituted
18 or asserted prior to such date, and any such right, duty,
19 obligation, interest, cause of action, civil action or claim
20 may be enforced, exercised, enjoyed, terminated, discharged,
21 consummated, prosecuted, maintained or asserted with like
22 effect as if said chapter sixty-one had not been enacted:
23 *Provided*, That any person who has attained the age of
24 eighteen years shall have full power and authority to exercise
25 any and all of the rights, privileges and powers granted to
26 him in the first paragraph of this section with respect to
27 any legal or equitable interest acquired by or which vested
28 in such person before he became eighteen years of age:
29 *Provided, however*, That under no circumstances whatever shall
30 any of the changes made by said chapter sixty-one have
31 any effect upon any of the terms or provisions of or any
32 conditions imposed by any last will and testament, trust
33 agreement or any other written instrument of any kind or
34 character executed prior to such date of June nine, one
35 thousand nine hundred seventy-two: *Provided further*, That
36 any order or mandate providing for payment of child support
37 for any person up to the age of twenty-one years contained
38 in any decree or order of divorce or separate maintenance
39 or in any order in any nonsupport or bastardy proceeding,
40 which decree or order was entered prior to June nine, one
41 thousand nine hundred seventy-two, may by order of the
42 court be terminated as to such person upon such person

43 attaining the age of eighteen years. Moreover, the provisions
44 of this section shall not affect any acts performed or trans-
45 actions entered into by a person under the age of twenty-one
46 years prior to June nine, one thousand nine hundred seventy-
47 two. No change in the general age of legal capacity or in
48 the definitions of the words "under disability," "infant" or
49 "minor" contained in section ten, article two of this chapter
50 shall alter any statute of limitations as to causes of action
51 arising before such date of June nine, one thousand nine
52 hundred seventy-two.

CHAPTER 60

(H. B. 735—By Mr. Cline)

[Passed February 21, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section two-a, article two, chapter one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to legislative findings regarding apportionment of the House of Delegates.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. APPORTIONMENT OF REPRESENTATION.

§1. Repeal of section relating to legislative findings regarding apportionment of the House of Delegates.

1 Section two-a, article two, chapter one of the code of
2 West Virginia, one thousand nine hundred thirty-one, as
3 amended, is hereby repealed.

CHAPTER 61

(S. B. 309—By Mr. Beall and Mr. Gilligan)

[Passed February 28, 1974; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article six, chapter four of the code of West Virginia, one thousand nine hun-

dred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section seven, relating to extending the duration of the Blennerhassett historical commission and the creation, appointment, duties and expenses of an advisory council to such commission.

Be it enacted by the Legislature of West Virginia:

That section six, article six, chapter 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 seven, all to read as follows:

ARTICLE 6. BLENNERHASSETT HISTORICAL COMMISSION.

§4-6-6. Duration of commission.

§4-6-7. Creation, appointment, duties and expenses of advisory council.

§4-6-6. Duration of commission.

- 1 Unless sooner terminated by law and until and unless
- 2 extended, the Blennerhassett historical commission shall
- 3 cease to exist at the adjournment sine die of both houses
- 4 of the Legislature at the conclusion of its regular session
- 5 in the year one thousand nine hundred seventy-six.

§4-6-7. Creation, appointment, duties and expenses of advisory council.

- 1 There is hereby created the advisory council to the
- 2 Blennerhassett historical commission. The council shall
- 3 consist of one representative from each of the following,
- 4 to be appointed as hereinafter provided: One representa-
- 5 tive to be appointed by the directors of the Blennerhassett
- 6 drama association, a nonprofit corporation; one repre-
- 7 sentative to be appointed by the mayor of the city of
- 8 Parkersburg, a municipal corporation; one representative
- 9 to be appointed by the county court of the county of Wood;
- 10 one representative to be appointed by the West Virginia
- 11 geological and economic survey commission; one repre-
- 12 sentative to be appointed by the West Virginia American
- 13 revolution bicentennial commission; and one representa-
- 14 tive to be appointed by the public land corporation of West

15 Virginia. Members of the advisory council shall receive
16 no compensation for their service on the council but shall
17 be reimbursed for all reasonable and necessary expenses
18 actually incurred in the performance of their duties: *Pro-*
19 *vided*, That such expenses be first approved by the Blen-
20 nerhassett historical commission to be paid from appro-
21 priations authorized to be expended by the commission.

22 The commission may designate such additional members
23 of the council as such commission may deem appropriate.

24 The council shall from time to time advise the commis-
25 sion upon matters related to the powers and duties of the
26 commission, and shall, upon request of the commission,
27 attend its meetings.



CHAPTER 62

(Com. Sub. for H. B. 679—By Mr. Prunty)

[Passed March 5, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eleven, relating to members of the Legislature maintaining employee status while serving in the Legislature.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. TERMS OF OFFICE; MATTERS AFFECTING THE RIGHT TO HOLD OFFICE.

§6-5-11. Members of Legislature not to be discriminated against in connection with seniority rights; pension coverage or benefits or insurance coverage or benefits provided by employer.

1 In order to encourage dedicated public service, it shall be

2 unlawful for any private employer to discriminate against an
3 employee who is a member of the Legislature, in connection
4 with any employee seniority rights, employee pension coverage
5 or benefits or employee insurance coverage or benefits, because
6 of such employee's absence from work to attend regular or ex-
7 traordinary sessions of the Legislature: *Provided*, That such
8 employee continues to contribute his share of the costs for any
9 such coverage or benefits when such contribution is required
10 by his employer. An employee shall have a cause of action
11 against his employer for violation of the provisions of this
12 section and such cause of action may be enforced in a civil
13 action for such purpose.

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CHAPTER 63

(Com. Sub. for S. B. 158—By Mr. Brotherton, Mr. President, and Mr. Hubbard)

[Passed March 9, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three, five, nine, ten, eleven and twelve, article eight, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article eight by adding thereto a new section, designated section fifteen; and to amend and reenact article nine of said chapter, relating to increasing the exemption from execution, levy and like process personal property and a homestead; defining terms; relating to method of claiming exemption of personal property; relating to appraisement of personal property, to debts and liabilities enforceable against the same, to appraisal procedures and fees, to setting aside appraisement and to determination of liens; providing that any waiver of personal property exemption shall be void; relating to persons entitled to a homestead exemption and to debts and liabilities enforceable against a homestead; relating to proceedings to reach excess value; relating to descent of homestead to infant children; and providing that any waiver of homestead exemption shall be void, except where there is a consensual security interest and such

security interest cannot be satisfied without encroaching upon the homestead exemption.

Be it enacted by the Legislature of West Virginia:

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

Article

8. Exemptions From Levy.

9. Homestead Exemptions.

ARTICLE 8. EXEMPTIONS FROM LEVY.

§38-8-1. Exemptions of personal property.

§38-8-2. Definition of value.

§38-8-3. Method of claiming exemption on personal property.

§38-8-5. Appraisalment.

§38-8-9. Compensation of appraisers.

§38-8-10. Right of exemption of surviving spouse or minor children.

§38-8-11. No exemption from claims for purchase money or taxes.

§38-8-12. How appraisalment may be set aside; determination of liens.

§38-8-15. Waiver of exemption void.

§38-8-1. Exemptions of personal property.

1 Any husband, wife, parent or other head of a household
 2 residing in this state, or the infant children of deceased
 3 parents, may set apart and hold personal property not ex-
 4 ceeding one thousand dollars in value to be exempt from
 5 execution or other process, except as hereinafter provided.
 6 Any mechanic, artisan or laborer residing in this state,
 7 whether he be a husband, wife, parent or other head of a
 8 household, or not, may hold the working tools of his trade
 9 or occupation to the value of fifty dollars exempt from
 10 forced sale or execution: *Provided*, That in no case shall
 11 the exemption allowed any one person exceed one thou-
 12 sand dollars.

§38-8-2. Definition of value.

1 For the purpose of this article, the term "value," when
 2 used without any modifying words, means fair market
 3 value as of the date the exemption is claimed, less all

4 liens other than judicial liens obtained by legal or equi-
5 table proceedings.

§38-8-3. Method of claiming exemption on personal property.

1 When a debtor claims personal property as exempt un-
2 der the provisions of this article, he shall deliver to the
3 officer holding the execution or other process, a list by
4 separate items with the fair market value of each item,
5 according to the belief of the debtor, of all personal prop-
6 erty and estate owned or claimed by him, including
7 money, bonds, bills, notes, claims and demands, with the
8 residence of the person against whom such bonds, bills,
9 notes, claims and demands are. Such list shall also set
10 forth with respect to each such item of personal property
11 and estate the name and address of the holder of and the
12 current amount owing on each lien thereon other than
13 judicial liens obtained by legal or equitable proceedings.
14 The debtor shall verify such list, valuation and lien in-
15 debtedness by affidavit, which affidavit shall also show
16 that the debtor is entitled to such exemption, and shall
17 specify the character in which he claims to be so entitled,
18 as for example, that he is a husband. If the value of the
19 property named in such list exceeds, as stated therein, one
20 thousand dollars, the debtor shall state at the foot thereof
21 what part of such property he claims as exempt, as afore-
22 said; but if such value does not exceed one thousand dol-
23 lars, as so stated, the claim of exemption shall be held
24 to extend to the whole thereof without stating more; and
25 if no appraisalment thereof be demanded, as hereinafter
26 provided, the property so claimed shall be set apart to
27 the debtor as exempt as aforesaid. If the husband, wife,
28 parent or other head of a household owning such prop-
29 erty be absent, or incapable of acting, or neglect or decline
30 to act, the claim may be made, the list delivered, and
31 the affidavit made by another member of the family, with
32 the same effect as if made by the owner, and the claim
33 may be made, the list delivered, and the affidavit made on
34 behalf of infant children by the guardian thereof or some-
35 one standing in loco parentis thereto. The officer shall
36 immediately, upon receipt of the list, exhibit the same
37 to the creditor, his agent or attorney.

§38-8-5. Appraisement.

1 The appraisers shall forthwith proceed to make a list,
2 by separate items, of the personal estate selected by the
3 debtor, affixing to each item the fair market value they
4 may agree on, and annexing to the list their affidavit to
5 the following effect: "We solemnly swear that, to the
6 best of our judgment, the above is the fair market value
7 of the property therein described;" which affidavit shall
8 be signed by two appraisers at least, and be certified by
9 some person authorized to administer oaths.

§38-8-9. Compensation of appraisers.

1 Each appraiser shall be entitled to one dollar, to be paid
2 by the creditor if the appraised fair market value of the
3 property claimed by the debtor as exempt is equal to or
4 greater than the fair market value ascribed to such prop-
5 erty by the debtor; otherwise to be paid by the debtor.

§38-8-10. Right of exemption of surviving spouse or minor children.

1 After the death of a husband, wife or parent residing in
2 this state, his surviving spouse or minor children, or such
3 of them as there may be, may select personal estate of the
4 deceased, not exceeding one thousand dollars in value,
5 and hold the same exempt from any debts or liabilities of
6 the deceased spouse or parent, contracted or incurred by
7 the deceased in his lifetime, but the personal representa-
8 tive or any creditor of the deceased may have the personal
9 estate so selected appraised as prescribed in the preceding
10 sections of this article, and with like effect; and no greater
11 amount than one thousand dollars of the personal estate
12 of the deceased shall be exempt by virtue of this pro-
13 vision; and if during his lifetime, he had himself set apart
14 personal estate to be exempt from execution and other
15 process, the same shall be subject thereto after his death,
16 so far as it is not selected as aforesaid by his surviving
17 spouse and minor children, or such of them as there may
18 be.

§38-8-11. No exemption from claims for purchase money or taxes.

1 No exemption claimed under the preceding sections of
 2 this article, or any of them, shall affect or impair any
 3 claim for the purchase money of the personal estate in
 4 respect to which such exemption is claimed, or any pro-
 5 ceeding for the collection of taxes, or county or district
 6 or municipal levies. The increase in such exemption pro-
 7 vided by this article shall not be applicable to liens and
 8 all other debts and liabilities contracted and incurred
 9 prior to the effective date of this article.

§38-8-12. How appraisement may be set aside; determination of liens.

1 Whenever an appraisement has been timely demanded
 2 by the creditor, his agent or attorney, the circuit court
 3 of the county, or judge thereof in vacation, on motion of
 4 any person aggrieved made within ten days after de-
 5 livery of the appraisement list to the officer as specified
 6 in section six of this article, may set aside any appraise-
 7 ment made as provided in this article, order a new ap-
 8 praisement to be made and returned, and appoint ap-
 9 praisers for that purpose, and may determine the amount
 10 and validity of the liens on the items of personal property
 11 and estate set forth on the debtor's list delivered to the
 12 officer as specified in section three of this article, and
 13 make such order respecting the costs as may be deemed
 14 just. Any determination under this section of the amount
 15 and validity of liens shall be binding only as between
 16 the debtor and the creditor at whose instance the exe-
 17 cution or other process has issued.

§38-8-15. Waiver of exemption void.

1 Any waiver of the rights conferred by this article shall
 2 be void and unenforceable.

ARTICLE 9. HOMESTEAD EXEMPTIONS.

- §38-9-1. Persons entitled to homestead; value.
- §38-9-2. Definitions.
- §38-9-3. Debts enforceable against homestead.
- §38-9-4. Proceedings to reach excess value of homestead.
- §38-9-5. Descent of homestead to infant children.
- §38-9-6. Waiver of exemption void.

§38-9-1. Persons entitled to homestead; value.

1 Any husband, wife, parent or other head of a household
2 residing in this state, or the infant children of deceased or
3 insane parents, owning a homestead shall by operation of
4 law have a homestead exemption therein to the value of
5 five thousand dollars, subject to the provisions of section
6 forty-eight, article six of the constitution of this state.

§38-9-2. Definitions.

1 As used in this article:

2 (1) "Homestead" means property owned and used as
3 the principal home for the debtor, his spouse or a depen-
4 dent, or any or all of them, whether classified as real
5 property, chattel real, a fixture or personal property;
6 and

7 (2) "Value," without any modifying words, means
8 fair market value as of the date the exemption is asserted,
9 less all liens other than judicial liens obtained by legal or
10 equitable proceedings.

§38-9-3. Debts enforceable against homestead.

1 As of the effective date of this article, a homestead
2 shall be exempt up to the value of five thousand
3 dollars from all debts and liabilities, except debts
4 incurred for the purchase money thereof, or for the erec-
5 tion of permanent improvements thereon, and claims for
6 taxes or county or district or municipal levies due there-
7 on: *Provided*, That the exemption herein granted by
8 operation of law shall not render the homestead exempt
9 from liens and all other debts and liabilities contracted
10 and incurred prior to the effective date of this article:
11 *Provided further*, That with respect to a homestead ex-
12 emption up to one thousand dollars perfected by execu-
13 tion and recordation of a written instrument as required
14 under the former provisions of this article, such exemption
15 shall for all purposes continue to be governed by such
16 former provisions of this article.

§38-9-4. Proceedings to reach excess value of homestead.

1 Any creditor of the person owning such homestead may
2 assert a claim in a civil action, alleging that the value of
3 the homestead is of greater value than five thousand dol-

4 lars, and if the court shall be satisfied, from the proofs
 5 in the cause, that the allegations are true, it shall make
 6 such order or decree as may be necessary to subject such
 7 excess of value, above the sum of five thousand dollars,
 8 to the payment of the debt, or demand of such creditor.
 9 If more than one creditor shall join in such judicial pro-
 10 ceeding, and their debts or claims be of equal priority,
 11 such excess shall be paid pro rata upon the debt or claim
 12 of each.

§38-9-5. Descent of homestead to infant children.

1 In case of the death of a husband, wife or parent owning
 2 such homestead, the benefit thereof shall descend to his or
 3 her minor children, and shall be held and enjoyed by them
 4 as such homestead, until all of such infants attain the age
 5 of twenty-one years unless they sooner die.

§38-9-6. Waiver of exemption void.

1 Any waiver of the rights conferred by this article shall
 2 be void and unenforceable except to the extent that (1)
 3 such waiver is accompanied by a consensual security in-
 4 terest in the property in which the homestead exemption
 5 is asserted and (2) such security interest cannot be sat-
 6 isfied without encroaching upon the homestead exemption
 7 so asserted.

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CHAPTER 64

(H B. 831—By Mr. Speaker, Mr. McManus, and Mr. Seibert)

[Passed March 5, 1974; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact article two, chapter forty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to a certain valuation of life estates; relating to the payment of a certain gross sum in lieu of a life estate; providing that said valuation of a life estate and said payment thereon be made on the basis of certain calculations made according to the 1958 Commissioners Standard Ordinary (C.S.O.) Table of Mortality with interest at five percent per annum; providing a certain rule of calculation

therefor; relating to a certain method of computing the value of an inchoate right of dower; providing that said valuation of an inchoate right of dower be made on the basis of certain calculations made according to a certain Table of Uniform Seniority for 1958 Commissioners Standard Ordinary (C.S.O.) Mortality showing the addition to be made to the age of the younger of two lives in order to obtain the equivalent equal ages and according to a certain table giving the present value of an annuity of one dollar per annum for the joint existence of two lives of equal ages, said table being based on the 1958 Commissioners Standard Ordinary (C.S.O.) Table of Mortality with interest of five percent per annum; and relating to certain examples of said aforementioned valuations.

Be it enacted by the Legislature of West Virginia:

That article two, chapter forty-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. VALUATION OF LIFE ESTATES.

- §43-2-1. Gross sum in payment of life estates.
- §43-2-2. Rule of calculation.
- §43-2-3. Examples.
- §43-2-4. Method of computing value of inchoate right of dower.
- §43-2-5. Examples.

§43-2-1. Gross sum in payment of life estates.

1 When a party as a tenant for life, or in dower, or otherwise,
2 is entitled to the annual interest on a sum of money, or is
3 entitled to the use of any estate, or any part thereof, or of
4 the proceeds arising therefrom by a sale or otherwise, and is
5 willing to accept a gross sum in lieu thereof, or the party
6 liable for such interest, or affected by such claim, has the
7 right to pay a gross sum in lieu thereof, or if a court in any
8 proceeding decrees a gross sum to be paid in lieu thereof,
9 or if it shall be desirable for any purpose to ascertain the
10 value thereof, the sum to be paid or the present value thereof
11 shall be estimated according to the then value of an annuity
12 of five percent on the principal sum during the probable life
13 of such person, according to the following table showing the
14 present value, on the basis of interest at five percent, of an

15 annuity of one dollar, payable at the end of each year that
 16 a person of a given age shall live:

17 **1958 Commissioners Standard Ordinary (C.S.O.)**
 18 **Table of Mortality, With Interest at**
 19 **Five Percent Per Annum**

| | Age | Present Value of \$1 per Annum | Age | Present Value of \$1 per Annum |
|----|-----|-----------------------------------------|-----|-----------------------------------------|
| 20 | 0 | 18.65027 | 25 | 17.13029 |
| 21 | 1 | 18.72242 | 26 | 17.02159 |
| 22 | 2 | 18.69320 | 27 | 16.90777 |
| 23 | 3 | 18.65774 | 28 | 16.78855 |
| 24 | 4 | 18.61927 | 29 | 16.66384 |
| 25 | 5 | 18.57764 | 30 | 16.53350 |
| 26 | 6 | 18.53289 | 31 | 16.39723 |
| 27 | 7 | 18.48487 | 32 | 16.25488 |
| 28 | 8 | 18.43359 | 33 | 16.10611 |
| 29 | 9 | 18.37911 | 34 | 15.95074 |
| 30 | 10 | 18.32144 | 35 | 15.78857 |
| 31 | 11 | 18.26082 | 36 | 15.61972 |
| 32 | 12 | 18.19748 | 37 | 15.44411 |
| 33 | 13 | 18.13146 | 38 | 15.26185 |
| 34 | 14 | 18.06319 | 39 | 15.07333 |
| 35 | 15 | 17.99275 | 40 | 14.87860 |
| 36 | 16 | 17.92001 | 41 | 14.67787 |
| 37 | 17 | 17.84504 | 42 | 14.47117 |
| 38 | 18 | 17.76769 | 43 | 14.25836 |
| 39 | 19 | 17.68766 | 44 | 14.03941 |
| 40 | 20 | 17.60441 | 45 | 13.81426 |
| 41 | 21 | 17.51778 | 46 | 13.58299 |
| 42 | 22 | 17.42739 | 47 | 13.34578 |
| 43 | 23 | 17.33286 | 48 | 13.10276 |
| 44 | 24 | 17.23397 | 49 | 12.85419 |

| | Age | Present Value of \$1 per Annum | Age | Present Value of \$1 per Annum |
|----|-----|-----------------------------------------|-----|-----------------------------------------|
| 45 | 50 | 12.60026 | 75 | 5.53981 |
| 46 | 51 | 12.34127 | 76 | 5.27737 |
| 47 | 52 | 12.07747 | 77 | 5.01772 |
| 48 | 53 | 11.80892 | 78 | 4.76245 |
| 49 | 54 | 11.53588 | 79 | 4.51368 |
| 50 | 55 | 11.25855 | 80 | 4.27293 |
| 51 | 56 | 10.97718 | 81 | 4.04097 |
| 52 | 57 | 10.69219 | 82 | 3.81806 |
| 53 | 58 | 10.40402 | 83 | 3.60362 |
| 54 | 59 | 10.11314 | 84 | 3.39659 |
| 55 | 60 | 9.81994 | 85 | 3.19585 |
| 56 | 61 | 9.52502 | 86 | 3.00022 |
| 57 | 62 | 9.22876 | 87 | 2.80842 |
| 58 | 63 | 8.93163 | 88 | 2.61877 |
| 59 | 64 | 8.63420 | 89 | 2.42965 |
| 60 | 65 | 8.33705 | 90 | 2.23938 |
| 61 | 66 | 8.04095 | 91 | 2.04635 |
| 62 | 67 | 7.74687 | 92 | 1.84880 |
| 63 | 68 | 7.45587 | 93 | 1.64653 |
| 64 | 69 | 7.16916 | 94 | 1.42958 |
| 65 | 70 | 6.88736 | 95 | 1.20982 |
| 66 | 71 | 6.61066 | 96 | 0.97745 |
| 67 | 72 | 6.33858 | 97 | 0.74050 |
| 68 | 73 | 6.07017 | 98 | 0.51535 |
| 69 | 74 | 5.80411 | 99 | 0. |

§43-2-2. Rule of calculation.

1 Calculate the interest at five percent upon the sum to the
2 income of which or upon the value of the property to the use of
3 which the person is entitled. Multiply this interest by the pre-
4 sent value of an annuity of one dollar as set opposite the per-
5 son's age in the table, and the product is the gross value of the
6 life estate of such person therein.

§43-2-3. Examples.

1 Suppose a person whose age is fifty is tenant for life in the
2 whole of an estate worth \$18,000. The annual interest on that
3 sum at five percent is \$900. The present value of an annuity
4 of one dollar at the age of fifty, as appears by the table, is
5 \$12.60026, which multiplied by \$900, the amount of the an-
6 nual interest, gives \$11,340.23 as the gross value of such life
7 estate in the premises, or the proceeds thereof. Then suppose
8 a tenant in dower whose age is fifty is entitled to dower in an
9 estate worth \$18,000. The annual interest at five percent on
10 \$6,000, the third part thereof, is \$300, which, multiplied by
11 as before, gives \$3,780.08 as the gross value of such estate of
12 dower.

§43-2-4. Method of computing value of inchoate right of dower.

1 The present value of an inchoate right of dower shall be
2 determined by finding the present value of an annuity, for the
3 life of the spouse entitled to dower, equal to the interest at
4 five percent on one third of the value of the property or prin-
5 cipal sum in which he or she is entitled to dower, and then
6 subtracting from such value the present value of an annuity of
7 the same amount for the joint lives of the husband and wife.
8 Such determination shall be made by the following method:

9 (a) Compute the difference between the age of the husband
10 at his nearest birthday and the age of the wife at her nearest
11 birthday.

12 (b) From Table I (Uniform Seniority) hereto appended, add
13 the number given for the difference of age computed in sub-

14 division (a) to the younger of the husband's and wife's ages.
15 The resulting number is the equivalent "equal ages" of a hus-
16 band and wife of different ages.

17 (c) From Table II (Present Value of an Annuity of One
18 Dollar for the Joint Existence of Two Lives of Equal Ages)
19 hereto appended, find the present value of an annuity of one
20 dollar payable during the joint existence of two lives at the age
21 which is next younger than the "equal ages" computed in sub-
22 division (b).

23 (d) Subtract from the value found as directed in subdivision
24 (c) the value for the next higher "equal ages" as given in
25 Table II.

26 (e) Multiply the remainder obtained as directed in sub-
27 division (d) by the fractional part of the "equal ages" found as
28 directed in subdivision (b).

29 (f) Subtract the product obtained as directed in subdivision
30 (e) from the value obtained from Table II as directed in sub-
31 division (c).

32 (g) Subtract the remainder obtained as directed in sub-
33 division (f) from the value of an annuity of one dollar on the
34 life of the spouse entitled to the inchoate right of dower ac-
35 cording to the figures given for his or her age by the table in
36 section one of this article.

37 (h) Multiply the remainder obtained as directed in sub-
38 division (g) by five percent of one third of the value of the
39 property or principal sum in which such spouse has an inchoate
40 right of dower, and the result thus obtained is the present
41 value of the inchoate dower right.

42

TABLE I.

43

Uniform Seniority for 1958

44

Commissioners Standard Ordinary (C. S. O.)

45

Mortality Showing the Addition

46

to be Made to the Age of the

47

Younger of Two Lives in Order to

48

Obtain the Equivalent Equal Ages

| | Difference of Age | Addition to Younger Age | Difference of Age | Addition to Younger Age |
|----|------------------------------|------------------------------------|------------------------------|------------------------------------|
| 49 | 1 | .512 | 21 | 14.940 |
| 50 | 2 | 1.046 | 22 | 15.819 |
| 51 | 3 | 1.603 | 23 | 16.707 |
| 52 | 4 | 2.183 | 24 | 17.604 |
| 53 | 5 | 2.785 | 25 | 18.509 |
| 54 | 6 | 3.409 | 26 | 19.422 |
| 55 | 7 | 4.055 | 27 | 20.342 |
| 56 | 8 | 4.721 | 28 | 21.268 |
| 57 | 9 | 5.407 | 29 | 22.201 |
| 58 | 10 | 6.113 | 30 | 23.139 |
| 59 | 11 | 6.837 | 31 | 24.082 |
| 60 | 12 | 7.580 | 32 | 25.030 |
| 61 | 13 | 8.340 | 33 | 25.982 |
| 62 | 14 | 9.116 | 34 | 26.938 |
| 63 | 15 | 9.907 | 35 | 27.898 |
| 64 | 16 | 10.714 | 36 | 28.862 |
| 65 | 17 | 11.534 | 37 | 29.828 |
| 66 | 18 | 12.368 | 38 | 30.707 |
| 67 | 19 | 13.214 | 39 | 31.769 |
| 68 | 20 | 14.072 | 40 | 32.744 |

| | Difference of Age | Addition to Younger Age | Difference of Age | Addition to Younger Age |
|----|------------------------------|------------------------------------|------------------------------|------------------------------------|
| 69 | 41 | 33.720 | 59 | 51.522 |
| 70 | 42 | 34.699 | 60 | 52.517 |
| 71 | 43 | 35.679 | 61 | 53.514 |
| 72 | 44 | 36.661 | 62 | 54.510 |
| 73 | 45 | 37.645 | 63 | 55.507 |
| 74 | 46 | 38.630 | 64 | 55.504 |
| 75 | 47 | 39.617 | 65 | 57.502 |
| 76 | 48 | 40.604 | 66 | 58.499 |
| 77 | 49 | 41.593 | 67 | 59.497 |
| 78 | 50 | 42.582 | 68 | 60.495 |
| 79 | 51 | 43.573 | 69 | 61.493 |
| 80 | 52 | 44.564 | 70 | 62.491 |
| 81 | 53 | 45.556 | 71 | 63.490 |
| 82 | 54 | 46.549 | 72 | 64.489 |
| 83 | 55 | 47.543 | 73 | 65.487 |
| 84 | 56 | 48.537 | 74 | 66.486 |
| 85 | 57 | 49.531 | 75 | 67.485 |
| 86 | 58 | 50.526 | | |

87

TABLE II.

88

Present Value of an Annuity of One Dollar per

89

Annun for the Joint Existence of Two Lives of

90

Equal Ages, According to the 1958

91

Commissioners Standard Ordinary (C.S.O.)

92

Table of Mortality, with Interest at

93

Five Percent Per Annun

| | Equal Ages | | Equal Ages | |
|-----|-----------------------|----------|-----------------------|----------|
| 94 | 0 | 17.84678 | 20 | 16.55681 |
| 95 | 1 | 18.00731 | 21 | 16.44706 |
| 96 | 2 | 17.97440 | 22 | 16.33279 |
| 97 | 3 | 17.93063 | 23 | 16.21341 |
| 98 | 4 | 17.88226 | 24 | 16.08861 |
| 99 | 5 | 17.82905 | 25 | 15.95776 |
| 100 | 6 | 17.77115 | 26 | 15.82051 |
| 101 | 7 | 17.70832 | 27 | 15.67685 |
| 102 | 8 | 17.64068 | 28 | 15.52640 |
| 103 | 9 | 17.56837 | 29 | 15.36911 |
| 104 | 10 | 17.49151 | 30 | 15.20491 |
| 105 | 11 | 17.41061 | 31 | 15.03338 |
| 106 | 12 | 17.32620 | 32 | 14.85442 |
| 107 | 13 | 17.23844 | 33 | 14.66756 |
| 108 | 14 | 17.14824 | 34 | 14.47265 |
| 109 | 15 | 17.05581 | 35 | 14.26949 |
| 110 | 16 | 16.96101 | 36 | 14.05846 |
| 111 | 17 | 16.86404 | 37 | 13.83963 |
| 112 | 18 | 16.76475 | 38 | 13.61334 |
| 113 | 19 | 16.66264 | 39 | 13.38044 |

| | Equal Ages | | Equal Ages | |
|-----|---------------|----------|---------------|---------|
| 114 | 40 | 13.14123 | 71 | 4.42687 |
| 115 | 41 | 12.89623 | 72 | 4.19567 |
| 116 | 42 | 12.64564 | 73 | 3.97151 |
| 117 | 43 | 12.38935 | 74 | 3.75233 |
| 118 | 44 | 12.12749 | 75 | 3.53702 |
| 119 | 45 | 11.86009 | 76 | 3.32527 |
| 120 | 46 | 11.58742 | 77 | 3.11782 |
| 121 | 47 | 11.30991 | 78 | 2.91618 |
| 122 | 48 | 11.02791 | 79 | 2.72260 |
| 123 | 49 | 10.74196 | 80 | 2.53865 |
| 124 | 50 | 10.45247 | 81 | 2.36506 |
| 125 | 51 | 10.16002 | 82 | 2.20202 |
| 126 | 52 | 9.86508 | 83 | 2.04891 |
| 127 | 53 | 9.56780 | 84 | 1.90462 |
| 128 | 54 | 9.26863 | 85 | 1.76803 |
| 129 | 55 | 8.96788 | 86 | 1.63815 |
| 130 | 56 | 8.66595 | 87 | 1.51387 |
| 131 | 57 | 8.36347 | 88 | 1.39387 |
| 132 | 58 | 8.06108 | 89 | 1.27684 |
| 133 | 59 | 7.75942 | 90 | 1.16163 |
| 134 | 60 | 7.45897 | 91 | 1.04729 |
| 135 | 61 | 7.16051 | 92 | .93307 |
| 136 | 62 | 6.86446 | 93 | .81815 |
| 137 | 63 | 6.57132 | 94 | .70079 |
| 138 | 64 | 6.28170 | 95 | .57580 |
| 139 | 65 | 5.99623 | 96 | .43646 |
| 140 | 66 | 5.71571 | 97 | .27539 |
| 141 | 67 | 5.44127 | 98 | .10488 |
| 142 | 68 | 5.17412 | 99 | 0 |
| 143 | 69 | 4.91568 | 100 | 0 |
| 144 | 70 | 4.66658 | | |

§43-2-5. Examples.

1 Suppose it is desired to find the present value of the
2 wife's inchoate right of dower in real estate worth \$150,000
3 where the husband's age is forty and the wife's age is
4 thirty-five. Pursuing the method prescribed in section four
5 of this article, each step results, as follows:

6 (a) The difference in age is five years.

7 (b) The corresponding decimal from Table I is 2.785,
8 which added to 35 gives 37.785, the equivalent "equal ages"
9 of a husband aged 40 and wife aged 35.

10 (c) From Table II it is found that the present value of
11 an annuity of one dollar payable during the joint existence
12 of two lives aged 37, the age next younger than 37.785, is
13 \$13.83963.

14 (d) From Table II it is found that the present value of
15 such an annuity for two lives aged 38 is \$13.61334, which
16 subtracted from \$13.83963 leaves \$0.22629.

17 (e) \$0.22629, the result obtained in subdivision (d),
18 multiplied by 0.785, the fractional part of the "equal ages"
19 found in subdivision (b), gives \$0.17764.

20 (f) \$0.17764 subtracted from \$13.83963, the figures taken
21 from Table II as directed in subdivision (c), leaves \$13.66199,
22 which is the present value of an annuity of one dollar
23 payable during the joint existence of two lives aged 37.785
24 years.

25 (g) \$13.66199 subtracted from \$15.78857, the value of
26 an annuity of one dollar on the life of the wife at age
27 thirty-five with interest at five percent, as found in the
28 table in section one of this article, leaves \$2.12658.

29 (h) \$2.12658 multiplied by five percent of one third of
30 \$150,000 or \$2500, equals \$5316.45, which is the present
31 value of the inchoate right of dower of the wife in the example
32 given.

CHAPTER 65

(H. B. 1351—By Mrs. Smirl and Mr. Edwards)

[Passed March 9, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal article ten, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend chapter twenty-seven of said code by adding thereto a new article, designated article sixteen, relating to the sterilization of mentally incompetents; providing for procedures and persons subject to sterilization; right to appeal from court order; immunity of physician from civil or criminal liability; limitations; appointment of legal counsel and compensation and costs.

Be it enacted by the Legislature of West Virginia:

That article ten, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that chapter twenty-seven of said code be amended by adding thereto a new article, designated article sixteen, to read as follows:

ARTICLE 16. STERILIZATION OF MENTAL DEFECTIVES.

§27-16-1. Persons subject to sterilization; procedure.

§27-16-2. Appeal from court order.

§27-16-3. Immunity of physician performing surgical procedure.

§27-16-4. Limitations of article.

§27-16-5. Legal counsel; compensation; costs.

§27-16-1. Persons subject to sterilization; procedure.

1 Whenever any parent, guardian, committee or authority re-
2 sponsible for a person who has been declared mentally in-
3 competent shall be of the opinion that it is in said person's
4 best interest and the best interest of society that the said per-
5 son be sterilized, such parent, guardian, committee or au-
6 thority shall apply to the circuit court of the county of which
7 such incompetent person is a resident or where he may be
8 found, by petition setting forth, under oath, all of the facts of
9 the case and the grounds of his opinion, and praying that an
10 order may be entered by said court authorizing and requiring
11 him to have performed, by a duly licensed physician to be des-
12 ignated in the petition and order, upon such incompetent per-

13 son named in such petition, sterilization procedures as medi-
14 cally indicated.

15 The court in which such petition is filed, or the judge thereof
16 in vacation or a referee appointed by the court for this pur-
17 pose shall review the circumstances under which the indi-
18 vidual was declared incompetent and shall take evidence to de-
19 termine that the circumstances warrant continuation of the in-
20 competent status of the individual.

21 If, as a result of such review it is determined that the in-
22 competent status should be continued, a further hearing shall
23 be scheduled.

24 A copy of such petition shall be served upon such incom-
25 petent person, together with a notice, in writing, designating
26 the date and time when the court, or the judge thereof in
27 vacation, will hear the matters arising upon such petition.
28 Such notice shall be served not less than fifteen days prior
29 to the date of such hearing.

30 After the notice required by this article to be served shall
31 have been given, as herein provided, the court, or the judge
32 thereof in vacation or referee appointed for this purpose shall
33 proceed to hear and consider the petition and the evidence of-
34 fered in support of and against the same. For every such in-
35 competent person who is not represented by counsel the court
36 shall appoint competent legal counsel who shall represent the
37 rights and interests of such incompetent person who shall have
38 the right, but shall not be required to be present at such
39 hearings in person, and shall have the opportunity to present
40 evidence in his own behalf and cross-examine witnesses. A
41 transcript of all testimony at such hearing shall be made a
42 part of the record filed with the clerk and shall be made
43 available to the incompetent person or his counsel.

44 However, prior to such hearing the court shall order a com-
45 plete medical-social evaluation by one licensed physician and
46 one licensed psychologist or by two licensed physicians, at least
47 one of whom shall be qualified in the field of psychiatry, neuro-
48 logic or genetics. Such examiners shall be present at the hear-
49 ing and may be examined and cross-examined.

50 Upon consideration of the full record, the court, the judge
51 thereof in vacation or the referee may find:

52 (1) That sterilization is unwarranted and the proceedings
53 shall be dismissed;

54 (2) That the individual is mentally impaired and that such
55 defect is of a genetic nature that is likely to be passed on to
56 any children; or

57 (3) That the individual is mentally impaired to such a
58 degree as to be unable to care for a child and that the indi-
59 vidual is unlikely to recover from such mental impairment.

60 If the finding is made as enumerated in (2) or (3) above,
61 and it is further determined that no alternative method of
62 birth control is feasible, the court or the judge thereof in
63 vacation may order that medically appropriate sterilization
64 procedures shall be performed, and for a female, that such
65 procedures be performed in a medical facility licensed by the
66 state board of health. In no case shall such procedures be
67 carried out until sixty days have elapsed from the date of
68 such order.

§27-16-2. Appeal from court order.

1 From any such order so entered by the court, or the judge
2 thereof in vacation, any party thereto shall have, within sixty
3 days after the entry of such order, the right to apply for an
4 appeal to the supreme court of appeals, which may grant or
5 refuse such appeal and shall have jurisdiction to hear and to
6 determine the same upon the record of the hearing in the
7 circuit court and to enter such order as it may deem appro-
8 priate. The filing of such an appeal in the supreme court of
9 appeals shall operate as a stay of proceedings under any such
10 order of the circuit court until such appeal shall be determined
11 by the supreme court of appeals.

§27-16-3. Immunity of physician performing surgical procedure.

1 Except as to the laws governing negligence, no such physi-
2 cian shall be liable either civilly or criminally by reason of
3 having performed any procedure authorized by the provisions
4 of this article upon any person in this state.

§27-16-4. Limitations of article.

1 Nothing in this article shall be construed to authorize the
2 operation of castration nor the removal of sound organs from

3 the body; but this provision shall not be construed so as to
 4 prevent the medical or surgical treatment for sound thera-
 5 peutic reasons of any person in this state, by a physician li-
 6 censed by this state, in such a way as may incidentally in-
 7 volve the nullification or destruction of the reproductive func-
 8 tions.

§27-16-5. Legal counsel; compensation; costs.

1 When, in any case, the court, or judge thereof in vacation,
 2 is satisfied that the counsel appointed by the court has ren-
 3 dered substantial service to the mental incompetent, it may
 4 allow him reasonable compensation therefor, and his actual
 5 expenses, if any, to be paid by the petitioners.

6 The costs of any proceeding pursuant to this article shall
 7 be paid by the petitioner.

CHAPTER 66

(Com. Sub. for H. B. 910—By Mrs. Withrow and Mr. Greer)

[Passed March 9, 1974; in effect July 1, 1974. Approved by the Governor.]

AN ACT to repeal articles three and six, chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal section nine, article three, chapter sixty-two of said code; to amend and reenact sections two, three and six, article one, chapter twenty-seven of said code; to further amend said article one by adding thereto five new sections, designated sections nine through thirteen; and to amend and reenact section three, article two, articles four, five, six-a and eleven, all of chapter twenty-seven of said code, all relating to mentally ill, mentally retarded and addicted persons; modifying procedures for admission of persons to mental health facilities; amending procedures relative to commitment; defining words and phrases; relating to rules as to patients; authority of mental health facilities to receive patients; confinement of minors; voluntary patients; release of voluntary patients; right of patient to be released on application; involuntary commitment; hearing; appointment of mental hygiene commissioner;

payment by county court; duties of prosecuting attorney; involuntary hospitalization; admission by medical certification; emergency procedures; applications; examinations; hearings; release; legal proceedings for involuntary hospitalization; notice procedures; right to counsel; rules of evidence; transcript of all proceedings; order of findings; judicial review for persons adversely affected by order of commitment; examination of patients newly admitted to mental health facilities; disposition of patients after examination; procedures upon patient's demand for release, hospitalization by agency of United States; periodic examination and review of committed patients' hospitalization and their right to appeal; rights of patients; fees; expenses of proceedings; transportation for mentally ill, commitment of persons charged or convicted of a crime; determination of competency of defendant to stand trial; hospitalization of defendants found incompetent to stand trial or not guilty by reason of mental illness, mental retardation or addiction; periodic review of person found incompetent to stand trial; judicial hearing of defendant's defense of not guilty; release of defendant during course of criminal proceedings; dismissal of criminal charge; appointment of committee for incompetent persons; bond of committee; appraisal of estate of incompetent person; powers and duties of committee generally; and authority of committee to mortgage, lease or sell realty of incompetent person.

Be it enacted by the Legislature of West Virginia:

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

Article

- 1. Words and Phrases Defined.**
- 2. Mental Health Facilities.**
- 4. Voluntary Hospitalization.**
- 5. Involuntary Hospitalization.**

6A. Commitment of Persons Charged or Convicted of a Crime.

11. Committee; Disposition of Property.

ARTICLE 1. WORDS AND PHRASES DEFINED.

§27-1-2. Mental illness.

§27-1-3. Mental retardation.

§27-1-6. State hospital.

§27-1-9. Mental health facility.

§27-1-10. Psychologist.

§27-1-11. Addiction.

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

§27-1-13. Chief medical officer.

§27-1-2. Mental illness.

- 1 "Mental illness" means a manifestation in a person of
- 2 significantly impaired capacity to maintain acceptable levels
- 3 of functioning in the areas of intellect, emotion and physical
- 4 well-being.

§27-1-3. Mental retardation.

- 1 "Mental retardation" means significantly subaverage intel-
- 2 lectual functioning which manifests itself in a person during
- 3 his developmental period and which is characterized by his
- 4 inadequacy in adaptive behavior.

§27-1-6. State hospital.

- 1 "State hospital" means any hospital, center or institution,
- 2 or part thereof, established, maintained and operated by the
- 3 department of mental health or by the department of mental
- 4 health in conjunction with a political subdivision of the state
- 5 to provide inpatient or outpatient care and treatment for the
- 6 mentally ill, mentally retarded or addicted.

§27-1-9. Mental health facility.

- 1 "Mental health facility" means any inpatient, residential or
- 2 outpatient facility for the care and treatment of the mentally
- 3 ill, mentally retarded or addicted which is operated, or licensed
- 4 to operate, by the department of mental health and shall
- 5 include state hospitals as defined in section six of this article.
- 6 The term shall also include a veterans administration hospital.

§27-1-10. Psychologist.

- 1 "Psychologist" means any person licensed under the laws
- 2 of this state to engage in the practice of psychology.

§27-1-11. Addiction.

1 "Addiction" means the frequent or constant use of alcohol,
2 narcotic or other intoxicating or stupefying substance which
3 renders the person using such substance incapable of exer-
4 cising reasonable judgment in the conduct of his affairs or
5 which causes such person to be dangerous to himself or others.

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

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

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

7 (2) A substantial tendency to physically harm other per-
8 sons which is manifested by homicidal or other violent be-
9 havior which place others in reasonable fear of serious physical
10 harm.

§27-1-13. Chief medical officer.

1 "Chief medical officer" means the physician responsible for
2 medical programs within a mental health facility and shall
3 include the clinical director of a state hospital.

ARTICLE 2. MENTAL HEALTH FACILITIES.**§27-2-3. Rules as to patients.**

1 The director of mental health shall make rules, not
2 contrary to law, regulating the admission of patients to
3 mental health facilities, the care, maintenance and treatment
4 of inpatients, residents and outpatients of such facil-
5 ities and the release, trial visit and discharge of pa-
6 tients therefrom. No patient under eighteen years
7 of age in any state hospital shall be housed in any area
8 also occupied by any patient over eighteen years of age. Any
9 patient adjudged by the chief medical officer to have a likeli-
10 hood of seriously harming others shall be confined in a secure
11 area of a mental health facility.

ARTICLE 4. VOLUNTARY HOSPITALIZATION.

§27-4-1. Authority to receive voluntary patients.

§27-4-2. Release of voluntary patients.

§27-4-3. Right to release on application.

§27-4-1. Authority to receive voluntary patients.

1 The chief medical officer of a mental health facility,
2 subject to the availability of suitable accommodations and
3 to the rules and regulations promulgated by the director of
4 mental health, shall admit for diagnosis, care and treatment
5 any individual:

6 (a) Over eighteen years of age who is mentally ill, men-
7 tally retarded or addicted or who has manifested symptoms
8 of mental illness, mental retardation or addiction and who
9 makes application for hospitalization; or

10 (b) Under eighteen years of age who is mentally ill, men-
11 tally retarded or addicted or who has manifested symptoms of
12 mental illness, mental retardation or addiction and there is
13 application for hospitalization therefor in his behalf (1)
14 by the parents of such person, or (2) if only one parent
15 is living, then by such parent, or (3) if the parents are living
16 separate and apart, by the one who has the custody of such
17 person, or (4) if there is a guardian who has custody of such
18 person, then by such guardian. Such admission shall be con-
19 ditioned upon the consent of the prospective patient if the
20 patient is sixteen years of age or over.

21 (c) No person under eighteen years of age shall be ad-
22 mitted under this section to any state hospital unless said
23 person has first been reviewed and evaluated by a local
24 mental health facility and recommended for admission.

§27-4-2. Release of voluntary patients.

1 The chief medical officer of a mental health facility shall
2 release any voluntary patient who, in his opinion, has recov-
3 ered or whose hospitalization is no longer advisable but he
4 shall make every effort to assure that any further supportive
5 services required to meet the patient's need upon his re-
6 lease will be provided.

§27-4-3. Right to release on application.

1 A voluntary patient who requests his release or whose
2 release is requested in writing, by his parents, parent, guardian,
3 spouse or adult next of kin shall be released forthwith except
4 that:

5 (a) If the patient was admitted on his own application, and
6 request for release is made by a person other than the patient,
7 release shall be conditioned upon the agreement of the patient
8 thereto;

9 (b) If the patient is under eighteen years of age, his release
10 prior to becoming eighteen years of age may be conditioned
11 upon the consent of the person or persons who applied for
12 his admission; or

13 (c) If, within ninety-six hours of the receipt of the request,
14 the chief medical officer of the mental health facility in
15 which the patient is hospitalized files with the clerk of the
16 circuit court or mental hygiene commissioner of the county
17 where the facility is situated, an application for involuntary
18 hospitalization as provided in section four, article five of this
19 chapter, release may be postponed for twenty days pending
20 a finding in accordance with the legal proceedings prescribed
21 therein.

22 Legal proceedings for involuntary hospitalization shall not
23 be commenced with respect to a voluntary patient unless re-
24 lease of the patient has been requested by him or the individual
25 or individuals who applied for his admission.

ARTICLE 5. INVOLUNTARY HOSPITALIZATION.

§27-5-1. Involuntary commitment; hearing; appointment of mental hygiene commissioner; caseworker defined.

§27-5-2. Involuntary hospitalization; admission by medical certification; emergency procedure; examination; hearing; release.

§27-5-3. Custody for medical examination.

§27-5-4. Legal proceedings for involuntary hospitalization.

§27-5-5. Judicial review.

§27-5-6. Examination of newly admitted patients; failure to examine; disposition of patients after examination; demands for release.

§27-5-7. Hospitalization by agency of the United States.

§27-5-8. Periodic examination and review of patient's hospitalization; appeal procedures for release of patient from hospitalization.

§27-5-9. Rights of patients.

§27-5-10. Transportation for the mentally ill, mentally retarded or addicted.

§27-5-1. Involuntary commitment; hearing; appointment of mental hygiene commissioner; caseworker defined.

1 No individual shall be involuntarily committed to a mental
2 health facility except by order of the circuit court of the
3 county wherein such person resides or was found and then
4 only after a full hearing on the issues relating to the neces-
5 sity of committing an individual to a mental health facility.
6 The circuit court of each county may appoint a competent at-
7 torney in each county to preside over such hearings, who shall
8 be designated "mental hygiene commissioner." He shall be a
9 person of good moral character, of standing in his profession
10 and a resident of the county for which he is appointed, and
11 he shall, before assuming the duties of such commissioner,
12 take the oath required of other special commissioners as
13 provided in article one, chapter six of this code. The county
14 court shall pay the commissioner a reasonable sum com-
15 mensurate with his services. He shall discharge his duties and
16 hold his office at the pleasure of the circuit court by which
17 he is appointed and may be removed at any time by the court.
18 It shall be the duty of the mental hygiene commissioner to
19 conduct orderly inquiries into the mental health of any indi-
20 vidual brought before him concerning the advisability of com-
21 mitting the individual to a mental health facility. The mental
22 hygiene commissioner shall safeguard, at all times, the rights
23 and interests of the individual as well as the interests of the
24 state. The mental hygiene commissioner shall make a written
25 report of his findings to the circuit court. In any proceed-
26 ings before any court of record as set forth in this article,
27 the court of record shall appoint an interpreter for any in-
28 dividual who is deaf or cannot speak or who speaks a for-
29 eign language and who may be subject to involuntary commit-
30 ment to a mental health facility.

31 In all proceedings under this article, it shall be the duty
32 of the prosecuting attorney to represent the applicants.

33 As used in this article, the term "caseworker" means a person
34 employed by a mental health facility, state hospital, county
35 health department, or the state department of welfare, as an

36 agent for the providing of the social or medical services, or
37 both, of such facility, hospital or department.

§27-5-2. Involuntary hospitalization; admission by medical certification; emergency procedure; examination; hearing; release.

1 (a) Any individual may be admitted to a mental health
2 facility upon:

3 (1) Written application under oath to the facility by his
4 parents or parent, guardian, spouse, adult next of kin or
5 friend, a health officer or caseworker familiar with the case
6 of the individual, or the head of any institution where such
7 individual may be and certification by two physicians that
8 they have examined the individual and that they are of the
9 opinion that he is mentally ill, mentally retarded or addicted
10 and because of his mental illness, mental retardation or addiction
11 he is likely to cause serious harm to himself or others
12 if he is allowed to remain at liberty; admission to a mental
13 health facility in accordance with the procedure set forth in
14 this subdivision shall be referred to as a medical certification
15 admission, or

16 (2) Written application under oath to the facility by a
17 health officer, caseworker or law-enforcement officer stating
18 his belief that the individual, because of symptoms of mental
19 illness, mental retardation or addiction, is likely to cause
20 serious harm to himself or others if not immediately restrained
21 and the grounds for such belief and certification by at least
22 one physician that he has examined the individual and that
23 he is of the opinion the individual is mentally ill, mentally
24 retarded or addicted and because of his mental illness, mental
25 retardation or addiction he is likely to cause serious harm
26 to himself or others if not immediately restrained. Admission
27 to a mental health facility in accordance with the procedures
28 set forth in this subdivision (2) shall be referred to as an
29 emergency admission.

30 (b) Any individual with respect to whom such certification
31 has been issued may not be admitted on the basis thereof
32 at any time after the expiration of three days from the date
33 of such examination in the case of emergency admission with
34 one physician's certificate in accordance with subdivision (2),

35 subsection (a) of this section or fifteen days from the first ex-
36 amination in the case of medical certification admission in ac-
37 cordance with subdivision (1), subsection (a) of this section. A
38 certification under this section must include findings and con-
39 clusions of the mental examination, the date, time and place
40 thereof, and the facts upon which the conclusion of likelihood
41 of causing serious harm is based. The chief medical officer may,
42 with the approval of the director of mental health, transfer such
43 individual to a state hospital or to another similar type of men-
44 tal health facility after determining that no less restrictive treat-
45 ment alternative is suitable or available. The chief medical of-
46 ficer of the mental health facility admitting the individual shall
47 forthwith make a report thereof to the director of mental
48 health.

49 When an individual is admitted to a mental health facility
50 pursuant to the provisions of this section, the chief medical
51 officer thereof shall immediately give notice of the individual's
52 admission to the individual's spouse, if any, and the individual's
53 parents or parent or guardian, or if there be no such spouse,
54 parents, parent or guardian, to two of the individual's adult
55 next of kin. The notice shall be in writing and shall be trans-
56 mitted to such person or persons at his, her or their last
57 known address by certified or registered mail, return receipt
58 requested.

59 (c) After the individual's admission to a mental health
60 facility, he shall not be detained more than three days unless,
61 within such period, the individual is examined by two staff
62 physicians and the likelihood that the individual will cause
63 serious harm to himself or others is confirmed by such phy-
64 sicians. The physicians may jointly examine the individual
65 but must make separate, independent and signed evaluations
66 of his condition.

67 (d) If, on the basis of the examination by the two staff
68 physicians, the chief medical officer determines that the in-
69 dividual should continue to be hospitalized, a written request
70 for a hearing shall be sent to the clerk of the circuit court of
71 the county of the individual's residence or to the clerk of the
72 circuit court of the county where he was found within five days
73 after the person's admission. Within a reasonable time after
74 receipt of the request, the circuit court or mental hygiene

75 commissioner shall conduct a hearing pursuant to section four
76 of this article on the question of the individual's mental health
77 and the need for his further hospitalization, but in no event
78 shall such hearing be held later than twenty days after the
79 admission of the individual to a mental health facility.

80 (e) Unless he chooses to change his status to that of volun-
81 tary hospitalization, an individual hospitalized pursuant to
82 this section shall be released without fail:

83 (1) Within three days after his admittance to a mental
84 health facility, unless he has been examined by two staff
85 physicians both of whom confirm in writing that the individual
86 is likely to cause serious harm to himself or others if not
87 immediately restrained; or

88 (2) Within five days after his admittance to a mental
89 health facility, unless the chief medical officer has sent a
90 written request within such time, to the clerk of the circuit
91 court of the county of which the individual is a resident
92 or where he was found for a hearing on the question
93 of the individual's mental condition and the need for further
94 hospitalization; or

95 (3) Within twenty days after his admittance to a mental
96 health facility, unless a hearing has been conducted pursuant
97 to the provisions regarding legal proceedings for involuntary
98 hospitalization and a determination and order made as pre-
99 scribed therein on the question of the individual's mental
100 condition.

§27-5-3. Custody for medical examination.

1 When any person, health officer, casework or law-en-
2 forcement officer has reason to believe that an individual is
3 mentally ill, mentally retarded or addicted and because of his
4 mental illness, mental retardation or addiction is likely to cause
5 serious harm to himself or others if allowed to remain at liberty
6 while awaiting an examination and certification by a physician,
7 or physicians, as the case may be, pursuant to section two
8 of this article, such person, health officer, caseworker or law-
9 enforcement officer may make application under oath, to the
10 circuit court or mental hygiene commissioner of the county
11 of which the individual is a resident or to the circuit court

12 or mental hygiene commissioner of the county where he may
13 be found, giving such information and stating such facts there-
14 in as may be required, upon the form provided by the depart-
15 ment of mental health and the circuit court or mental hy-
16 giene commissioner shall thereupon enter an order for the
17 individual named in such application to be taken into custody
18 and detained, but not incarcerated in a jail or penal institu-
19 tion, for the purpose of an examination by at least one phy-
20 sician to take place within fourteen hours after the individual
21 is taken into custody. Not later than fourteen hours after the
22 individual is taken into custody, the individual shall be released
23 from custody, unless proceedings have been instituted pur-
24 suant to section two of this article.

§27-5-4. Legal proceedings for involuntary hospitalization.

1 (a) Proceedings for the involuntary hospitalization of an
2 individual may be commenced by the filing of a written appli-
3 cation under oath and the certificate or affidavit as hereinafter
4 after provided with the clerk of the circuit court or mental
5 hygiene commissioner of the county of which the individual is
6 a resident or with the clerk of the circuit court or mental
7 hygiene commissioner of the county where he may be found,
8 by his parents or parent, guardian, spouse, adult next of kin
9 or friend, or by a physician, a health officer or caseworker
10 familiar with the case of the individual, or the head of any
11 institution in which such individual may be.

12 Such application shall be made under oath and shall state
13 the belief of the applicant that because of symptoms of mental
14 illness, mental retardation or addiction, the individual is likely
15 to cause serious harm to himself or others and the grounds for
16 such belief. The written application, certificate, affidavit and
17 any warrants issued pursuant thereto, including any papers and
18 documents related thereto, filed with any circuit court or men-
19 tal hygiene commissioner for the involuntary hospitalization of
20 any individual shall not be open to inspection by any person
21 other than the individual, except upon authorization of the
22 individual or his legal representative or by order of the cir-
23 cuit court and such records shall not be published except upon
24 the authorization of the individual or his legal representative.
25 Such applicant shall file with his application the certificate of

26 a physician stating that in his opinion the individual is men-
27 tally ill, mentally retarded or addicted and that because of his
28 mental illness, mental retardation or addiction, the individual
29 is likely to cause serious harm to himself or others if he is al-
30 lowed to remain at liberty and therefor he should be hos-
31 pitalized or, in lieu of said certificate, an affidavit by the appli-
32 cant showing facts that the individual has refused to submit to
33 examination by a physician.

34 (b) Upon receipt of an application, the clerk of the circuit
35 court shall give notice thereof to the individual and to the indi-
36 vidual's spouse, parents or parent or guardian, or, if the indivi-
37 dual does not have a spouse, parents or parent or guardian, to
38 the individual's adult next of kin. Such notice shall be given
39 within ten days after receipt of the application by the clerk of
40 the circuit court and shall be served on such person or persons
41 at his or their last known address by certified or registered mail,
42 return receipt requested.

43 The notice served on the individual shall specify the nature
44 of the charges against him, the facts underlying and support-
45 ing the application for his involuntary commitment, and shall
46 advise him of his right to have counsel appointed for him and
47 to consult with counsel at every stage of the proceedings.

48 Within a reasonable time after notice of the commencement
49 of proceedings is given, the circuit court or mental hygiene com-
50 missioner shall appoint two physicians or a physician and psy-
51 chologist, other than the physician whose certification
52 may have accompanied the application to the circuit
53 court or mental hygiene commissioner, to examine the indi-
54 vidual and report to the circuit court or mental hygiene com-
55 missioner their findings as to the mental condition of the in-
56 dividual and the likelihood of his causing serious harm to him-
57 self or others. The physicians or physician and psychologist
58 may jointly examine the individual, but must make separate, in-
59 dependent and signed evaluations of his condition stating the
60 facts upon which the conclusions therein are based.

61 If the designated physicians or physician and psychologist
62 report to the circuit court or mental hygiene commissioner that
63 the individual has refused to submit to an examination, the
64 circuit court or mental hygiene commissioner shall order him

65 to submit to such examination. The circuit court may enter an
66 order directing the individual to be taken into custody, but not
67 incarcerated in a jail or penal institution, for the purpose of an
68 immediate examination by the designated physicians or phy-
69 sician and psychologist. All such orders shall be directed to
70 the sheriff of the county or other appropriate law-enforcement
71 officer. After such examination has been completed, the in-
72 dividual shall be released from custody unless such custody is
73 in a mental health facility pursuant to an emergency hospitali-
74 zation as provided for in section two of this article. If the re-
75 ports of the appointed physicians or physician and psycholo-
76 gist do not confirm that the individual is mentally ill, men-
77 tally retarded or addicted and might be harmful to himself or
78 others, then the proceedings for his involuntary hospitalization
79 shall be dismissed.

80 The circuit court or mental hygiene commissioner shall
81 forthwith fix a date for and have the clerk of the circuit court
82 give notice of the hearing to (1) the individual, (2) to the appli-
83 cant or applicants, and (3) to the individual's spouse, parents
84 or parent or guardian, or if the individual does not have a
85 spouse, parents or parent or guardian, to the individual's
86 adult next of kin, and (4) to the mental health facility serving
87 the area. Such notice shall be served on such persons as process
88 in civil actions not less than ten days prior to the date of the
89 hearing. Such notice shall specify the nature of the charges
90 against him; the facts underlying and supporting the appli-
91 cation of his involuntary commitment; his right to have coun-
92 sel appointed for him; his right to consult with counsel at
93 every stage of the proceedings and the time and place of the
94 hearing.

95 (c) The individual shall be present at the hearing and he,
96 the applicant and all persons entitled to notice of such hear-
97 ing shall be afforded an opportunity to testify and to present
98 and cross-examine witnesses. In the event that the individual
99 has not retained counsel, the court or mental hygiene
100 commissioner at least seven days prior to hearing shall
101 appoint a competent attorney, who shall be present at
102 the hearing and protect the interest of the individual,
103 and the circuit court, by order of record, shall allow
104 the attorney a fee not to exceed two hundred dollars.

105 Any counsel representing an individual shall be entitled
106 to copies of all medical reports, psychiatric or other-
107 wise. The individual shall have the right to have an
108 examination by an independent expert of his choice and
109 testimony from such expert as a medical witness on his
110 behalf. The circuit court or mental hygiene commissioner
111 shall hear evidence from all interested parties in cham-
112 bers, including testimony from representatives of the com-
113 munity mental health facility. The individual shall not be
114 compelled to be a witness against himself. The circuit court
115 or mental hygiene commissioner shall receive all relevant
116 and material evidence which may be offered. The circuit
117 court or mental hygiene commissioner shall be bound by the
118 rules of evidence except that statements made to physicians
119 by the individual may be admitted into evidence by the phy-
120 sician's testimony notwithstanding failure to inform the indi-
121 vidual that this statement may be used against him. A tran-
122 script shall be made of all proceedings, whether before the
123 circuit court or mental hygiene commissioner, and made avail-
124 able to the individual or his counsel within thirty days, if the
125 same is requested for purposes of an appeal. In any case where-
126 in an indigent person seeks an appeal, the circuit court shall,
127 by order entered of record, authorize and direct the court re-
128 porter to furnish a transcript of the hearing and the costs of
129 such transcript shall be paid by the county wherein the hearing
130 was held.

131 (d) Upon completion of the hearing, and the evidence pre-
132 sented therein, the circuit court or mental hygiene commission-
133 er shall make findings as to whether or not (1) the individual
134 is mentally ill, mentally retarded or addicted and because of
135 his illness, retardation or addiction is likely to cause serious
136 harm to himself or to others if allowed to remain at liberty
137 and (2) is a resident of the county in which the hearing is held
138 or currently is a patient at a mental health facility in such
139 county. The circuit court or mental hygiene commissioner shall
140 also make a finding as to whether or not there is a less re-
141 strictive alternative than commitment appropriate for the in-
142 dividual. The burden of proof of the lack of a less restrictive
143 alternative than commitment shall be on the person or persons
144 seeking the commitment of the individual.

145 The findings of fact shall be incorporated into the order en-
146 tered by the circuit court and must be based upon clear, cogent
147 and convincing proof. Upon the requisite findings, the circuit
148 court may order the individual to a mental health facility for
149 an indeterminate period or for a temporary observatory period
150 not exceeding six months. If the order is for a temporary ob-
151 servation period, the circuit court or mental hygiene commis-
152 sioner may, at any time prior to the expiration of such peri-
153 od on the basis of a report by the chief medical officer of the
154 mental health facility in which the patient is confined and
155 such further inquiry as may seem appropriate, order indeter-
156 minate hospitalization of the patient or dismissal of the pro-
157 ceedings. An order for an indeterminate period shall expire
158 of its own terms at the expiration of two years from the date
159 of the last order of commitment.

160 If the circuit court or mental hygiene commissioner finds
161 that the individual is not mentally ill, mentally retarded or
162 addicted, the proceeding shall be dismissed. If the circuit court
163 or mental hygiene commissioner finds that the individual is
164 mentally ill, mentally retarded or addicted but is not because
165 of such illness, retardation or addiction likely to cause serious
166 harm to himself or others if allowed to remain at liberty, the
167 proceedings shall be dismissed.

168 (e) The clerk of the circuit court in which an order directing
169 hospitalization is entered, if not in the county of the indi-
170 vidual's residence, shall immediately upon entry thereof for-
171 ward a certified copy of same to the clerk of the circuit court
172 of the county of which the individual is a resident.

173 If the circuit court or mental hygiene commissioner is
174 satisfied that hospitalization should be ordered but finds that
175 the individual is not a resident of the county in which the hear-
176 ing is held, and the individual is not currently a resident of a
177 mental health facility, a transcript of the evidence adduced at
178 the hearing of such individual, properly certified by the clerk of
179 the circuit court, shall forthwith be forwarded to the clerk of
180 the circuit court of the county of which such individual is a resi-
181 dent, who shall immediately present such transcript to the cir-
182 cuit court or mental hygiene commissioner of said county.
183 If the circuit court or mental hygiene commissioner of the

184 county of the residence of the individual is satisfied from the
185 evidence contained in such transcript that such individual
186 should be hospitalized as determined by the standards set forth
187 above, the circuit court shall order the appropriate hospital-
188 ization as though the individual had been brought before the
189 circuit court or its mental hygiene commissioner in the first
190 instance. This order shall be transmitted forthwith to the clerk
191 of the circuit court of the county in which the hearing was held
192 who shall execute said order promptly.

193 (f) In lieu of ordering the patient to a mental health facil-
194 ity, the circuit court may order the individual delivered to
195 some responsible person who will agree to take care of the
196 individual and the circuit court may take from such responsible
197 person a bond in an amount to be determined by the circuit
198 court, with condition to restrain and take proper care of such
199 individual until further order of the court.

200 (g) If the individual found to be mentally ill, mentally re-
201 tarded or addicted by the circuit court or mental hygiene com-
202 missioner is a resident of another state, this information shall
203 be forthwith given to the director of mental health, who shall
204 make appropriate arrangements for his transfer to the state
205 of his residence conditioned on the agreement of the individual
206 except as qualified by the interstate compact on mental health.

207 (h) The chief medical officer of a mental health facility ad-
208 mitting a patient pursuant to proceedings under this section
209 shall forthwith make a report of such admission to the direc-
210 tor of mental health.

211 (i) All expenses incurred in a hearing conducted under the
212 provisions of this article, whether or not hospitalization is
213 ordered, including any fee awarded for the individual's
214 attorney and the fees of the physicians and psychologists
215 and other witnesses, shall be borne by the county of which the
216 individual is a resident. The amount of the fees, other than
217 any fee awarded to the individual's attorney, shall be pre-
218 scribed by the county court and all such fees, including any
219 fee awarded to the individual's attorney, shall be paid out of
220 the county treasury.

§27-5-5. Judicial review.

1 Any individual adversely affected by any order of commit-
2 ment entered by the circuit court under this article may seek
3 review thereof by appeal to the state supreme court of appeals
4 and jurisdiction is hereby conferred upon such court to hear
5 and entertain such appeals upon application made therefor in
6 the manner and within the time provided by law for civil ap-
7 peals generally.

8 This section shall not be construed to in any way limit or
9 precondition the right to seek release of such individual by
10 habeas corpus.

§27-5-6. Examination of newly admitted patients; failure to examine; disposition of patients after examination; demands for release.

1 The chief medical officer of the mental health facility
2 shall arrange for psychiatric examination of every patient
3 hospitalized pursuant to the provisions of section two of
4 this article. If such examination is not completed within
5 three days after the date of admission, or if the physician
6 designated by the chief medical officer cannot certify that
7 in his opinion the patient is mentally ill, mentally retarded
8 or addicted and is likely to injure himself or others if allowed
9 to be at liberty, the patient shall be discharged immediately
10 or permitted to change his status to that of voluntary hospital-
11 ization and be thereafter treated according to the provisions
12 of article four of this chapter.

13 If, in the opinion of the designated examining physician,
14 the patient is mentally ill, mentally retarded or addicted
15 and because of such mental illness, mental retardation or
16 addiction he is likely to injure himself or others if allowed
17 to be at liberty, the chief medical officer shall, within
18 five days from the date of such determination by the designated
19 examining physician, institute legal proceedings as provided
20 in section four of this article. If such proceedings are not in-
21 stituted within such five-day period, the patient shall be im-
22 mediately released or permitted to change his status to that of
23 voluntary hospitalization and thereafter treated according
24 to the provisions of article four of this chapter. If such

25 proceedings are not completed within twenty days from the
26 date of admittance, the patient shall be immediately released,
27 unless he chooses to change his status to that of voluntary
28 hospitalization and thereafter treated according to the pro-
29 visions of article four of this chapter.

30 Notwithstanding any other provisions of this article, when
31 any individual is hospitalized pursuant to the provisions of
32 section two of this article, such person or his spouse, relative,
33 guardian or friend may demand in writing that such person
34 be released from the mental health facility. Upon receipt of
35 such demand, the chief medical officer shall either release
36 such person or forthwith institute legal proceedings as specified
37 in section four of this article. The chief medical officer of the
38 facility shall make arrangements for informing each person
39 hospitalized therein, under the provisions of section two of
40 this article, of his rights under this section. The chief medical
41 officer shall also assist any such person in making such written
42 demand.

§27-5-7. Hospitalization by agency of the United States.

1 If an individual ordered to be hospitalized pursuant to sec-
2 tion four of this article is eligible for hospital care or treat-
3 ment by any agency of the United States, then, upon receipt
4 of a certificate from such agency showing that facilities are
5 available and that the individual is eligible for care or treat-
6 ment therein, the circuit court or mental hygiene commis-
7 sioner may order him to be placed in the custody of such
8 agency for hospitalization. When any such individual is ad-
9 mitted pursuant to the order of such circuit court or mental
10 hygiene commissioner to any hospital or institution estab-
11 lished, maintained or operated by any agency of the United
12 States within or without the state, he shall be subject to the
13 rules and regulations of such agency. The chief officer of any
14 hospital or institution operated by such agency and in which
15 the individual is so hospitalized shall, with respect to such
16 individual, be vested with the same powers as the chief medi-
17 cal officers of mental health facilities or the director of mental
18 health within this state with respect to detention, custody,
19 transfer, conditional release or discharge of patients. Jurisdic-
20 tion is retained in the appropriate circuit court or mental hy-

21 giene commissioner of this state at any time to inquire into
22 the mental condition of an individual so hospitalized, and to
23 determine the necessity for continuance of his hospitaliza-
24 tion, and every order of hospitalization issued pursuant to this
25 section is so conditioned.

**§27-5-8. Periodic examination and review of patient's hospitaliza-
tion; appeal procedures for release of patient from
hospitalization.**

1 (a) The chief medical officer of each mental health facility
2 shall cause periodic psychiatric examinations to be made
3 of each individual committed to a facility pursuant to section
4 four of this article as frequently as the chief medical officer
5 considers desirable, but intervals between examinations shall
6 not exceed three months. A report of the conclusions from
7 each examination shall be given promptly to the chief medical
8 officer. A copy of each report shall be placed in the patient's
9 clinical record and the chief medical officer shall notify the
10 patient as to his continued hospitalization or release based
11 upon the report. If the patient is not released he may appeal
12 and demand his discharge.

13 (b) Appeal shall be made to the chief medical officer of
14 the mental health facility wherein the patient is confined. The
15 chief medical officer shall review the report of the examination
16 and the conclusions resulting therefrom and he shall either af-
17 firm the patient's continued hospitalization or discharge the
18 patient from confinement within three days from the date
19 of his appeal.

20 If, within three days from the date of the patient's appeal,
21 the chief medical officer has not taken action or has taken
22 action unfavorable to the patient, the patient may appeal to a
23 review board of appeal which shall be appointed by the direc-
24 tor of mental health. The review board shall consist of three
25 members, one of whom shall be a psychiatrist. The review
26 board shall consider the patient's clinical record, the report
27 of the examination and conclusions therefrom and any evidence
28 offered by the patient and by the chief medical officer of
29 such facility. The review board shall either order the pa-
30 tient's continued hospitalization or shall order the chief medi-

31 cal officer to discharge the patient within seven days from the
32 date of the patient's appeal to the review board.

33 If, within seven days from the date of the patient's appeal
34 to the review board, the review board has taken no action
35 or has taken action unfavorable to the patient, the patient
36 may appeal to the circuit court of the county of the patient's
37 residence or to the circuit court of the county where the pa-
38 tient is hospitalized. The circuit court or its mental hygiene
39 commissioner shall hold a hearing to review the hospitalization
40 of the patient. If the patient has appealed to the circuit court
41 within one year prior to the present appeal, it shall be within
42 the circuit court's discretion to deny the appeal. A hearing
43 under this section shall be conducted in the matter prescribed
44 in subsections (c) and (d), section four of this article.

45 The administrative and appeal remedies available by vir-
46 tue of this section shall not be construed to in any way limit
47 or precondition the right to seek release of the patient by
48 habeas corpus.

§27-5-9. Rights of patients.

1 (a) No person shall be deprived of any civil right solely
2 by reason of his receipt of services for mental illness, mental
3 retardation or addiction, nor shall the receipt of such services
4 modify or vary any civil right of such person, including, but not
5 limited to civil service status and appointment, the right to
6 register for and to vote at elections, the right to acquire and
7 to dispose of property, the right to execute instruments or
8 rights relating to the granting, forfeiture or denial of a license,
9 permit, privilege or benefit pursuant to any law, but a person
10 who has been adjudged incompetent pursuant to article eleven
11 of this chapter and who has not been restored to legal com-
12 petency may be deprived of such rights. Involuntary commit-
13 ment pursuant to this article shall not of itself relieve the
14 patient of legal capacity.

15 (b) Each patient of a mental health facility receiving
16 services therefrom shall receive care and treatment that is
17 suited to his needs and administered in a skillful, safe and
18 humane manner with full respect for his dignity and personal
19 integrity.

20 (c) Every patient shall have the following rights regardless
21 of adjudication of incompetency:

22 (1) Treatment by trained personnel;

23 (2) Careful and periodic psychiatric reevaluation no less
24 frequently than once every three months;

25 (3) Periodic physical examination by a physician no less
26 frequently than once every six months; and

27 (4) Treatment based on appropriate examination and diag-
28 nosis by a staff member operating within the scope of his
29 professional license.

30 (d) The chief medical officer shall cause to be developed
31 within the clinical record of each patient a written treatment
32 plan based on initial medical and psychiatric examination not
33 later than seven days after he is admitted for treatment. The
34 treatment plan shall be updated periodically, consistent with
35 reevaluation of the patient. Failure to accord the patient the
36 requisite periodic examinations or treatment plan and re-
37 evaluations shall entitle the patient to release.

38 (e) A clinical record shall be maintained at a mental
39 health facility for each patient treated by the facility. The
40 record shall contain information on all matters relating to
41 the admission, legal status, care and treatment of the patient
42 and shall include all pertinent documents relating to the patient.
43 Specifically, the record shall contain results of periodic ex-
44 aminations, individualized treatment programs, evaluations and
45 reevaluations, orders for treatment, orders for application for
46 mechanical restraint and accident reports, all signed by the
47 personnel involved.

48 A patient's clinical record shall be confidential and shall
49 not be released by the department of mental health or its
50 facilities or employees to any person or agency outside of
51 the department except as follows:

52 (1) Pursuant to an order of a court of record.

53 (2) To the attorney of the patient, whether or not in
54 connection with pending judicial proceedings.

55 (3) With the written consent of the patient or of someone
56 authorized to act on the patient's behalf and of the director to:

57 (i) Physicians and providers of health, social or welfare
58 services involved in caring for or rehabilitating the patient, such
59 information to be kept confidential and used solely for the
60 benefit of the patient.

61 (ii) Agencies requiring information necessary to make pay-
62 ments to or on behalf of the patient pursuant to contract or
63 in accordance with law. Only such information shall be
64 released to third party payers as is required to certify that
65 covered services have been provided.

66 (iii) Other persons who have obtained such consent.

67 No patient record, or part thereof, obtained by any agency or
68 individual shall be released in whole or in part to any other
69 individual or agency, unless authorized by the written consent
70 of the patient or his legal representative.

71 (f) Every patient, upon his admission to a hospital and
72 at any other reasonable time, shall be given a copy of the
73 rights afforded by this section.

74 (g) The department of mental health shall promulgate
75 rules and regulations to protect the personal rights of patients
76 not inconsistent with this section.

**§27-5-10. Transportation for the mentally ill, mentally retarded
or addicted.**

1 Whenever transportation of an individual is required under
2 the provisions of article four or article five of this chapter, it
3 shall be the duty of the sheriff to provide immediate transpor-
4 tation to or from the appropriate mental health facility or state
5 hospital: *Provided*, That upon the written request of a person
6 having a proper interest in the individual's hospitalization, the
7 sheriff may permit such person to arrange for the individual's
8 transportation to the mental health facility or state hospital by
9 such means as may be suitable for his mental condition.

**ARTICLE 6A. COMMITMENT OF PERSONS CHARGED OR CON-
VICTED OF A CRIME.**

§27-6A-1. Determination of competency of defendant to stand trial; examina-
tion; commitment.

§27-6A-2. Hearing on competency to stand trial; findings.

§27-6A-3. Hospitalization of defendants found not guilty by reason of mental
illness; notice to prosecuting attorney.

§27-6A-4. Discharge.

§27-6A-5. Periodic review of person found incompetent to stand trial.

§27-6A-6. Judicial hearing of defendant's defense other than not guilty by reason of mental illness.

§27-6A-7. Release of defendant during course of criminal proceedings.

§27-6A-8. Credit for time; expenses.

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

1 (a) Whenever a court of record believes that a defendant
2 in a criminal case may be incompetent to stand trial or is
3 not criminally responsible by reason of mental illness, mental
4 retardation or addiction, it may at any state of the proceedings
5 after the return of an indictment or the issuance of a warrant
6 against the defendant, order an examination of such defendant
7 to be conducted by one or more psychiatrists, or a psychiatrist
8 and a psychologist.

9 (b) After the examination described in subsection (a) of
10 this section, the court of record may order that the person
11 be admitted to a mental health facility designated by the
12 director of mental health for a period not to exceed twenty
13 days for observation and further examination if the court
14 has reason to believe that such further observation and
15 examination are necessary in order to determine whether
16 mental illness, mental retardation or addiction have so af-
17 fected a person that he is not competent to stand trial or
18 not criminally responsible for the crime or crimes with which
19 he has been charged. If, before the expiration of such twenty-
20 day period, the examining physician believes that observation
21 for more than twenty days is necessary, he shall make a
22 written request to the court of record for an extension of the
23 twenty-day period specifying the reason or reasons for which
24 such further observation is necessary. Upon the receipt of
25 such request, the court of record may by order extend said
26 observation period, but in no event shall the period exceed
27 forty days from the date of the initial court order of ob-
28 servation.

29 (c) At the conclusion of each examination or observa-
30 tion period provided for herein, the examining psychiatrist,
31 or psychiatrist and psychologist, shall forthwith give to the
32 court of record a written signed report of their findings on the

33 issue of competence to stand trial or criminal responsibility.
34 Such reports shall contain an opinion, supported by clinical
35 findings, as to whether or not the defendant is in need of care
36 and treatment.

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

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

58 If after hearing conducted pursuant to the procedures
59 prescribed in subsection (c), section four, article five of this
60 chapter, the court of record makes the findings specified in sec-
61 tion four, article five of this chapter or finds that the convicted
62 individual would benefit from treatment in a mental health
63 facility, the court may enter an order of commitment in ac-
64 cord with section four, article five for treatment in a mental
65 health facility designated by the director of mental health.

66 (f) In like manner, in accordance with procedures set
67 forth in subsections (a), (b) and (c) of this section, a
68 juvenile court may order a psychiatric examination or a period
69 of observation for an alleged delinquent or neglected juvenile
70 in a mental health facility to aid the court in its disposition.
71 The period of observation shall not exceed forty days.

§27-6A-2. Hearing on competency to stand trial; findings.

1 (a) At a hearing to determine a defendant's competency
2 to stand trial, the defendant shall be present and he shall have
3 the right to be represented by counsel and introduce evidence
4 and cross-examine witnesses. The defendant shall be afforded
5 timely and adequate notice of the issues of the hearing and
6 shall have access to a summary of the medical evidence to be
7 presented by the state. The defendant shall have the right to
8 an examination by an independent expert of his choice and
9 testimony from such expert as a medical witness on his be-
10 half. All rights generally afforded a defendant in criminal pro-
11 ceedings shall be afforded to a defendant in such competency
12 proceedings.

13 (b) At the termination of such hearing the court of record
14 shall make a finding of fact upon a preponderance of the evi-
15 dence as to the individual's competency to stand trial based on
16 whether or not the individual is capable of participating sub-
17 stantially in his defense and understanding the nature and con-
18 sequences of a criminal trial. If the individual is found com-
19 petent, the court of record shall forthwith proceed with the
20 criminal proceedings. If the individual is found incompetent
21 to stand trial, the court of record shall upon the evidence make
22 further findings as to whether or not there is a substantial like-
23 lihood that the individual will attain competency within the
24 next ensuing six months, and if the court of record so finds,
25 the individual may be committed to a mental health facility
26 for an improvement period not to exceed six months. If re-
27 quested by the chief medical officer of the mental health fa-
28 cility on the grounds that additional time is necessary for the
29 individual to attain competency, the court of record may, prior
30 to the termination of the six-month period, extend the period
31 for an additional three months. Within ten days of the termi-
32 nation of such period, the court of record shall ascertain by
33 hearing in accordance with subsection (a) of this section wheth-
34 er or not the individual has attained competency to stand
35 trial.

36 (c) If the individual is found initially to be incompetent to
37 stand trial with no substantial likelihood of obtaining compe-
38 tency, or if after such improvement period the individual is

39 found to be incompetent to stand trial, the criminal charges
40 shall be dismissed. The dismissal order may be stayed for
41 ten days to allow civil commitment proceedings to be in-
42 stituted pursuant to article five of this chapter.

§27-6A-3. Hospitalization of defendants found not guilty by reason of mental illness; notice to prosecuting attorney.

1 (a) The court of record may order that a person who has
2 been found not guilty by reason of mental illness, mental re-
3 tardation or addiction be hospitalized in a mental health facility
4 for a period not to exceed forty days for observation and
5 examination.

6 (b) During the observation period of a person found not
7 guilty of any crime by reason of mental illness, mental re-
8 tardation or addiction, procedures for civil commitment may
9 be initiated before the court having jurisdiction pursuant to
10 article five of this chapter.

11 (c) The prosecuting attorney of the county within which
12 the alleged crime or crimes occurred shall be notified of any
13 hearing conducted for a person under the provisions of this
14 section or any subsequent hearing for such person within five
15 years of the alleged crime conducted under the provisions of
16 this chapter relating to the commitment of the mentally ill,
17 mentally retarded or addicted and shall have a right to be
18 heard at such hearings.

§27-6A-4. Discharge.

1 No person initially committed to a mental health facility
2 under this article shall be discharged from a mental health
3 facility unless the physician in charge communicates his in-
4 tention to discharge such person to the committing court and
5 to the prosecuting attorney of the county within which the al-
6 leged crime occurred. If within twenty days after the receipt of
7 such communication the committing court makes no written
8 objection to such discharge, the physician in charge may dis-
9 charge such person. In the event of a written objection by the
10 committing court, a hearing shall be held by a court of record
11 within ten days thereafter and the person shall be discharged
12 unless the court of record conducts a hearing and makes the
13 findings required by section four, article five of this chapter.

§27-6A-5. Periodic review of person found incompetent to stand trial.

1 The periodic review of a person who has been found incom-
2 petent to stand trial shall include a clinical opinion with re-
3 gard to the person's competence to stand trial, which opinion
4 shall be made a part of the patient's medical record. If any
5 person previously found incompetent to stand trial is later
6 determined to be competent, the director of mental health
7 shall notify the court of record, which shall promptly hold
8 a hearing on the person's competency to stand trial. Any per-
9 son found incompetent to stand trial may at any time petition
10 the court of record for a hearing on his competency. Whenever
11 a hearing is held and the court of record finds that the per-
12 son is competent to stand trial, his commitment, if any, to
13 a mental health facility shall be terminated and the court of
14 record shall order his return to the custody of the sheriff for
15 trial. However, if the person requests continued care and
16 treatment during the pendency of the criminal proceedings
17 against him and the mental health facility agrees to provide
18 such care and treatment, the court of record may order the
19 further hospitalization of such person.

§27-6A-6. Judicial hearing of defendant's defense other than not guilty by reason of mental illness.

1 If a defendant who has been found to be incompetent
2 to stand trial believes that he can establish a defense of not
3 guilty to the charges pending against him, other than the
4 defense of not guilty by reason of mental illness, mental
5 retardation or addiction, he may request an opportunity to
6 offer a defense thereto on the merits before the court which
7 has criminal jurisdiction. If the person is unable to obtain
8 legal counsel, the court of record shall appoint counsel for
9 the defendant to assist him in supporting the request by
10 affidavit or other evidence. If the court of record in its discre-
11 tion grants such a request, the evidence of the defendant and of
12 the state shall be heard by the court of record sitting without
13 a jury. If after hearing such petition the court of record finds
14 insufficient evidence to support a conviction, it shall dismiss
15 the indictment and order the release of the defendant from
16 criminal custody. The order may be stayed for ten days to

17 allow institution of civil proceedings pursuant to article five
18 of this chapter.

§27-6A-7. Release of defendant during course of criminal proceedings.

1 Notwithstanding any finding of incompetence to stand trial
2 under the provisions of this article, the court of record may
3 at any stage of the criminal proceedings allow a defendant
4 to be released with or without bail.

§27-6A-8. Credit for time; expenses.

1 (a) If a person is convicted of a crime, any time spent
2 in involuntary confinement in a mental health facility as a
3 result of being charged with such crimes, shall be credited to
4 this sentence.

5 (b) All medical and psychological expenses attendant upon
6 these proceedings shall be paid by the county court of the
7 county of the individual's residence.

ARTICLE 11. COMMITTEE; DISPOSITION OF PROPERTY.

§27-11-1. Committees; appointment.

§27-11-2. Bond; refusal to act or failure to qualify; appointment of another;
committal to sheriff.

§27-11-3. Appraisal of estate.

§27-11-4. Powers and duties of committee generally.

§27-11-5. Authority of committee to mortgage, lease or sell realty.

§27-11-1. Committees; appointment.

1 (a) The county court of a person's residence may appoint
2 a committee for a person found to be incompetent. Any find-
3 ing of incompetency under this article shall be made separately
4 and at a different proceeding from any finding of mental
5 illness, mental retardation or addiction under article four or
6 five of this chapter.

7 (b) Proceedings for the appointment of a committee for an
8 alleged incompetent may be commenced by the filing of a veri-
9 fied petition of a person setting forth the facts showing the
10 incompetency of an individual with the county court. Upon
11 receipt of the petition, the clerk of the county court shall give
12 notice of the hearing thereon to the individual and to the in-

13 individual's spouse, or if the individual does not have a spouse,
14 to the individual's adult next of kin. Such notice and petition
15 shall be served upon the individual at least ten days prior to
16 hearing thereon and shall state the purpose of the hearing and
17 advise the individual of his rights with respect thereto. The
18 individual shall appear at the hearing, to testify, to present
19 and cross-examine witnesses. In the event that the individual
20 cannot retain counsel, the county court shall appoint a com-
21 petent attorney for the individual. The individual shall have
22 the right to an examination by an independent expert of his
23 choice and testimony from such expert as a medical witness on
24 his behalf. A transcript shall be made of all proceedings and
25 made available to the individual or his counsel within thirty
26 days, if the same is requested for purposes of appeal. In any
27 case wherein an indigent person seeks an appeal, the circuit
28 court shall, by order entered of record, authorize and direct
29 the court reporter to furnish a transcript of the hearing and the
30 costs of such transcript shall be paid by the county wherein
31 the hearing was held.

32 (c) Upon completion of the hearing and upon the evidence
33 presented therein the county court may find that (i) the indi-
34 vidual is unable to manage his business affairs, or (ii) the in-
35 dividual is unable to care for his physical well-being, or (iii)
36 both, and is therefor incompetent; or (iv) that the person is
37 competent. Evidence of mere poor judgment or of a different
38 life style shall not be competent evidence upon which to base
39 a finding of incompetency.

40 (1) "Unable to manage one's business affairs" means the
41 inability to know and appreciate the nature and effect of his
42 business transactions, notwithstanding the fact that he may
43 display poor judgment.

44 (2) "Unable to care for one's physical well-being" means
45 the substantial risk of physical harm to himself as evidenced
46 by conduct demonstrating that he is dangerous to himself,
47 notwithstanding the fact that he may display poor judgment.

48 If the county court finds the person to be competent, the
49 proceedings shall be dismissed. No appointment of a commit-
50 tee shall be made on evidence which is uncorroborated by the
51 testimony of a medical expert.

52 (d) The extent of the committee's authority shall be speci-
53 fied in the order of the county court. No authority of a com-
54 mittee shall extend beyond what is necessary for the protec-
55 tion of the individual. A finding of inability to care for one's
56 physical well-being shall entitle the committee to custody of
57 the individual, except when the individual is under a commit-
58 ment order to a mental health facility, but only to the extent
59 as is necessary for the protection of the individual.

60 (e) An individual found incompetent pursuant to subsection
61 (c) of this section shall have the right to an appeal and hear-
62 ing thereon in the circuit court of the county. The judge shall
63 hear the matter on appeal as provided in article three, chapter
64 fifty-eight of this code or order a hearing de novo on the
65 matter.

66 (f) The individual or any person may apply to the county
67 court in the manner provided by subsection (b) of this section
68 for termination of his committee at any time and appeal from
69 a determination thereon in the manner provided by this
70 section; or in the alternative, the individual may seek such
71 termination by habeas corpus.

§27-11-2. Bond; refusal to act or failure to qualify; appointment of another; committal to sheriff.

1 The county court, when making an appointment of such
2 committee, shall take from the appointee a bond in such
3 penalty and with such surety as it shall deem sufficient, with
4 condition that the person so appointed will well and truly
5 account for and pay over to the person entitled thereto
6 all property and moneys which may come into his hands by
7 virtue of such appointment and with such other conditions as
8 the county court may require. The committee shall be entitled
9 to reasonable compensation for all services performed on
10 behalf of the individual. If any person so appointed as a
11 committee refuses the trust or shall fail for ten days succeeding
12 his appointment to give bond, as aforesaid, the county court
13 on the motion of any party interested, or at its own instance,
14 may appoint some other person as committee, taking from him
15 bond as above provided, or may commit the estate of the per-
16 son to the sheriff of the county, who shall act as committee

17 without giving any bond as such and he and the sureties on
18 his official bond shall be liable for the faithful performance
19 of the trust.

§27-11-3. Appraisement of estate.

1 The county court, whenever any committee is appointed
2 for a person unable to manage his business affairs, shall
3 appoint appraisers and cause to be made, returned and re-
4 corded, an appraisement of the property, both real and per-
5 sonal, of any such person in the same manner, to the same
6 extent, within the same time, and subject to the same regula-
7 tions and conditions as required by law for the estate of a
8 deceased person.

§27-11-4. Powers and duties of committee generally.

1 The committee appointed for any such person unable to
2 manage his business affairs shall take possession of his
3 estate, and may sue or be sued in respect thereto, and for
4 the recovery of debts due to and from such person. The
5 committee shall preserve such estate and manage it to the
6 best advantage, shall apply the personal estate, or so much
7 thereof as may be necessary to the payment of the debts of
8 such person, and the rents and profits of the residue of his
9 estate, real and personal, and the residue of the personal
10 estate, or so much as may be necessary, to the maintenance of
11 such person, and of his family, if any, and shall make due
12 accounting as required by law, and surrender the estate, or
13 as much as he may be accountable for, to such person in case
14 he shall be deemed competent, or, in case of his death,
15 without having been restored to competence, the real estate
16 to his heirs or devisees, and the personal estate to his execu-
17 tors or administrators.

§27-11-5. Authority of committee to mortgage, lease or sell realty.

1 If the personal estate of such person be insufficient for
2 the discharge of his debts, or if such estate or the residue
3 thereof after payment of the debts, and the rents and profits
4 of his real estate, be insufficient for his maintenance and
5 that of his family, if any, the committee of such person may
6 proceed, as provided in article one, chapter thirty-seven

7 of this code, to obtain authority to mortgage, lease or sell
8 so much of the real estate of such person as may be
9 necessary for the purposes aforesaid, or any of them, setting
10 forth in the petition the particulars and the amount of
11 the estate, real and personal, the application which may have
12 been made of any personal estate, and an account of the
13 debts and demands existing against the estate.

CHAPTER 67

(Com. Sub. for S. B. 503—By Mr. Susman)

[Passed March 9, 1974; in effect July 1, 1974. Approved by the Governor.]

AN ACT to repeal section twenty, article two, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section seven, article two of said chapter; to amend and reenact article six of said chapter; to further amend said chapter twenty-two by adding thereto a new article, designated article six-a; and to amend article six, chapter twenty of said code by adding thereto a new section, designated section twenty-a, all relating to coal miner and prospective miner training, education and certification; requiring certification of all surface miners after the first day of July, one thousand nine hundred seventy-six; requiring the employment of a mine foreman—fire boss; assistants; requirements for certification; equivalency of certificates; certification of underground and surface coal miners; definitions; permits of apprenticeship; requiring adequate supervision of apprentices; refusal to issue certificates; appeal; limitations of article; making working without a certificate, employing an uncertified miner or failure to supervise apprentices a misdemeanor and providing penalties; establishing a board of miner training, education and certification; declarations of legislative findings and purposes; board powers; methods of appointment; meetings; duties of director and departments; and authorizing the payment of a stipend to prospective miners in training.

Be it enacted by the Legislature of West Virginia:

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

Chapter

- 20. Natural Resources.
- 22. Mines and Minerals.

CHAPTER 20. NATURAL RESOURCES

ARTICLE 6. SURFACE MINING AND RECLAMATION.

§20-6-20a. Surface miner; certification required.

- 1 After the first day of July, one thousand nine hundred
- 2 seventy-six, certification shall be required of all surface
- 3 miners in accordance with the provisions of articles six
- 4 and six-a, chapter twenty-two of this code.

CHAPTER 22. MINES AND MINERALS.

Article

- 2. Coal Mines.
- 6. Certification of Underground and Surface Coal Miners.
- 6A. Board of Miner Training, Education and Certification.

ARTICLE 2. COAL MINES.

§22-2-7. When underground mine foreman—fire boss required; assistants; certification.

- 1 (a) In every underground mine where five or more
- 2 persons are employed in a period of twenty-four hours,
- 3 the operator shall employ at least one person certified
- 4 in accordance with the provisions of article six-a of this
- 5 chapter as a mine foreman—fire boss. Each applicant for
- 6 certification as a mine foreman—fire boss shall, at the
- 7 time he is issued a certificate of competency: (1) Be a
- 8 resident or employed in a mine in this state; (2) have had

9 at least five years' experience in the underground work-
10 ing, ventilation, and drainage of a coal mine, which shall
11 include at least eighteen months' experience on or at a
12 working section of an underground mine or be a graduate
13 of the School of Mines at West Virginia University or of
14 another accredited mining engineering school and have
15 had at least two years' practical experience in an under-
16 ground mine, which shall include at least eighteen
17 months' experience on or at a working section of an
18 underground mine; and (3) have demonstrated his know-
19 ledge of dangerous mine gases and their detection, mine
20 safety, first aid, safety appliances, state and federal
21 mining laws and regulations and other subjects by com-
22 pleting such training, education and examinations as may
23 be required of him under article six-a of this chapter.

24 (b) In mines in which the operations are so extensive
25 that the duties devolving upon the mine foreman—fire
26 boss cannot be discharged by one man, one or more
27 assistant mine foreman—fire boss may be designated.
28 Such persons shall act under the instruction of the mine
29 foreman—fire boss, who shall be responsible for their
30 conduct in the discharge of their duties. Each assistant
31 so designated shall be certified under the provisions of
32 article six-a of this chapter. Each applicant for certifi-
33 cation as assistant mine foreman—fire boss shall, at the
34 time he is issued a certificate of competency, possess
35 all of the qualifications required of a mine foreman—
36 fire boss: *Provided*, That he shall at the time he is certified
37 be required to have at least three years' experience in
38 the underground working, ventilation and drainage of
39 coal mines, which shall include eighteen months on or
40 at a working section of an underground mine or be a
41 graduate of the School of Mines at West Virginia Uni-
42 versity or of another accredited mining engineering
43 school and have had twelve months' practical experience
44 in an underground mine, all of which shall have been
45 on or at a working section.

46 (c) Until the first day of January, one thousand nine
47 hundred seventy-seven, in mines in which the operations
48 are so extensive that all the duties devolving upon the

49 mine foreman—fire boss cannot be discharged by one man,
50 competent persons having had at least three years' ex-
51 perience in coal mines may be designated as assistants,
52 who shall act under the mine foreman—fire boss instruc-
53 tions and the mine foreman—fire boss shall be responsible
54 for their conduct in the discharge of their duties under
55 such designation.

56 (d) Any person holding a mine foreman's certificate
57 issued by any other state may act in the capacity of mine
58 foreman—fire boss in any mine in this state until the next
59 regular mine foreman—fire boss examination held by the
60 department, but not to exceed a maximum of ninety days.

61 (e) After the effective date of this act, all duties
62 heretofore performed by persons certified as mine fore-
63 man, assistant mine foreman or fire boss shall be per-
64 formed by persons certified as underground mine fore-
65 man—fire boss or an assistant underground mine fore-
66 man—fire boss.

67 After the effective date of this act, every certificate
68 heretofore issued to an assistant mine foreman or fire
69 boss shall be deemed to be of equal value to a certificate
70 issued hereafter to an assistant mine foreman—fire boss,
71 and every certificate heretofore issued to a mine foreman
72 shall be deemed to be of equal value to a certificate
73 issued hereafter to a mine foreman—fire boss.

ARTICLE 6. CERTIFICATION OF UNDERGROUND AND SURFACE COAL MINERS.

§22-6-1. Certificate of competency and qualification or permit of apprentice-
ship required of all surface and underground miners.

§22-6-2. Definitions.

§22-6-3. Permit of apprenticeship—Underground miner.

§22-6-4. Permit of apprenticeship—Surface miner.

§22-6-5. Supervision of apprentices.

§22-6-6. Certificate of competency and qualification—Underground or sur-
face miner.

§22-6-7. Refusal to issue certificate; appeal.

§22-6-8. Limitations of article.

§22-6-9. Violations; penalties.

**§22-6-1. Certificate of competency and qualification or permit
of apprenticeship required of all surface and un-
derground miners.**

1 Except as hereinafter provided, no person shall work

2 or be employed for the purpose of performing normal
3 duties as a surface or underground miner in any mine
4 in this state unless he holds at the time he performs
5 such duties a certificate of competency and qualification
6 or a permit of apprenticeship issued under the provisions
7 of this article.

§22-6-2. Definitions.

1 For purposes of this article the term "surface miner"
2 means a person employed at a "surface mine," as that
3 term is defined in section two, article six, chapter twenty
4 of this code.

5 For purposes of this article, the term "underground
6 miner" means an underground worker in a bituminous
7 coal mine, except as hereinafter provided.

8 For purposes of this article, the term "board of miner
9 training, education and certification" means that board
10 established in article six-a of this chapter.

§22-6-3. Permit of apprenticeship—Underground miner.

1 A permit of apprenticeship—underground miner shall
2 be issued by the director to any person who has demon-
3 strated by examination a knowledge of the subjects and
4 skills pertaining to employment in underground mines,
5 including, but not limited to general safety, first aid,
6 miner and operator rights and responsibilities, general
7 principles of electricity, general mining hazards, roof
8 control, ventilation, mine health and sanitation, mine
9 mapping, state and federal mining laws and regulations
10 and such other subjects as may be required by the board
11 of miner training, education and certification: *Provided*,
12 That each applicant for said permit shall complete a pro-
13 gram of education and training of at least eighty hours,
14 which shall be determined by the board of miner training,
15 education and certification and provided for and imple-
16 mented by the director of the department of mines:
17 *Provided further*, That if a sufficient number of qualified
18 applicants having successfully completed the state train-
19 ing provided by the state department of mines are not
20 available, the operator may request approval from the di-

21 rector to conduct his own preemployment training pro-
22 gram so long as such training adequately covers the mini-
23 mum criteria determined by the board and such trainees
24 shall be eligible for the same certification as provided
25 for trainees undergoing training provided by the state.

§22-6-4. Permit of apprenticeship—Surface miner.

1 A permit of apprenticeship—surface miner, shall be is-
2 sued by the director to any person who has demonstrated
3 by examination a knowledge of the subjects and skills
4 pertaining to employment in the surface mining industry,
5 including, but not limited to general safety, first aid, miner
6 and operator rights and responsibilities, general principles
7 of electricity, health and sanitation, heavy equipment
8 safety, high walls and spoil banks, haulage, welding safety,
9 tipple safety, state and federal mining laws and regula-
10 tions and such other subjects as may be required by the
11 board of miner training, education and certification: *Pro-*
12 *vided*, That each applicant for said permit shall complete
13 a program of education and training of at least forty hours,
14 which program shall be determined by the board of miner
15 training, education and certification and provided for and
16 implemented by the director of the department of mines:
17 *Provided further*, That if a sufficient number of quali-
18 fied applicants having successfully completed the state
19 training provided by the state department of mines
20 are not available, the operator may request approval from
21 the director to conduct his own preemployment training
22 program so long as such training adequately covers the
23 minimum criteria determined by the board and such
24 trainees shall be eligible for the same certification as
25 provided for trainees undergoing training provided by
the state.

§22-6-5. Supervision of apprentices.

1 Each holder of a permit of apprenticeship shall be
2 known as an apprentice. Any miner holding a certificate
3 of competency and qualification may have one person
4 working with him, and under his direction, as an appren-
5 tice, and any mine foreman—fire boss or assistant mine
6 foreman—fire boss may have not more than five persons

7 working with him and under his immediate supervision
8 and direction, as apprentices, for the purpose of learning
9 and being instructed in the duties and calling of mining.

10 Every apprentice working at a surface mine shall be at
11 all times under the supervision and control of at least one
12 person who holds a certificate of competency and qualifi-
13 cation: *Provided*, That whenever the director determines
14 that a person trained, qualified or certified by the federal
15 government to act in a supervisory capacity is competent
16 to supervise five or more surface mine apprentices, such
17 person may have not more than five apprentices working
18 with him and under his supervision and direction.

19 In all cases, it shall be the duty of every mine operator
20 who employs apprentices to insure that such persons are
21 effectively supervised and to instruct such persons in safe
22 mining practices. Each apprentice shall wear a red hat
23 which identifies him as such while employed at or near
24 a mine. No person shall be employed as an apprentice
25 for a period in excess of eight months, except that in the
26 event of illness or injury, time extensions shall be per-
27 mitted as established by the director of the department
28 of mines.

**§22-6-6. Certificate of competency and qualification—Under-
ground or surface miner.**

1 A certificate of competency and qualification as an un-
2 derground miner or as surface miner shall be issued by
3 the director to any person who has at least six months'
4 total experience as an apprentice and demonstrated his
5 competence as a miner by successful completion of an
6 examination given by the director or his representative
7 in a manner and place to be determined by the board of
8 miner training, education and certification: *Provided*,
9 That all examinations shall be conducted in the English
10 language and shall be of a practical nature, so as to
11 determine the competency and qualifications of the appli-
12 cant to engage in the mining of coal with reasonable
13 safety to himself and his fellow employees: *Provided*
14 *further*, That notice of the time and place of such exami-
15 nation shall be given to management at the mine, to the

16 local union thereat if there is a local union, and notice
17 shall also be posted at the place or places in the vicinity
18 of the mine where notices to employees are ordinarily
19 posted. Examinations shall also be held at such times and
20 places, and after such notice, as the board finds necessary
21 to enable all applicants for certificates to have an oppor-
22 tunity to qualify for certification.

§22-6-7. Refusal to issue certificate; appeal.

1 If the director or his representative finds that an appli-
2 cant is not qualified and competent, he shall so notify the
3 applicant not more than ten days after the date of ex-
4 amination.

5 Any applicant aggrieved by an action of the director
6 in failing or refusing to issue a certificate of qualification
7 and competency may, within ten days of notice of the
8 action complained of, appeal to the director who shall
9 promptly give the applicant a hearing and either affirm
10 the action or take such action as should have been taken.

§22-6-8. Limitations of article.

1 All persons possessing certificates of qualification issued
2 by the department of mines of this state, entitling them to
3 act as mine foreman—fire bosses; or assistant mine fore-
4 man—fire bosses; shall be eligible to engage at any time
5 as miners in the mines of this state. Supervisory and tech-
6 nically trained employees of the operator, whose work
7 contributes only indirectly to mine operations, shall not
8 be required to possess a miners' certificate.

9 Notwithstanding the provisions of this article, every
10 person working as a surface miner in this state on or be-
11 fore the first day of July, one thousand nine hundred and
12 seventy-four shall, upon application to the director, be
13 issued a certificate of competency and qualification.

§22-6-9. Violations; penalties.

1 Any person who knowingly works in or at a mine with-
2 out a certificate issued under the provisions of this ar-
3 ticle, any person who knowingly employs an uncertified
4 miner to work in or at a coal mine in this state, or, any
5 operator who fails to insure the supervision of miners

6 holding a certificate of apprenticeship as provided for
7 in section five of this article, shall be guilty of a mis-
8 demeanor, and, upon conviction thereof, shall be fined
9 not less than fifty dollars nor more than five hundred
10 dollars.

**ARTICLE 6A. BOARD OF MINER TRAINING, EDUCATION AND
CERTIFICATION.**

§22-6A-1. Short title.

§22-6A-2. Declaration of legislative findings and policy.

§22-6A-3. Definitions.

§22-6A-4. Board of miner training, education and certification created;
membership, method of appointment, terms.

§22-6A-5. Board powers and duties.

§22-6A-6. Duties of director and department.

§22-6A-1. Short title.

1 This article shall be cited as "The West Virginia Miner
2 Training, Education and Certification Act."

§22-6A-2. Declaration of legislative findings and policy.

1 The Legislature hereby finds and declares that:

2 (a) The continued prosperity of the coal industry is of
3 primary importance to the state of West Virginia;

4 (b) The highest priority and concern of this Legisla-
5 ture and all in the coal mining industry must be the
6 health and safety of the industry's most valuable resource
7 —the miner;

8 (c) A high priority must also be given to increasing
9 the productivity and competitiveness of the mines in this
10 state;

11 (d) An inordinate number of miners, working on both
12 the surface in surface mining and in and at underground
13 mines, are injured during the first few months of their
14 experience in a mine;

15 (e) These injuries result in the loss of life and serious
16 injury to miners and are an impediment to the future
17 growth of West Virginia's coal industry;

18 (f) Injuries can be avoided through proper miner
19 training, education and certification;

20 (g) Mining is a technical occupation with various
21 specialties requiring individualized training and educa-
22 tion; and

23 (h) It is the general purpose of this article to:

24 (1) Require adequate training, education and mean-
25 ingful certification of all persons employed in coal mines;

26 (2) Establish a board of miner training, education,
27 and certification and empower it to require certain train-
28 ing and education of all prospective miners and miners
29 certified by the state;

30 (3) Authorize a stipend for prospective miners en-
31 rolled in this state's miner training, education and certi-
32 fication program;

33 (4) Direct the director of the department of mines to
34 apply and implement the standards set by the board of
35 miner training, education and certification by estab-
36 lishing programs for miner and prospective miner educa-
37 tion and training; and

38 (5) Provide for a program of continuing miner educa-
39 tion for all categories of certified miners.

§22-6A-3. Definitions.

1 Unless the context in which a word or phrase appears
2 clearly requires a different meaning, the words defined in
3 section one, article one of this chapter shall have when
4 used in this article the meaning therein assigned to them.
5 These words include but are not limited to the following:
6 Department, director of the department of mines, mine
7 inspector, operator, miner, shot firer and certified elec-
8 trician.

9 "Board" means the board of miner training, education
10 and certification established by section four of this article.

11 "Mine" means any mine, including a "surface mine," as
12 that term is defined in subsection (k), section two, ar-
13 ticle six, chapter twenty and a "mine" as that term is
14 defined in section one, article one, chapter twenty-two of
15 this code.

§22-6A-4. Board of miner training, education and certification created; membership, method of appointment, terms.

1 (a) There is hereby created a board of miner train-
2 ing, education and certification, which shall consist of
3 seven members, who shall be appointed in the following
4 manner:

5 (1) One member shall be appointed to represent the
6 viewpoint of surface mine operators in this state. When
7 such member is to be appointed, the governor shall re-
8 quest from the major association representing surface
9 coal operators in this state a list of three nominees to
10 the board. The governor shall select from said nominees
11 one person to serve on the board. For purposes of this
12 subsection, the major association representing the surface
13 coal operators in this state shall be deemed to be that
14 association, if any, which represents surface mine oper-
15 ators accounting for over one half of the coal produced
16 in surface mines in this state in the year prior to that
17 year in which the appointment is made.

18 (2) Two members shall be appointed to represent
19 the interests of the underground operators of this state.
20 When said members are to be appointed, the governor
21 shall request from the major association representing
22 the underground coal operators in this state a list of
23 six nominees to the board. The governor shall select
24 from said nominees two persons to serve on the board.
25 For purposes of this subsection, the major association
26 representing the underground operators in this state shall
27 be deemed to be that association, if any, which repre-
28 sents underground operators accounting for over one
29 half of the coal produced in underground mines in this
30 state in the year prior to that year in which the appoint-
31 ments are made.

32 (3) Three members shall be appointed who can rea-
33 sonably be expected to represent the interests of the
34 working miners in this state. If the major employee
35 organization representing coal miners in this state is
36 divided into administrative districts, the employee orga-

37 nization of each district shall, upon request by the gover-
38 nor, submit a list of three nominees for membership on
39 the board. If such major employee organization is not so
40 divided into administrative districts, such employee or-
41 ganization shall, upon request by the governor, submit
42 a list of twelve nominees for membership on the board.
43 The governor shall make such appointments from the
44 persons so nominated: *Provided*, That in the event nom-
45 inations are made by administrative districts, not more
46 than one member shall be appointed from the nominees
47 of any one district unless there are less than three such
48 districts in this state.

49 (4) The seventh member of the board, who shall
50 serve as chairman, shall be a person selected and agreed
51 upon by the six persons appointed by the governor.

52 (5) All appointments made by the governor under this
53 section shall be with the advice and consent of the
54 Senate: *Provided*, That persons so appointed while the
55 Senate of this state is not in session shall be permitted
56 to serve up to one year in an acting capacity, or until
57 the next session of the Legislature, whichever is less.

58 (b) The board hereby established shall be appointed
59 by the governor within three months of the effective
60 date of this act. As soon as the members of the board are
61 appointed, the director of the department of mines shall
62 call an organizational meeting of the board. At said
63 meeting, all of the board members then appointed shall
64 select a seventh member of the board to serve as chair-
65 man and draw lots to determine the length of the term
66 they and the chairman shall serve. Three members shall
67 serve for three years; two members shall serve for two
68 years; and two members shall serve for one year. There-
69 after, members shall serve for a term of three years. As
70 so organized, the board shall meet at the call of the
71 chairman, at the call of the director, or upon the request
72 of any two members of the board: *Provided*, That no
73 meeting of the board for any purpose shall be conducted
74 unless the board members are notified at least five days
75 in advance of a proposed meeting. In cases of an emer-

76 gency, members may be notified of a board meeting by
77 the most appropriate means of communication available.

78 (c) Whenever a vacancy on the board occurs, appoint-
79 ments shall be made in the manner prescribed in this sec-
80 tion: *Provided*, That in the case of an appointment to fill a
81 vacancy nominations shall be submitted to the governor
82 within thirty days after the vacancy occurs. The vacancy
83 shall be filled by the governor within thirty days of his
84 receipt of the list of nominations.

85 (d) Each member of the board shall receive seventy-
86 five dollars per diem while actually engaged in the per-
87 formance of the work of the board and shall receive
88 mileage at the rate of fifteen cents for each mile actually
89 traveled going from the home of the member to the place
90 of the meeting of the board and returning therefrom,
91 which shall be paid out of the state treasury upon a
92 requisition upon the state auditor, properly certified by
93 such members of the board.

94 (e) A quorum of the board shall be four members; the
95 board may act officially by a majority of those members
96 who are present.

97 (f) The chairman of the board shall be a nonvoting
98 member: *Provided*, That in cases of a tie, the chairman
99 shall cast the deciding vote on the issue or issues under
100 consideration.

101 (g) The director of the department of mines shall
102 serve as the secretary to the board and shall be present
103 or send an authorized representative to all meetings of
104 the board.

§22-6A-5. Board powers and duties.

1 (a) The board shall establish criteria and standards for
2 a program of education, training and examination to be
3 required of all prospective miners and miners prior to
4 their certification in any of the various miner specialties
5 requiring certification, under this article or any other pro-
6 vision of this code. Such specialties include, but are not
7 limited to underground miner, surface miner, apprentice,
8 underground mine foreman—fire boss, assistant under-

9 ground mine foreman—fire boss, shot firer, mine electrician and belt examiner.

11 (b) The board may require certification in other miner
12 occupational specialties: *Provided*, That no new specialty
13 may be created by the board unless certification in a new
14 specialty is made desirable by action of the federal gov-
15 ernment requiring certification in a specialty not enumer-
16 ated in this code.

17 (c) The board may establish criteria and standards for
18 a program of pre-employment education and training to
19 be required of miners working on the surface at under-
20 ground mines who are not certified under the provisions of
21 this article or any other provision of this code.

22 (d) The board shall set minimum standards for a pro-
23 gram of continuing education and training of certified
24 persons and other miners on an annual basis. Prior to
25 issuing said standards, the board shall conduct public
26 hearings at which the parties that may be affected by its
27 actions may be heard. Such education and training shall
28 be provided in a manner determined by the director to be
29 sufficient to meet the standards established by the board.

30 (e) The board may, in conjunction with any state,
31 local or federal agency or any other person or institution,
32 provide for the payment of a stipend to prospective miners
33 enrolled in one or more of the programs of miner educa-
34 tion, training and certification provided for in this article
35 or any other provision of this code.

36 (f) The board may also from time to time conduct
37 such hearings and other oversight activities as may be
38 required to insure full implementation of programs es-
39 tablished by it.

40 (g) Nothing in this article shall be deemed to empower
41 the board to revoke or suspend any certificate issued by
42 the director or the department of mines.

43 (h) The board may, upon its own motion or whenever
44 requested so to do by the director, deem two certificates
45 issued by this state to be of equal value or deem training
46 provided or required by federal agencies to be sufficient

47 to meet training and education requirements set by it, the
48 director, or by the provisions of this code.

§22-6A-6. Duties of director and department.

1 The director shall be empowered to promulgate, pur-
2 suant to chapter twenty-nine-a of this code, such reason-
3 able rules and regulations as are necessary to establish
4 a program to implement the provisions of this article.
5 Such program shall include, but not be limited to im-
6 plementation of a program of instruction in each of the
7 miner occupational specialties and the conduct of examina-
8 tions to test each applicant's knowledge and understand-
9 ing of the training and instruction which he is required
10 to have prior to the receipt of a certificate.

11 The director is authorized and directed to utilize state
12 mine inspectors, mine safety instructors, the state mine
13 foreman examiner, private and public institutions of edu-
14 cation and such other persons as may be available to him
15 in implementing the program of instruction and examina-
16 tions.

17 The director may, at any time, make such recommenda-
18 tions or supply such information to the board as he may
19 deem appropriate.

20 The director is authorized and directed to utilize such
21 state and federal moneys and personnel as may be avail-
22 able to the department for educational and training pur-
23 poses in the implementation of the provisions of this ar-
24 ticle.

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CHAPTER 68

(H. B. 692—By Mr. Kepp and Mr. Potter)

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[Passed February 12, 1974; in effect July 1, 1974. Approved by the Governor.]

AN ACT to amend and reenact section one, article six-b, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to financial affairs

of the interstate mining commission; allocating among the party states to the interstate mining compact the amounts of legislative appropriations expected of each party state.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6B. INTERSTATE MINING COMPACT.

§20-6B-1. Enactment of compact.

1 The "Interstate Mining Compact" is hereby enacted into
2 law and entered into with all other jurisdictions legally
3 joining therein in the form substantially as follows:

4 **INTERSTATE MINING COMPACT**

5 **Article I. Findings and Purposes.**

6 (a) The party states find that:

7 (1) Mining and the contributions thereof to the economy
8 and well-being of every state are of basic significance.

9 (2) The effects of mining on the availability of land,
10 water and other resources for other uses present special
11 problems which properly can be approached only with due
12 consideration for the rights and interests of those engaged
13 in mining, those using or proposing to use these resources
14 for other purposes and the public.

15 (3) Measures for the reduction of the adverse effects
16 of mining on land, water and other resources may be costly
17 and the devising of means to deal with them are of both
18 public and private concern.

19 (4) Such variables as soil structure and composition,
20 physiography, climatic conditions and the needs of the public
21 make impracticable the application to all mining areas of a
22 single standard for the conservation, adaption or restoration
23 of mined land, or the development of mineral and other
24 natural resources, but justifiable requirements of law and
25 practice relating to the effects of mining on land, water
26 and other resources may be reduced in equity or effectiveness

27 unless they pertain similarly from state to state for all mining
28 operations similarly situated.

29 (5) The states are in a position and have the respon-
30 sibility to assure that mining shall be conducted in accordance
31 with sound conservation principles, and with due regard
32 for local conditions.

33 (b) The purposes of this compact are to:

34 (1) Advance the protection and restoration of land, water
35 and other resources affected by mining.

36 (2) Assist in the reduction or elimination or counteracting
37 of pollution or deterioration of land, water and air attributable
38 to mining.

39 (3) Encourage, with due recognition of relevant regional,
40 physical and other differences, programs in each of the party
41 states which will achieve comparable results in protecting,
42 conserving and improving the usefulness of natural resources,
43 to the end that the most desirable conduct of mining and related
44 operations may be universally facilitated.

45 (4) Assist the party states in their efforts to facilitate the
46 use of land and other resources affected by mining, so that
47 such use may be consistent with sound land use, public
48 health and public safety, and to this end to study and recom-
49 mend, wherever desirable, techniques for the improvement,
50 restoration or protection of such land and other resources.

51 (5) Assist in achieving and maintaining an efficient and
52 productive mining industry and in increasing economic and
53 other benefits attributable to mining.

54 **Article II. Definitions.**

55 As used in this compact, the term:

56 (a) "Mining" means the breaking of the surface soil in
57 order to facilitate or accomplish the extraction or removal
58 of minerals, ores or other solid matter, any activity or pro-
59 cess constituting all or part of a process for the extraction
60 or removal of minerals, ores and other solid matter from
61 its original location, and the preparation, washing, cleaning
62 or other treatment of minerals, ores or other solid matter

63 so as to make them suitable for commercial, industrial or
64 construction use; but shall not include those aspects of
65 deep mining not having significant effect on the surface,
66 and shall not include excavation or grading when conducted
67 solely in aid of on-site farming or construction.

68 (b) "State" means a state of the United States, the
69 District of Columbia, the commonwealth of Puerto Rico or a
70 territory or possession of the United States.

71 **Article III. State Programs.**

72 Each party state agrees that within a reasonable time
73 it will formulate and establish an effective program for the
74 conservation and use of mined land, by the establishment of
75 standards, enactment of laws or the continuing of the same
76 in force, to accomplish:

77 (a) The protection of the public and the protection of
78 adjoining and other landowners from damage to their lands
79 and the structures and other property thereon resulting from
80 the conduct of mining operations or the abandonment or
81 neglect of land and property formerly used in the conduct of
82 such operations.

83 (b) The conduct of mining and the handling of refuse
84 and other mining wastes in ways that will reduce adverse
85 effects on the economic, residential, recreational or aesthetic
86 value and utility of land and water.

87 (c) The institution and maintenance of suitable programs
88 for adaption, restoration and rehabilitation of mined lands.

89 (d) The prevention, abatement and control of water, air
90 and soil pollution resulting from mining, present, past and
91 future.

92 **Article IV. Powers.**

93 In addition to any other powers conferred upon the
94 interstate mining commission, established by Article V of
95 this compact, such commission shall have power to:

96 (a) Study mining operations, processes and techniques
97 for the purpose of gaining knowledge concerning the effects
98 of such operations, processes and techniques on land, soil,

99 water, air, plant and animal life, recreation and patterns of
100 community or regional development or change.

101 (b) Study the conservation, adaptation, improvement and
102 restoration of land and related resources affected by mining.

103 (c) Make recommendations concerning any aspect or as-
104 pects of law or practice and governmental administration
105 dealing with matters within the purview of this compact.

106 (d) Gather and disseminate information relating to any
107 of the matters within the purview of this compact.

108 (e) Cooperate with the federal government and any public
109 or private entities having interests in any subject coming within
110 the purview of this compact.

111 (f) Consult, upon the request of a party state and within
112 resources available therefor, with the officials of such state
113 in respect to any problem within the purview of this com-
114 pact.

115 (g) Study and make recommendations with respect to any
116 practice, process, technique or course of action that may
117 improve the efficiency of mining or the economic yield from
118 mining operations.

119 (h) Study and make recommendations relating to the
120 safeguarding of access to resources which are or may become
121 the subject of mining operations to the end that the needs
122 of the economy for the products of mining may not be
123 adversely affected by unplanned or inappropriate use of land
124 and other resources containing minerals or otherwise con-
125 nected with actual or potential mining sites.

126 **Article V. The Commission.**

127 (a) There is hereby created an agency of the party states
128 to be known as the "Interstate Mining Commission," here-
129 inafter called "the commission." The commission shall be
130 composed of one commissioner from each party state who
131 shall be the governor thereof. Pursuant to the laws of his
132 party state, each governor shall have the assistance of an
133 advisory body (including membership from mining industries,
134 conservation interests and such other public and private

135 interests as may be appropriate) in considering problems re-
136 lating to mining and in discharging his responsibilities as
137 the commissioner of his state on the commission. In any
138 instance where a governor is unable to attend a meeting of
139 the commission or perform any other function in connection
140 with the business of the commission, he shall designate an
141 alternate from among the members of the advisory body
142 required by this paragraph, who shall represent him and act
143 in his place and stead. The designation of an alternate
144 shall be communicated by the governor to the commission in
145 such manner as its bylaws may provide.

146 (b) The commissioners shall be entitled to one vote each
147 on the commission. No action of the commission making a
148 recommendation pursuant to Articles IV (c), IV (g) and IV
149 (h) or requesting, accepting or disposing of funds, services
150 or other property pursuant to this paragraph, Articles V
151 (g), V (h) or VII shall be valid unless taken at a meeting
152 at which a majority of the total number of votes on the
153 commission is cast in favor thereof. All other action shall
154 be by a majority of those present and voting: *Provided,*
155 That action of the commission shall be only at a meeting
156 which a majority of the commissioners, or their alternates,
157 is present. The commission may establish and maintain such
158 facilities as may be necessary for the transacting of its
159 business. The commission may acquire, hold and convey real
160 and personal property and any interest therein.

161 (c) The commission shall have a seal.

162 (d) The commission shall elect annually, from among its
163 members, a chairman, a vice chairman, and a treasurer. The
164 commission shall appoint an executive director and fix his
165 duties and compensation. Such executive director shall serve
166 at the pleasure of the commission. The executive director, the
167 treasurer and such other personnel as the commission shall
168 designate shall be bonded. The amount or amounts of such
169 bond or bonds shall be determined by the commission.

170 (e) Irrespective of the civil service, personnel or other
171 merit system laws of any of the party states, the executive
172 director with the approval of the commission, shall appoint,
173 remove or discharge such personnel as may be necessary for

174 the performance of the commission's functions, and shall
175 fix the duties and compensation of such personnel.

176 (f) The commission may establish and maintain, inde-
177 pendently or in conjunction with a party state, a suitable
178 retirement system for its employees. Employees of the com-
179 mission shall be eligible for social security coverage in respect
180 of old age and survivor's insurance: *Provided*, That the
181 commission take such steps as may be necessary pursuant
182 to the laws of the United States to participate in such
183 program of insurance as a governmental agency or unit.
184 The commission may establish and maintain or participate in
185 such additional programs of employee benefits as it may
186 deem appropriate.

187 (g) The commission may borrow, accept or contract for
188 the services of personnel from any state, the United States
189 or any other governmental agency, or from any person, firm,
190 association or corporation.

191 (h) The commission may accept for any of its purposes
192 and functions under this compact any and all donations and
193 grants of money, equipment, supplies, materials and services,
194 conditional or otherwise, from any state, the United States
195 or any other governmental agency, or from any person,
196 firm, association or corporation, and may receive, utilize
197 and dispose of the same. Any donation or grant accepted
198 by the commission pursuant to this paragraph or services
199 borrowed pursuant to paragraph (g) of this article shall
200 be reported in the annual report of the commission. Such
201 report shall include the nature, amount and conditions, if
202 any, of the donation, grant or services borrowed and the
203 identity of the donor or lender.

204 (i) The commission shall adopt bylaws for the conduct
205 of its business and shall have the power to amend and
206 rescind these bylaws. The commission shall publish its by-
207 laws in convenient form and shall file a copy thereof and
208 a copy of any amendment thereto with the appropriate agency
209 or officer in each of the party states.

210 (j) The commission annually shall make to the governor,
211 Legislature and advisory body required by Article V (a) of
212 each party state or report covering the activities of the com-

213 mission for the preceding year, and embodying such recom-
214 mendations as may have been made by the commission.
215 The commission may make such additional reports as it may
216 deem desirable.

217 **Article VI. Advisory, Technical and Regional Committees.**

218 The commission shall establish such advisory, technical
219 and regional committees as it may deem necessary, membership
220 on which shall include private persons and public officials,
221 and shall cooperate with and use the services of any such
222 committees and the organizations which the members represent
223 in furthering any of its activities. Such committees may be
224 formed to consider problems of special interest to any party
225 states, problems dealing with particular commodities or types
226 of mining operations, problems relating to reclamation, deve-
227 lopment or use of mined land or any other matters of concern
228 to the commission.

229

Article VII. Finance.

230 (a) The commission shall submit to the governor or de-
231 signated officer or officers of each party state a budget of
232 its estimated expenditures for such periods as may be re-
233 quired by the laws of that party state for presentation to
234 the legislature thereof.

235 (b) Each of the commission's budgets of estimated ex-
236 penditures shall contain specific recommendations of the
237 amount or amounts to be appropriated by each of the party
238 states. The total amount of appropriations requested under
239 any such budget shall be apportioned among the party states
240 as follows: One half in equal shares, and the remainder in
241 proportion to the value of minerals, ores and other solid
242 matter mined. In determining such values, the commission
243 shall employ such available public source or sources of
244 information as, in its judgment, present the most equitable
245 and accurate comparisons among the party states. Each of
246 the commission's budgets of estimated expenditures and re-
247 quests for appropriations shall indicate the source or sources
248 used in obtaining information concerning value of minerals,
249 ores and other solid matter mined.

250 (c) The commission shall not pledge the credit of any
251 party state. The commission may meet any of its obligations

252 in whole or in part with funds available to it under Article
253 V (h) of this compact: *Provided*, That the commission takes
254 specific action setting aside such funds prior to incurring any
255 obligation to be met in whole or in part in such manner.
256 Except where the commission makes use of funds available to
257 it under Article V (h) hereof, the commission shall not
258 incur any obligation prior to the allotment of funds by the
259 party states adequate to meet the same.

260 (d) The commission shall keep accurate accounts of all
261 receipts and disbursements. The receipts and disbursements
262 of the commission shall be subject to the audit and accounting
263 procedures established under its bylaws. All receipts and
264 disbursements of funds handled by the commission shall be
265 audited yearly by a qualified public accountant and the
266 report of the audit shall be included in and become part of
267 the annual report of the commission.

268 (e) The accounts of the commission shall be open at any
269 reasonable time for inspection by duly constituted officers
270 of the party states and by any persons authorized by the
271 commission.

272 (f) Nothing contained herein shall be construed to pre-
273 vent commission compliance with laws relating to audit or
274 inspection of accounts by or on behalf of any government
275 contributing to the support of the commission.

276 **Article VIII. Entry Into Force and Withdrawal.**

277 (a) This compact shall enter into force when enacted
278 into law by any four or more states. Thereafter, this compact
279 shall become effective as to any other state upon its enactment
280 thereof.

281 (b) Any party state may withdraw from this compact by
282 enacting a statute repealing the same, but no such with-
283 drawal shall take effect until one year after the governor
284 of the withdrawing state has given notice in writing of the
285 withdrawal to the governors of all other party states. No
286 withdrawal shall affect any liability already incurred by or
287 chargeable to a party state prior to the time of such with-
288 drawal.

289

Article IX. Effect on Other Laws.

290 Nothing in this compact shall be construed to limit, repeal
291 or supersede any other law of any party state.

292

Article X. Construction and Severability.

293 This compact shall be liberally construed so as to effectuate
294 the purposes thereof. The provisions of this compact shall
295 be severable and if any phrase, clause, sentence or provision
296 of this compact is declared to be contrary to the constitution of
297 any state or of the United States or the applicability thereof to
298 any government, agency, person or circumstance is held in-
299 valid, the validity of the remainder of this compact and the
300 applicability thereof to any government, agency, person or
301 circumstance shall not be affected thereby. If this compact
302 shall be held contrary to the constitution of any state partici-
303 pating herein, the compact shall remain in full force and effect
304 as to the remaining party states and in full force and effect
305 as to the state affected as to all severable matters.

c

CHAPTER 69

(Com. Sub. for H. B. 795—By Mr. Shaffer and Mr. Moore)

[Passed March 8, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section sixty-three, article two, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring surface-mine permits when opening or reopening of deep mines requires extensive surface disturbance where coal is removed commercially and not incidentally.

Be it enacted by the Legislature of West Virginia:

That section sixty-three, article two, 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 2. COAL MINES.

§22-2-63. No mine to be opened or reopened without prior approval of director of department of mines; approval fee; extension of certificate of approval; certificates not transferable; section to be printed on certificates.

1 (a) After the effective date of this section, no mine shall
2 be opened or reopened unless prior approval has been obtained
3 from the director of the department of mines, which approval
4 shall not be unreasonably withheld. The operator shall pay
5 for such approval a fee of ten dollars, which payment shall
6 be tendered with the operator's application for such approval:
7 *Provided*, That mines producing coal solely for the operator's
8 use shall be issued a permit without charge if coal production
9 will be less than fifty tons a year.

10 (b) Within thirty days after January first of each year,
11 the operator of each mine holding a certificate evidencing
12 approval of the director to open a mine, shall apply for the
13 extension of such certificate of approval for an additional
14 year. Such approval, evidenced by a certificate of the director,
15 shall be granted as a matter of right and without charge if,
16 at the time such application is made, the operator is in
17 compliance with the provisions of section seventy-two of
18 this article. Applications for extension of such certificates
19 of approval not submitted within the time required shall be
20 processed as an application to open or reopen a mine and
21 shall be accompanied by a fee of ten dollars.

22 (c) Certificates of approval issued pursuant to this section
23 shall not be transferable.

24 (d) The provisions of this section shall be printed on the
25 reverse side of every certificate issued hereunder.

26 (e) On or after the first day of July, one thousand nine
27 hundred seventy-one, no mine shall be opened or reopened
28 unless a surface disturbed reclamation bond in the amount
29 of five hundred dollars per acre is submitted to the department
30 of mines for the removal of unused surface structures and
31 the sealing of abandoned mine openings. The district mine
32 inspector shall be contacted for a preinspection of the area
33 proposed for underground mining prior to the issuance of

34 any new opening approval. The above-mentioned bond shall
 35 go into a separate fund and must be submitted separate,
 36 when application is made for the issuance of a deep-mine
 37 permit.

38 (f) On or after the first day of July, one thousand nine
 39 hundred seventy-four, no mine shall be opened or reopened
 40 where the total area of surface disturbance at the outcrop
 41 of the coal seam is greater than four hundred lineal feet
 42 and where coal is removed or to be removed commercially
 43 or for commercial purposes from this area unless a surface-
 44 mine reclamation bond as required in articles six and six-a,
 45 chapter twenty of the code be first obtained covering the
 46 area to be disturbed.

CHAPTER 70

(H. B. 1178—By Mr. Kincaid and Mr. Goodwin)

[Passed March 9, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article nine, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to motor vehicle registration; and providing for the temporary use of a facsimile of a vehicle registration plate in the event the registration plate originally issued is lost, destroyed or stolen.

Be it enacted by the Legislature of West Virginia:

That section two, article nine, 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 9. OFFENSES AGAINST REGISTRATION LAWS AND SUSPENSION OR REVOCATION OF REGISTRATION.

§17A-9-2. Operation of vehicles without evidences of registration; use of temporary facsimile.

1 No person shall operate, nor shall an owner knowingly per-
 2 mit to be operated, upon any highway any vehicle required to
 3 be registered hereunder unless there shall be attached thereto
 4 and displayed thereon or shall be in the possession of the

5 operator when and as required by this chapter a valid registra-
6 tion card and registration plate or plates issued therefor by
7 the department for the current registration year except as other-
8 wise expressly permitted in this chapter. Any violation of this
9 section is a misdemeanor.

10 In the event that the registration plate or plates originally
11 issued are lost, destroyed or stolen, a temporary facsimile of
12 the plate or plates, showing the number of the same, may be
13 attached to the vehicle by the owner for a period of not more
14 than fifteen days, or until a new plate or plates are issued by
15 the department whichever is earlier: *Provided*, That no such
16 facsimile shall be used and no such vehicle shall be driven up-
17 on the highways of this state, until the owner shall have noti-
18 fied in writing the department of public safety of the loss of
19 such registration plate or plates.

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CHAPTER 71

(H. B. 686—By Mr. Shaffer and Mr. Savilla)

[Passed February 22, 1974; in effect July 1, 1974. Approved by the Governor.]

AN ACT to amend and reenact section eight, article ten, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to motor vehicles; fees for registration, licensing, etc.; exemptions for disabled veterans.

Be it enacted by the Legislature of West Virginia:

That section eight, article ten, 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 10. FEES FOR REGISTRATION, LICENSING, ETC.

§17A-10-8. Exemptions from registration fees.

1 The United States government, the state, or any political
2 subdivision thereof, shall be exempted from the payment of
3 any fee on account of registration of any vehicle owned or

4 operated by the United States government, the state, or any
5 political subdivision thereof, as the case may be. The proper
6 representative of the federal government, the state, or any
7 such political subdivision thereof, shall make, or cause to be
8 made, on the form provided for that purpose, an application
9 for registration of such vehicle so owned and operated, and the
10 registration plate or plates issued for such vehicle shall be dis-
11 played or caused to be displayed as provided in this chapter.
12 Fire apparatus owned by the United States government, the
13 state, or any political subdivision thereof, or by an incorporated
14 volunteer fire department organized for protection of com-
15 munity property shall be exempt from all the provisions of this
16 article, pertaining to the payment of registration fees. Any
17 ambulance used exclusively for charitable purposes, for which
18 use there is no charge, shall be exempt from the payment of all
19 registration fees required by this article. Any disabled veteran
20 owning an automobile or other conveyance under the pro-
21 visions of Public Law 663 of the 79th Congress of the
22 United States or Public Law 187 of the 82nd Congress of
23 the United States, or Public Law 77 of the 90th Congress
24 of the United States shall be exempt from the payment of any
25 such fee on account of registration of any motor vehicle
26 owned by such disabled veteran. This exemption shall not
27 apply to such disabled veterans owning motor vehicles used
28 for hire, but such exemption shall be in force and effect
29 for such motor vehicles owned by such disabled veterans
30 during their natural life.

CHAPTER 72

(S. B. 55—By Mr. Dillon and Mr. Deem)

[Passed February 23, 1974; in effect July 1, 1974. Approved by the Governor.]

AN ACT to amend article two, chapter seventeen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seven-a, relating to the creation of a drivers' licensing advisory board, appointment and qualifications of board

members, duties of the board and honorarium and reimbursement of expenses for board members.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-7a. Drivers' licensing advisory board.

1 There is hereby created a drivers' licensing advisory
2 board, which shall consist of five members to be ap-
3 pointed by the governor, by and with the advice and
4 consent of the Senate, for terms of three years, except
5 that as to the members first appointed, two shall be ap-
6 pointed for a term of three years, two shall be appointed
7 for a term of two years, and one shall be appointed for
8 a term of one year, all from the first day of July, one
9 thousand nine hundred seventy-four. All vacancies oc-
10 ccurring on the board shall be filled by the governor, by
11 and with the advice and consent of the Senate. One mem-
12 ber of the board shall be an optometrist duly registered
13 to practice optometry in this state and the other four
14 members of the board shall be physicians or surgeons
15 duly licensed to practice medicine or surgery in this state.
16 The governor shall appoint persons qualified to serve on
17 the board who, in his opinion, will best serve the work
18 and function of the board.

19 The board shall advise the commissioner of motor ve-
20 hicles as to vision standards and all other medical criteria
21 of whatever kind or nature relevant to the licensing of
22 persons to operate motor vehicles under the provisions
23 of this chapter. The board shall, upon request, advise
24 the commissioner of motor vehicles as to the mental or
25 physical fitness of an applicant for, or the holder of, a li-
26 cense to operate a motor vehicle. The board shall furnish
27 the commissioner with all such medical standards, statis-
28 tics, data, professional information and advice as he may
29 reasonably request.

30 The members of the board shall receive an honorarium
31 of thirty-five dollars for each day actually devoted to the
32 business of the board, and shall be reimbursed for all
33 reasonable and necessary expenses actually incurred by
34 them in the discharge of their official duties.

CHAPTER 73

(H. B. 704—By Mr. Savilla and Mr. Polen)

[Passed February 15, 1974; in effect July 1, 1974. Approved by the Governor.]

AN ACT to amend chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five-b, relating to blood test for alcohol in any driver and adult pedestrian who dies in or within four hours after having been involved in a motor vehicle accident; relating to those responsible for reporting death and functions of county medical examiner; establishing a time limit for conducting test; relating to persons who may conduct test; granting consent to withdraw blood from dead body; granting civil and criminal immunity to person withdrawing blood and conducting test; relating to fee for test and to whom and how county medical examiners report results of blood tests; making such reports not admissible as evidence; relating to use of reports; and specifying that reports may be used only for statistical and highway safety purposes.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5B. POST-MORTEM TESTS FOR ALCOHOL IN PERSONS KILLED IN MOTOR VEHICLE ACCIDENTS.

§17C-5B-1. Blood tests for alcohol in drivers and adult pedestrians killed in motor vehicle accidents; time limit for conducting test; who may conduct test; express consent to withdraw blood from dead body granted; granting civil and criminal immunity to person conducting test; fee for test.

§17C-5B-2. To whom and how county medical examiners report results of blood tests; such reports not admissible as evidence; use of reports only for statistical and highway safety purposes.

§17C-5B-1. Blood tests for alcohol in drivers and adult pedestrians killed in motor vehicle accidents; time limit for conducting test; who may conduct test; express consent to withdraw blood from dead body granted; granting civil and criminal immunity to person conducting test; fee for test.

1 When any motor vehicle driver or adult pedestrian dies
2 in a motor vehicle accident in this state or dies within
3 four hours after having been involved in a motor vehicle
4 accident in this state, the physician in attendance, or law-
5 enforcement officer having knowledge of such death, or the
6 funeral director, or any other person present when such
7 death occurred shall immediately report such death to the
8 medical examiner of the county in which such death occurred.
9 Upon receipt of such notice, the medical examiner shall take
10 charge of the dead body and shall conduct, or shall cause to
11 be conducted, within twelve hours after receiving such notice
12 and before the dead body is embalmed, a blood test to
13 determine the presence and percentage concentration of alcohol
14 in the blood of such dead body.

15 The blood test required under this section shall be con-
16 ducted only by a person qualified to conduct an autopsy
17 under article twelve, chapter sixty-one of this code, or by
18 a doctor of medicine, doctor of osteopathy, registered nurse,
19 trained medical technician at the place of his employment,
20 or county coroner who is deemed qualified by the com-
21 mission on post-mortem examinations to conduct such blood
22 test.

23 Any person who is to conduct a blood test under the
24 provisions of this section is hereby expressly authorized to
25 withdraw blood from the dead body in the quantity necessary
26 to conduct such blood test. Any person withdrawing blood
27 from the dead body and testing such blood and any hos-
28 pital or clinic in which such blood is withdrawn and tested
29 under the provisions of this section shall be immune from all
30 civil and criminal liability which might otherwise be imposed.

31 Any person conducting a blood test under the provisions

32 of this section shall receive a standardized fee in the amount
33 determined by the commission on post-mortem examinations,
34 which fee shall be paid from funds appropriated to the com-
35 mission on post-mortem examinations.

36 Nothing contained in this section shall be construed to
37 preclude the taking of a blood test by any other person having
38 the right to take such test or cause such test to be taken
39 while the medical examiner has charge of the body.

**§17C-5B-2. To whom and how county medical examiners report
results of blood tests; such reports not admissible as
evidence; use of reports only for statistical and high-
way safety purposes.**

1 Each county medical examiner shall immediately report the
2 results of each blood test conducted under the authority of
3 section one of this article by him, or conducted at his request,
4 to the chief medical examiner of the office of medical exami-
5 nations and to the department of public safety. The results of
6 such blood test and report thereof shall be used only for
7 record-keeping and statistical purposes. No results of such
8 blood test or any report thereof shall be admissible in evi-
9 dence in any action or proceeding of any kind in any court or
10 before any tribunal, board, agency or person.

11 The department of public safety shall compile the data from
12 all such reports submitted to it on a monthly basis. The de-
13 partment shall forward such compilations to the governor's
14 highway safety administration and the department of motor
15 vehicles. Such compilations shall be only for statistical pur-
16 poses and highway safety information and shall not disclose
17 or reveal in any manner the identity of any dead person whose
18 blood was tested under the provisions of section one of this
19 article.

20 The department of public safety, the governor's highway
21 safety administration and department of motor vehicles shall
22 make use of such compilations in a manner to provide accurate
23 and useful statistical information to government and the public
24 relative to achieving a reduction in motor vehicle accidents
25 arising in whole or in part from the imbibing of alcohol by
26 motor vehicle drivers and adult pedestrians.

CHAPTER 74

(H. B. 779—By Mr. Goodwin and Mr. Christian)

[Passed March 9, 1974; in effect July 1, 1974. Approved by the Governor.]

AN ACT to amend article six, 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 nine, relating to traffic regulations; speed restrictions; providing for use of a slow moving vehicle emblem to be used on vehicles and machinery designed to operate at twenty-five miles per hour or less.

Be it enacted by the Legislature of West Virginia:

That article six, 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 nine, to read as follows:

ARTICLE 6. SPEED RESTRICTIONS.

§17C-6-9. Slow moving vehicle emblem.

1 (a) All farm machinery and other machinery including
2 all road construction machinery except when guarded by
3 flagmen or flares, designed to operate at twenty-five miles per
4 hour or less, traveling on a public highway during day or night
5 shall display a triangular slow moving emblem on the rear
6 of the vehicle.

7 (b) The commissioner shall adopt standards and speci-
8 fications for design and the position of mounting the slow
9 moving vehicle emblem, as well as requirements for certifi-
10 cation of conformance. The requirements of such emblem
11 shall be in addition to any lighting devices required by
12 law.

13 (c) The use of this emblem shall be restricted to the use
14 specified in subsection (a) and its use on any other type of
15 vehicle or as a clearance marker on wide machinery or on
16 stationary objects on the highway is prohibited.

CHAPTER 75

(H. B. 1032—By Mr. Shaw)

[Passed March 9, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventeen, article fifteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the equipping of public utility maintenance vehicles with more than one spot lamp.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. EQUIPMENT.**§17C-15-17. Spot lamps and other auxiliary lamps.**

1 (a) *Spot lamps.*—Any motor vehicle except a public
2 utility company maintenance vehicle may be equipped with
3 not to exceed one spot lamp and every lighted spot lamp
4 shall be so aimed and used upon approaching another vehicle
5 that no part of the high-intensity portion of the beam will be
6 directed to the left of the prolongation of the extreme left
7 side of the vehicle nor more than one hundred feet ahead of
8 the vehicle. A public utility company maintenance vehicle
9 may be equipped with more than one spot lamp but all lighted
10 spot lamps shall be aimed and used in conformity to the
11 requirements of this subsection.

12 (b) *Fog lamps.*—Any motor vehicle may be equipped with
13 not to exceed two fog lamps mounted on the front at a
14 height not less than twelve inches nor more than thirty inches
15 above the level surface upon which the vehicle stands and
16 so aimed that when the vehicle is not loaded none of the
17 high-intensity portion of the light to the left of the center
18 of the vehicle shall at a distance of twenty-five feet ahead
19 project higher than a level of four inches below the level
20 of the center of the lamp from which it comes.

21 (c) *Auxiliary passing lamp.*—Any motor vehicle may be
22 equipped with not to exceed one auxiliary passing lamp
23 mounted on the front at a height not less than twenty-four
24 inches nor more than forty-two inches above the level
25 surface upon which the vehicle stands and every auxiliary
26 passing lamp shall meet the requirements and limitations set
27 forth in this article.

28 (d) *Auxiliary driving lamp.*—Any motor vehicle may be
29 equipped with not to exceed one auxiliary driving lamp
30 mounted on the front at a height not less than sixteen
31 inches nor more than forty-two inches above the level surface
32 upon which the vehicle stands and every such auxiliary driving
33 lamp shall meet the requirements and limitations set forth
34 in this article.



CHAPTER 76

(Com. Sub. for H. B. 840—By Mr. Goodwin)

[Passed March 5, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article sixteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to inspection of motor vehicles; owners and drivers of motor vehicles to comply with inspection laws; definition.

Be it enacted by the Legislature of West Virginia:

That section three, article sixteen, 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 16. INSPECTION OF VEHICLES.

§17C-16-3. Owners and drivers to comply with inspection laws.

1 (a) No person driving a vehicle shall refuse to submit
2 such vehicle to an inspection and test when required to do
3 so by the department of public safety.

4 (b) Every owner or driver, upon receiving a notice as
5 provided in section two of this article shall comply therewith

6 and shall within five days secure an official certificate of
7 inspection and approval which shall be issued in duplicate,
8 one copy to be retained by the owner or driver and the
9 other copy to be forwarded to the department. In lieu of
10 compliance with this paragraph the vehicle shall not be
11 operated, except as provided in the next succeeding paragraph.

12 (c) No person shall operate any vehicle after receiving a
13 notice with reference thereto as above provided, except as
14 may be necessary to return such vehicle to the residence or
15 place of business of the owner or driver, or to a garage,
16 until said vehicle and its equipment has been placed in
17 proper repair and adjustment and otherwise made to conform
18 to the requirements of this chapter and a certificate of inspec-
19 tion and approval shall be obtained as promptly as possible
20 thereafter.

21 (d) In the event repair or adjustment of any vehicle or
22 its equipment is found necessary upon inspection, the owner
23 of said vehicle may obtain, such repair or adjustment at any
24 place he may choose, but in every event an official certificate
25 of inspection and approval must be obtained, otherwise such
26 vehicle shall not be operated upon the highways of this
27 state.

28 (e) "Inspection and test," as used in this article, shall
29 mean inspections and tests as related to the actual mechanical
30 and operating ability of such vehicle.

CHAPTER 77

(Com. Sub. for S. B. 15—By Mr. Williams)

[Passed March 5, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fifteen-a, relating to municipalities and providing for the calling upon petition of a special municipal election for a proper governmental purpose.

Be it enacted by the Legislature of West Virginia:

That article five, 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 fifteen-a, to read as follows:

ARTICLE 5. ELECTION, APPOINTMENT, QUALIFICATION AND COMPENSATION OF OFFICERS; GENERAL PROVISIONS RELATING TO OFFICERS AND EMPLOYEES; ELECTIONS AND PETITIONS GENERALLY; CONFLICT OF INTEREST.

§8-5-15a. Special municipal elections not otherwise provided for.

1 In any instance where there is no statutory, charter or
2 lawful ordinance provision authorizing, relating to or re-
3 quiring a special municipal election, the governing body
4 of a municipality shall, upon receipt of a proper petition,
5 as hereinafter in this section specified, requesting a special
6 municipal election for a proper governmental purpose, as
7 specified in such petition, forthwith adopt a resolution or
8 ordinance, where procedure by ordinance is required,
9 calling and providing for a special municipal election for
10 such purpose. Such petition must bear the signatures,
11 written in their own handwriting, of not less than twenty
12 percent of the qualified voters of such municipality. Such
13 special municipal election shall be held, superintended
14 and conducted, and the results thereof ascertained, certi-
15 fied, returned and canvassed in the same manner and by
16 the same individuals as elections for municipal officers.
17 In any instance where there is a statutory, charter or
18 lawful ordinance provision authorizing, relating to or re-
19 quiring a special municipal election upon petition or
20 otherwise, the provisions of this section shall not be ap-
21 plicable and such statutory, charter or lawful ordinance
22 provision shall govern and control in all respects, includ-
23 ing without limiting the generality of the foregoing, the
24 requisites of any petition for such special municipal
25 election.

CHAPTER 78

(Com. Sub. for S. B. 5—Mr. Williams)

[Passed February 14, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section two, article nineteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section seventeen, article twelve of said chapter, relating to the sale or lease of a waterworks system or other public utility owned by a municipality, election procedures in connection therewith, and the disposition of proceeds therefrom.

Be it enacted by the Legislature of West Virginia:

That section two, article nineteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that section seventeen, article twelve of said chapter be amended and reenacted, to read as follows:

ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL OFFICERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.

**PART V. SALE OR LEASE OF MUNICIPAL
PUBLIC UTILITY.**

§8-12-17. Sale or lease of municipal public utility.

1 In any case where a municipality shall own a gas system,
2 an electric system, a waterworks or other public utility,
3 and the governing body thereof shall deem it for the best
4 interest of such municipality that such utility be sold or
5 leased, the governing body shall, by ordinance legally
6 adopted, submit to the qualified voters of such municipi-
7 pality, at any regular municipal election or at any special
8 municipal election called for that purpose, the question of
9 making or effecting such sale or lease. In such case the
10 governing body shall, in the ordinance submitting such
11 question to a vote, set forth in full the terms of such pro-
12 posed sale or lease, the name of the proposed purchaser or
13 lessee and the date of such election, and a notice contain-

14 ing this information shall be published as a Class II-0
15 legal advertisement in compliance with the provisions of
16 article three, chapter fifty-nine of this code, and the pub-
17 lication area for such publication shall be such municipal-
18 ity. Such election shall be held in all respects in compli-
19 ance with the provisions of chapter three of this code,
20 so far as the same are applicable and not inconsistent
21 herewith, and the provisions of article five of this chapter.
22 If a majority of the legal votes cast at such election upon
23 such question be in favor of the proposed sale or lease of
24 such utility, the governing body, upon the ascertainment
25 of the result of such election, shall have full power and
26 authority to proceed to execute or effect such sale or
27 lease in accordance with the terms and conditions pre-
28 scribed in the ordinance as aforesaid, and shall have power
29 to do any and all things necessary or incident thereto:
30 *Provided*, That if at any time after such election and be-
31 fore the execution of the authority under the ordinance,
32 any person should present to the governing body an offer
33 to buy such public utility at a price which exceeds by at
34 least five percent the sale price which shall have been so
35 voted upon and authorized or to lease the same upon terms
36 which the governing body, in its discretion, shall consider
37 more advantageous to the municipality than the terms of
38 the lease which shall have been authorized by vote as
39 aforesaid, the governing body shall have the power to
40 accept such subsequent offer, and to make such sale or
41 such lease to the person making the offer, without resub-
42 mitting the question to a vote; but, if a sale shall have
43 been authorized by vote as aforesaid, and such subsequent
44 proposition be for a lease, or, if a lease shall have been so
45 authorized, and the subsequent proposition shall be for a
46 sale, the governing body shall have no power to accept the
47 same without submitting the question thereof to a vote of
48 the people as first above provided. Before any such second
49 or subsequent proposition shall be submitted to a vote, af-
50 ter a sale or lease shall have been authorized at an election
51 held hereunder, the person making such proposition shall
52 furnish bond, with security to be approved by the gov-
53 erning body, in a penalty of not less than twenty-five
54 percent of such proposed bid, conditioned to carry such

55 proposition into execution, if the same shall be approved
56 at the election to be called thereon. In any case where
57 any such public utility shall be sold or leased by the
58 governing body as hereinabove provided, no part of the
59 moneys derived from such sale or lease shall be applied
60 to the payment of current expenses of the municipality,
61 but the proceeds of such sale or lease shall be applied in
62 payment and discharge of any bonded indebtedness cre-
63 ated in respect to such public utility, and in case there be
64 no bonded indebtedness, the governing body, in its dis-
65 cretion, shall have the power and authority to expend
66 all such moneys when received for the purchase or con-
67 struction of fire-fighting equipment and buildings for
68 housing such equipment, a municipal building or city
69 hall, and the necessary land upon which to locate the
70 same, or for the construction of paved streets, avenues,
71 roads, alleys, ways, sidewalks, sewers and other like per-
72 manent improvements, and for no other purposes. In case
73 there be a surplus after the payment of such bonded
74 indebtedness, the surplus shall be used as aforesaid.

75 The requirements of this section shall not apply to the
76 sale or lease of any part of the properties of any such
77 public utility determined by the governing body to be
78 unnecessary for the efficient rendering of the service of
79 such utility.

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CHAPTER 79

(S. B. 387—By Mr. Kusic and Mr. Davis)

[Passed March 4, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty, article fourteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section twenty-five, article fifteen of said chapter, all relating to removal, discharge, suspension, reduction in rank or pay, appeal and reduction in number of members of police and fire departments and providing that

members of such departments shall have the right to appeal any suspension.

Be it enacted by the Legislature of West Virginia:

That section twenty, article fourteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section twenty-five, article fifteen of said chapter be amended and reenacted, 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.

§8-14-20. Removal, discharge, suspension or reduction in rank or pay; appeal; reduction in number of members.

- 1 (a) No member of any paid police department subject
- 2 to the civil service provisions of this article shall be re-
- 3 moved, discharged, suspended or reduced in rank or pay
- 4 except for just cause, which shall not be religious or polit-
- 5 ical, except as hereinbefore provided in section nine-
- 6 teen of this article; and no such member shall be re-
- 7 moved, discharged, suspended or reduced except as pro-
- 8 vided by the civil service provisions of this article, and in
- 9 no event until he shall have been furnished with a writ-
- 10 ten statement of the reasons for such action. In every
- 11 case of such removal, discharge, suspension or reduction,
- 12 a copy of the statement of reasons therefor and of the
- 13 written answer thereto, if the member sought to be re-
- 14 moved, discharged, suspended or reduced desires to file
- 15 such written answer, shall be furnished to the police-
- 16 men's civil service commission and entered upon its rec-

17 ords. If the member sought to be removed, discharged,
18 suspended or reduced shall demand it, the commission
19 shall grant him a public hearing, which hearing shall be
20 held within a period of ten days from the filing of the
21 charges in writing or the written answer thereto, which-
22 ever shall last occur. At such hearing the burden shall
23 be upon the removing, discharging, suspending or re-
24 ducing officer, hereinafter in this section referred to as
25 "removing officer," to show just cause for his action, and in
26 the event the removing officer fails to show just cause for
27 his action before the commission, then the member re-
28 moved, discharged, suspended or reduced shall be reinstat-
29 ed with full pay, forthwith and without any additional or-
30 der, for the entire period during which he may have been
31 prevented from performing his usual employment, and no
32 charges shall be officially recorded against his record.
33 A written record of all testimony taken at such hearing
34 shall be kept and preserved by the commission, which
35 record shall be sealed and not be open to public inspec-
36 tion, if no appeal be taken from the action of the com-
37 mission.

38 (b) In the event that the commission shall sustain
39 the action of the removing officer, the member removed,
40 discharged, suspended or reduced shall have an im-
41 mediate right of appeal to the circuit court of the
42 county wherein the city or the major portion of the
43 territory thereof is located. In the event that the com-
44 mission shall reinstate the member removed, discharged,
45 suspended or reduced, the removing officer shall have
46 an immediate right of appeal to said circuit court. Any
47 appeal must be taken within ninety days from the date
48 of entry by the commission of its final order; upon an
49 appeal being taken and docketed with the clerk of
50 the circuit court of said county, the circuit court shall
51 proceed to hear the appeal upon the original record
52 made before the commission and no additional proof shall
53 be permitted to be introduced. The circuit court's decision
54 shall be final, but the member or removing officer, as the
55 case may be, against whom the decision of the circuit court
56 is rendered shall have the right to petition the supreme
57 court of appeals for a review of the circuit court's decision,

58 as in other civil cases. Such member or removing officer
59 shall also have the right, where appropriate, to seek in lieu
60 of an appeal, a writ of mandamus.

61 (c) The removing officer and the member sought to be
62 removed, discharged, suspended or reduced shall at all
63 times, both before the commission and upon appeal, be
64 given the right to employ counsel to represent them.

65 (d) If for reasons of economy or other reasons it
66 shall be deemed necessary by any Class I or Class II
67 city to reduce the number of paid members of its paid
68 police department, said city shall follow the procedure
69 set forth in this subsection (d). The reduction in mem-
70 bers of the said paid police department of said city shall
71 be effected by suspending the last man or men, including
72 probationers, who have been appointed to said paid po-
73 lice department. Such removal shall be accomplished by
74 suspending the number desired in the inverse order of
75 their appointment: *Provided*, That in the event the said
76 paid police department shall again be increased in num-
77 bers to the strength existing prior to such reduction of
78 members the said members suspended under the terms
79 of this subsection shall be reinstated in the inverse order
80 of their suspension before any new appointment to said
81 paid police department shall be made.

**ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPART-
MENTS; CIVIL SERVICE FOR PAID FIRE DEPART-
MENTS.**

**§8-15-25. Removal, discharge, suspension or reduction in rank
or pay; appeal; reduction in number of members.**

1 (a) No member of any paid fire department subject
2 to the civil service provisions of this article shall be re-
3 moved, discharged, suspended or reduced in rank or pay
4 except for just cause, which shall not be religious or po-
5 litical, except as hereinbefore provided in section twenty-
6 four of this article; and no such member shall be re-
7 moved, discharged, suspended or reduced except as pro-
8 vided by the civil service provisions of this article, and
9 in no event until he shall have been furnished with a
10 written statement of the reasons for such action. In every

11 case of such removal, discharge, suspension or reduction,
12 a copy of the statement of reasons therefor and of the
13 written answer thereto, if the member sought to be re-
14 moved, discharged, suspended or reduced desires to file
15 such written answer, shall be furnished to the firemen's
16 civil service commission and entered upon its records.
17 If the member sought to be removed, discharged, sus-
18 pended or reduced shall demand it, the commission shall
19 grant him a public hearing, which hearing shall be held
20 within a period of ten days from the filing of the charges
21 in writing or the written answer thereto, whichever shall
22 last occur. At such hearing the burden shall be upon the
23 removing, discharging, suspending or reducing officer,
24 hereinafter in this section referred to as "removing offi-
25 cer," to show just cause for his action, and in the event the
26 removing officer fails to show just cause for his action be-
27 fore the commission, then the member removed, dis-
28 charged, suspended or reduced shall be reinstated with full
29 pay, forthwith and without any additional order, for the
30 entire period during which he may have been prevented
31 from performing his usual employment, and no charges
32 shall be officially recorded against his record. A written
33 record of all testimony taken at such hearing shall be kept
34 and preserved by the commission, which record shall be
35 sealed and not be open to public inspection, if no appeal
36 be taken from the action of the commission.

37 (b) In the event that the commission shall sustain the
38 action of the removing officer the member removed, dis-
39 charged, suspended or reduced shall have an immediate
40 right of appeal to the circuit court of the county wherein
41 the municipality or the major portion of the territory
42 thereof is located. In the event that the commission shall
43 reinstate the member removed, discharged, suspended or
44 reduced, the removing officer shall have an immediate
45 right of appeal to said circuit court. Any appeal must be
46 taken within ninety days from the date of entry by the
47 commission of its final order; upon an appeal being taken
48 and docketed with the clerk of the circuit court of said
49 county, the circuit court shall proceed to hear the appeal
50 upon the original record made before the commission and

51 no additional proof shall be permitted to be introduced.
52 The circuit court's decision shall be final, but the member
53 or removing officer, as the case may be, against whom
54 the decision of the circuit court is rendered shall have the
55 right to petition the supreme court of appeals for a re-
56 view of the circuit court's decision, as in other civil cases.
57 Such member or removing officer shall also have the right,
58 where appropriate, to seek in lieu of an appeal, a writ of
59 mandamus.

60 (c) The removing officer and the member sought to be
61 removed, discharged, suspended or reduced shall at all
62 times, both before the commission and upon appeal, be
63 given the right to employ counsel to represent them.

64 (d) If for reasons of economy or other reasons it shall
65 be deemed necessary by any such municipality to reduce
66 the number of paid members of its paid fire department,
67 said municipality shall follow the procedure set forth in
68 this subsection (d). The reduction in members of the said
69 paid fire department of said municipality shall be effected
70 by suspending the last man or men, including probation-
71 ers, who have been appointed to said paid fire department.
72 Such removal shall be accomplished by suspending the
73 number desired in the inverse order of their appointment:
74 *Provided*, That in the event the said paid fire department
75 shall again be increased in numbers to the strength exist-
76 ing prior to such reduction of members the said members
77 suspended under the terms of this subsection shall be
78 reinstated in the inverse order of their suspension before
79 any new appointment to said paid fire department shall be
80 made.

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CHAPTER 80

(Com. Sub. for S. B. 4—Originating in the Senate Committee on the Judiciary)

[Passed February 13, 1974; in effect from passage. Approved by the Governor.]

AN ACT to amend article thirty-two, 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, authorizing municipalities to appropriate funds for the benefit of certain health institutions; setting forth certain legislative findings; defining the term "health institution"; specifying certain conditions and limitations; relating to accounting for such funds; and specifying that indebtedness shall not be created.

Be it enacted by the Legislature of West Virginia:

That article thirty-two, 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 32. INTERGOVERNMENTAL RELATIONS — CONTRIBUTIONS TO OR INVOLVEMENT WITH NONSTOCK, NONPROFIT CORPORATIONS OR HEALTH INSTITUTIONS FOR PUBLIC PURPOSES.

PART IV. HEALTH INSTITUTIONS.

§8-32-4. Legislative findings; authority of municipalities to make appropriations; limitations and restrictions.

1 (a) The Legislature hereby finds that the support of
2 public or nonprofit health institutions dedicated to making
3 available to the general public health and mental health
4 services is for the general welfare of the public and is a
5 public purpose for which funds of a municipality may be
6 lawfully expended. This section is enacted in view of this
7 finding and shall be liberally construed in the light there-
8 of. As used in this section, the term "health institution"
9 means a hospital, health or mental health clinic, regional
10 or community health or mental health center, mental
11 retardation facility, extended care facility, nursing home,
12 or other health or mental health institution, which is
13 open to the general public.

14 (b) Notwithstanding any statutory or charter provision
15 to the contrary, a municipality is hereby empowered and
16 authorized to appropriate funds, subject to the conditions
17 and limitations set forth in this section, for the establish-
18 ment, cost, operation, maintenance and projects of any
19 health institution, whether such health institution be

20 situate within or without the corporate limits of such
21 municipality. Funds may not be appropriated by a munic-
22 ipality for the benefit and use of any health institution
23 unless such health institution is either owned and operated
24 by a unit of government, or is owned and operated by a
25 nonstock, nonprofit corporation chartered under the laws
26 of this state which provides in its charter that no member
27 trustee or member of the board of directors (by what-
28 ever name the same may be called) shall receive any
29 compensation, gain or profit from such corporation and
30 which is operated in compliance with such charter pro-
31 visions. Any such appropriation shall be made from the
32 general funds of such municipality not otherwise appro-
33 priated or from federal revenue sharing funds received
34 by such municipality.

35 (c) The recipient of any funds appropriated under the
36 provisions of this section shall upon demand at any time
37 make a full and complete accounting of all such funds to
38 the governing body of the municipality which made such
39 appropriation and shall in every event without demand
40 make to such governing body an annual accounting
41 thereof.

42 (d) Under no circumstances whatever shall any action
43 taken by any municipality under the authority of this
44 section give rise to or create any indebtedness on the part
45 of such municipality, the governing body of such munici-
46 pality, any member of such governing body or any mu-
47 nicipal official or employee.

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CHAPTER 81

(H. B. 913—By Mr. Butcher and Mr. Hawse)

[Passed March 9, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to unlawful methods of hunting and fishing; clarifying what constitutes unlawful use of an

artificial light to hunt, locate, attract, take, trap or kill a wild bird or wild animal and specifying offense and penalty therefor.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-5. Unlawful methods of hunting and fishing.

1 Except as authorized by the director, it shall be unlawful
2 at any time for any person to:

3 (1) Shoot at or to shoot any wild bird or animal unless
4 it is plainly visible to him;

5 (2) Dig out, cut out, or smoke out, or in any manner
6 take or attempt to take any live wild animal or wild bird
7 out of its den or place of refuge, except as may be authorized
8 by regulations promulgated by the director or by law;

9 (3) Make use of, or take advantage of, any artificial light in
10 hunting, locating, attracting, taking, trapping, or killing any
11 wild bird or wild animal, or to attempt to do so, while having
12 in his possession or subject to his control, or for any person
13 accompanying him to have in his possession or subject to his
14 control, any firearm, whether cased or uncased, bow, arrow, or
15 both, or other implement or device suitable for taking, killing
16 or trapping a wild bird or animal: *Provided*, That it shall not
17 be unlawful to hunt or take raccoon, opossum or skunk by the
18 use of artificial lights. No person shall be guilty of a violation
19 of this subdivision merely because he looks for, looks at,
20 attracts or makes motionless a wild bird or wild animal with or
21 by the use of an artificial light, unless at such time he shall
22 have in his possession a firearm, whether cased or uncased,
23 bow, arrow, or both, or other implement or device suitable for
24 taking, killing or trapping a wild bird or wild animal, or unless
25 such artificial light (other than the head lamps of an automo-
26 bile or other land conveyance) is attached to, a part of, or used
27 from within or upon an automobile or other land conveyance.

28 Any person violating the provisions of this subdivision shall

29 be guilty of a misdemeanor, and, upon conviction thereof,
30 shall for each offense be fined not less than one hundred dollars
31 nor more than five hundred dollars and shall be imprisoned in
32 the county jail for not less than ten days nor more than one
33 hundred days;

34 (4) Hunt for, take, kill, wound or shoot at wild animals
35 or wild birds from an airplane, or other airborne convey-
36 ance, an automobile, or other land conveyance, or from a
37 motor-driven water conveyance, except as may be authorized
38 by regulations promulgated by the director;

39 (5) Take any beaver or muskrat by any means other than
40 by trap;

41 (6) Catch, capture, take or kill by seine, net, bait, trap
42 or snare or like device of any kind, any wild turkey, ruffed
43 grouse, pheasant or quail;

44 (7) Destroy or attempt to destroy needlessly or willfully
45 the nest or eggs of any wild bird or have in his possession such
46 nest or eggs unless authorized to do so under regulations
47 or under a permit by the director;

48 (8) Except as provided in section six of this article, carry an
49 uncased or loaded gun in any of the woods of this state except
50 during the open firearms hunting season for game animals and
51 nonmigratory game birds within any county of the state, unless
52 he has in his possession a permit in writing issued to him by the
53 director: *Provided*, That this section shall not prohibit hunting
54 or taking of unprotected species of wild animals and wild birds
55 and migratory game birds, during the open season, in the
56 open fields, open water and open marshes of the state;

57 (9) Except as provided in section six of this article, carry an
58 uncased or loaded gun after the hour of five o'clock ante-
59 meridian on Sunday in any woods or on any highway, railroad
60 right-of-way, public road, field or stream of this state, except
61 at a regularly used rifle, pistol, skeet, target or trapshooting
62 ground or range and nothing contained in section eighteen,
63 article eight, chapter sixty-one of this code shall prohibit the
64 use of a gun by a licensed hunter before the hour of five
65 o'clock antemeridian on Sunday;

66 (10) Have in his possession a loaded firearm or a firearm
67 from the magazine of which all shells and cartridges have not
68 been removed, in or on any vehicle or conveyance, or its attach-
69 ments, within the state, except as may otherwise be provided by
70 law or regulation. Except as hereinafter provided, between five
71 o'clock postmeridian of one day and seven o'clock antemeridi-
72 dian, eastern standard time of the day following, any unloaded
73 firearm, being lawfully carried in accordance with the foregoing
74 provisions, shall be so carried only when in a case or taken
75 apart and securely wrapped. During the period from July first
76 to September thirtieth, inclusive, of each year, the foregoing
77 requirements relative to carrying certain unloaded firearms
78 shall be permissible only from eight-thirty o'clock postmeridian
79 to five o'clock antemeridian, eastern standard time;

80 (11) Hunt, catch, take, kill, trap, injure or pursue with fire-
81 arms or other implement by which wildlife may be taken after
82 the hour of five o'clock antemeridian on Sunday any wild ani-
83 mals or wild birds: *Provided*, That traps previously and legally
84 set may be tended after the hour of five o'clock antemeridian
85 on Sunday, if the person so doing shall not have firearms or
86 long bow of any description in his possession;

87 (12) Hunt with firearms or long bow while under the
88 influence of intoxicating liquor;

89 (13) Possess a ferret;

90 (14) Buy raw furs, pelts or skins of fur-bearing animals
91 unless licensed to do so;

92 (15) Have in his possession or about his premises, with-
93 out the written permission of the director, any hunting
94 or fishing paraphernalia which cannot be used lawfully in
95 this state for hunting or fishing, and any conservation officer
96 shall remove and destroy such hunting and fishing para-
97 phernalia, whenever found in this state, and the person or
98 persons claiming ownership shall have no recourse at law
99 against such confiscation and destruction;

100 (16) Catch, take, kill, or attempt to catch, take or kill
101 any fish at any time by any means other than by rod, line,
102 and hooks with natural or artificial lures unless other-
103 wise authorized by law or regulation issued by the director:

104 *Provided*, That snaring of any species of suckers, carp,
105 fallfish and creek chubs shall at all times be lawful;

106 (17) Employ or hire, or induce or persuade, by the use
107 of money or other things of value, or by any means, any
108 person to hunt, take, catch or kill, any wild animal or wild
109 bird except those species on which there is no closed sea-
110 son, or to fish for, catch, take or kill any fish, amphibian
111 or aquatic life which is protected by the provisions of this
112 chapter or regulations of the director, or the sale of which
113 is prohibited;

114 (18) Hunt, catch, take, kill, capture, pursue, transport,
115 possess or use any migratory game or nongame birds in-
116 cluded in the terms of conventions between the United
117 States and Great Britain and between the United States
118 and United Mexican States for the protection of migratory
119 birds and game mammals concluded, respectively, August
120 sixteen, one thousand nine hundred sixteen, and February
121 seven, one thousand nine hundred thirty-six, except during
122 the time and in the manner and numbers prescribed by
123 the Federal Migratory Bird Treaty Act and regulations made
124 thereunder;

125 (19) Kill, take, catch, or have in his possession living
126 or dead, any wild bird, other than a game bird; or expose
127 for sale, or transport within or without the state any such
128 bird, except as aforesaid. No part of the plumage, skin
129 or body of any protected bird shall be sold or had in
130 possession for sale, except mounted or stuffed plumage, skin,
131 bodies or heads of such birds legally taken and stuffed
132 or mounted, irrespective of whether such bird was captured
133 within or without this state, except the English or European
134 sparrow (*Passer domesticus*), starling (*Sturnus vulgaris*),
135 crow (*Corvus brachyrhynchos*) and cowbird (*Molothrus ater*),
136 which shall not be protected and the killing thereof at any
137 time is lawful;

138 (20) Use dynamite or any like explosive or poisonous
139 mixture placed in any waters of the state for the purpose of
140 killing or taking fish. Any person violating the provisions
141 of this subdivision shall be guilty of a felony, and, upon
142 conviction thereof, shall be fined not more than five hundred

143 dollars or imprisoned for not less than six months nor more
144 than three years, or both fined and imprisoned;

145 (21) Have a bow and gun, or have a gun and any arrow or
146 arrows, in the fields or woods at the same time;

147 (22) Have a crossbow in the woods or fields or use a
148 crossbow to hunt for, take or attempt to take any wildlife;

149 (23) Take or attempt to take turkey, bear, elk or deer
150 with any arrow unless the same is equipped with a point
151 having at least two sharp cutting edges measuring in excess of
152 three fourths of an inch wide;

153 (24) Take or attempt to take any wildlife with an arrow
154 having an explosive head or shaft, a poisoned arrow, or an
155 arrow which would affect wildlife by any chemical action;

156 (25) Shoot an arrow across any public highway or from
157 aircraft, motor-driven watercraft, motor vehicle or other
158 land conveyance;

159 (26) Permit any dog owned by him or under his control
160 to chase, pursue or follow upon the track of any game animal
161 or game bird, either day or night, between the first day of
162 May and the fifteenth day of August next following: *Pro-*
163 *vided*, That dogs may be trained on game animals and game
164 birds, except deer and wild turkeys, and field trials may be
165 held or conducted on the grounds or lands of the owner or by
166 his bona fide tenant or tenants or upon the grounds or lands
167 of another person with his written permission or on public
168 lands, at any time: *Provided, however*, That the person
169 training said dogs does not have firearms or other implements
170 in his possession during the closed season on such game
171 animals and game birds, whereby game animals or game
172 birds could be taken or killed;

173 (27) Conduct or participate in a field trial, water race
174 or wild hunt hereafter referred to as trial: *Provided*, That any
175 person, group of persons, club or organization may hold
176 such trial at any time of the year upon obtaining such permit
177 as is provided for in section fifty-six of this article. The
178 person responsible for obtaining said permit shall prepare
179 and keep an accurate record of the names and addresses
180 of all persons participating in said trial, and make same

181 readily available for inspection by any conservation officer
182 upon request; and

183 (28) Except as provided in section four of this article,
184 hunt, catch, take, kill or attempt to hunt, catch, take or
185 kill any wild animal, wild bird or wild fowl except during the
186 open season established by regulation of the director as
187 authorized by subdivision six, section seven, article one of
188 this chapter.



CHAPTER 82

(S. B. 396—By Mr. Benson and Mr. Gainer)

[Passed March 9, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-two-a, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section forty-four-b, relating to bear protection within the state.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-22a. Hunting, tagging and reporting bear; procedures applicable to property destruction by bear; penalties.

§20-2-44b. Bear damage stamp; proceeds to be paid into bear damage fund; purposes, etc.

§20-2-22a. **Hunting, tagging and reporting bear; procedures applicable to property destruction by bear; penalties.**

1 (a) No person in any county of this state shall hunt,
2 capture, or kill any bear, or have in his possession any

3 bear, or any part thereof, including fresh pelt, except dur-
4 ing the hunting season for bear designated by rules and
5 regulations to be promulgated by the department of
6 natural resources and at no other time nor in any other
7 way than as herein and therein provided. A person on
8 killing a bear shall within twenty-four hours after killing,
9 deliver the bear or fresh skin to a conservation officer or
10 checking station for tagging. The bear shall have affixed
11 thereto an appropriate tag provided by the department
12 before any part of the bear may be transported more than
13 seventy-five miles from the point of kill. Any bear not
14 properly tagged, or any part of such bear, shall be for-
15 feited to the state for disposal to a charitable institution,
16 or school, or as otherwise designated by the department
17 of natural resources.

18 It shall be unlawful:

19 (1) To hunt bear without a bear damage stamp as
20 prescribed in section forty-four-b of this article, in addi-
21 tion to a hunting license as prescribed in this article;

22 (2) To hunt a bear with (a) a shotgun using ammuni-
23 tion loaded with more than one solid ball, or (b) a rifle
24 of less than twenty-five caliber using rimfire ammunition
25 or (c) a crossbow;

26 (3) To kill or attempt to kill any bear through the use
27 of poison, or explosives, or through the use of snares, steel
28 traps or deadfalls other than as authorized herein;

29 (4) To shoot at or kill a cub bear weighing less than
30 one hundred pounds or to kill any bear accompanied by
31 such cub;

32 (5) To have in possession any part of a bear not tagged
33 in accordance with the provisions of this section;

34 (6) To enter a state game refuge with firearms for the
35 purpose of pursuing or killing a bear except under the
36 direct supervision of department personnel;

37 (7) To hunt bear with dogs during seasons other than
38 those designated for such purpose by the department of
39 natural resources; after a bear is spotted and the chase has
40 begun, to pursue the bear with other than the pack of
41 dogs in use at the beginning of the hunt;

42 (8) To train bear hunting dogs on bear or to cause
43 dogs to chase bear at times other than those designated
44 by the department of natural resources for the hunting
45 of bear;

46 (9) Notwithstanding the provisions of sections twenty-
47 three and twenty-four of this article, for any person to
48 organize for commercial purposes, or to professionally
49 outfit a bear hunt or to give or receive any consideration
50 whatsoever or any donation in money, goods or services
51 in connection with a bear hunt;

52 (10) For any person, who is not a resident of this state,
53 to hunt bear with dogs or to use dogs in any fashion for
54 the purpose of hunting bear in this state, except in legally
55 authorized hunts.

56 (b) The following shall apply to bear destroying prop-
57 erty:

58 Any property owner including a lessee, who has suffered
59 damage to real or personal property including loss occa-
60 sioned by the death of livestock or the injury thereto or
61 the unborn issue thereof, caused by an act of a bear may
62 complain to any conservation officer of the department of
63 natural resources, for the protection against such bear.
64 Upon receipt of the complaint, such officer shall imme-
65 diately proceed to investigate the circumstances giving
66 rise to such complaint, and if such officer is unable to
67 personally investigate the complaint, he shall designate
68 a wildlife biologist to investigate on his behalf and if the
69 complaint is found to be justified, such officer or desig-
70 nated person, may, together with the owner and other
71 residents, proceed to hunt and destroy or capture the bear
72 which is determined to have caused the property damage:
73 *Provided*, That only the conservation officer or the wild-
74 life biologist shall determine whether the bear shall be
75 destroyed or captured. Notwithstanding any provision of
76 this article, if it is determined that the complaint is justi-
77 fied, the officer or designated person may summon or use
78 dogs from within or without this state to effectuate the
79 hunting and destruction or capture of such bear: *Provid-*
80 *ed*, That in the event dogs from without this state are used

81 in such hunt, the owners thereof shall be the only non-
82 residents permitted to participate in hunting such bear.

83 (c) When a property owner has suffered damage as the
84 result of an act by a bear, such owner shall file a report
85 with the director of the department of natural resources,
86 stating whether or not such bear was hunted and des-
87 troyed and if so, the sex, weight and estimated age of
88 subject bear, and also submit to the department an ap-
89 praisal of the property damage occasioned by subject bear
90 duly signed by three competent appraisers, fixing the val-
91 ue of the property lost. Such report shall be ruled upon
92 and the alleged damages examined by a commission to
93 which it shall be referred by the department. The com-
94 mission shall be composed of the complaining property
95 owner, an officer of the department, and a person to be
96 selected by the officer of the department and the complain-
97 ing property owner. The department shall by rules and
98 regulations to be promulgated, establish the procedures
99 to be followed in presenting and deciding claims under
100 this section and all such claims shall be paid in the first
101 instance from the bear damage fund provided in section
102 forty-four-b of this article, and in the event such fund is
103 insufficient to pay all claims determined by the commis-
104 sion to be just and proper the remainder due to owners of
105 lost or destroyed property shall be paid from the special
106 revenue account of the department of natural resources.

107 In all cases where the act of the bear complained of by
108 the property owner is the killing of livestock, the value
109 to be established is the fair market value of the livestock
110 at the date of death, and in cases where livestock killed
111 is pregnant, the total value shall be the sum of the values
112 of the mother and the unborn issue, with the value of the
113 unborn issue to be determined on the basis of the fair
114 market value of the issue, had it been born.

115 (d) Any person who kills a bear in violation of the
116 provisions of this section shall be guilty of a misde-
117 meanor, and, upon conviction thereof, shall be fined not
118 less than two hundred dollars nor more than five hundred
119 dollars, or imprisoned in the county jail not less than

120 thirty nor more than one hundred days, or both fined and
121 imprisoned.

**§20-2-44b. Bear damage stamp; proceeds to be paid into bear
damage fund; purposes, etc.**

1 Any hunter licensed to hunt bear in this state shall in
2 addition to a hunting license of either Class A or AB,
3 in the case of a resident, or C, E, L or M, in the case of a
4 nonresident, have a bear damage stamp which shall be
5 issued by the department of natural resources and which
6 shall be sold at places where hunting and fishing licenses
7 are sold. The fee for a bear damage stamp shall be four
8 dollars and all proceeds from the sale of such stamps
9 shall be paid into the bear damage fund which shall be
10 maintained by the department of natural resources for
11 the purposes of paying claims of property owners for
12 damages to real and personal property caused by acts of
13 bear and to cover the expense of hunting, capturing and
14 removing offending bear to remote areas.

CHAPTER 83

(S. B. 76—By Mr. Hubbard)

[Passed March 8, 1974; in effect January 1, 1975. Approved by the Governor.]

AN ACT to amend and reenact sections twenty-three, twenty-four and twenty-five, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to outfitters and guides; empowering the director of natural resources to promulgate rules and regulations covering the services of outfitters and guides; defining outfitters and guides to include a person taking land or water expeditions; and deleting the requirement of one year residency as a qualification for licensing as an outfitter or guide.

Be it enacted by the Legislature of West Virginia:

That sections twenty-three, twenty-four and twenty-five, article two, chapter twenty of the code of West Virginia, one

thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-23. Outfitters and guides—Generally; definitions.

§20-2-24. Same—Qualifications.

§20-2-25. Same—License applications; national forest requirements.

§20-2-23. Outfitters and guides—Generally; definitions.

1 Services of outfitters and guides for the benefit and
2 convenience of hunters, fishermen and others in this state
3 are recognized as essential, and such outfitters and guides
4 may be licensed and authorized to serve as provided in
5 this article. The director is hereby authorized to promul-
6 gate rules and regulations on services of outfitters and
7 guides as herein defined.

8 The word “outfitter,” as used herein, shall mean and
9 include any person who, operating from any temporary
10 or permanent camp, private or public lodge, or private or
11 incorporated home situate within this state, provides for
12 monetary profit or gain, saddle or pack animals or other
13 animals, vehicles, boats, conveyances or equipment, or
14 guide services for any person or persons hunting game
15 animals, game birds, fishing or taking expeditions, both
16 land and water, in this state. The term “outfitter” shall
17 not include, however, any person who occasionally for
18 accommodation or favor rather than profit or gain, rents
19 equipment to hunters, fishermen or others as a service
20 incidental to his principal occupation or business without
21 advertising outfitter or guide services or holding out to
22 the public his offering of such services. The terms “guide,”
23 as used herein, shall be construed to include and embrace
24 outfitter services and the term “outfitter” shall be con-
25 strued to include and embrace guide services, but the
26 applicant for any license hereunder may in his applica-
27 tion elect whether he wishes to be designated as an out-
28 fitter or as a guide.

§20-2-24. Same—Qualifications.

1 Each outfitter and guide licensed under the provisions
2 hereof shall be a financially responsible citizen of the

3 United States of America. He shall possess and inventory
4 proper and adequate materials and equipment to provide
5 for hunters, fishermen and others the services and con-
6 veniences he advertises. All such materials and equip-
7 ment shall be safe and free of infection and conditions
8 inimical to the health and well-being of hunters, fisher-
9 men, their traveling, camping and lodging companions.

10 The director shall cause all outfitter and guide appli-
11 cants to be investigated and shall make a determination
12 of their qualifications prior to the issuance or refusal of
13 licenses thereto.

**§20-2-25. Same—License applications; national forest require-
ments.**

1 Each applicant for an outfitter or guide license shall file
2 with the director a verified application setting forth the
3 applicant's name, his address, the property possessed and
4 to be used in the proposed outfitter and guide services,
5 the area within which he proposes to serve, his citizen-
6 ship, his age and such other data and information as may
7 be prescribed and required by the director on the applica-
8 tion forms to be furnished by the department. Each such
9 application, when filed by the applicant, shall be ap-
10 proved and signed by three resident real property owners
11 of the county in which such applicant resides.

12 Before any outfitter or guide license shall be issued
13 for serving hunters, fishermen or others in any national
14 forest areas within this state, the applicant shall obtain
15 from the supervisor of such national forest area a desig-
16 nation of the camp site or other site from which the out-
17 fitter or guide proposes to operate therein and shall like-
18 wise obtain from such supervisor any other authority or
19 permit to so operate in such national forest area, together
20 with copies of any rules and regulations of the forest
21 incident to maintenance of camps, sanitary conditions, and
22 prevention of forest fires and water pollution. The appli-
23 cant shall satisfy the director that he has obtained such
24 designation, permit, authority and rules and regulations,
25 as may be required, as a prerequisite to the director's
26 consideration of the applicant's license application.

CHAPTER 84*

(H. B. 720—By Mr. Stacy and Mr. Swann)

[Passed February 15, 1974; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-eight, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to categories of persons not required to obtain a license or permit to fish.

Be it enacted by the Legislature of West Virginia:

That section twenty-eight, 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.**§20-2-28. When licenses or permits not required.**

1 Persons in the following categories shall not be required
2 to obtain licenses or permits as indicated:

3 (a) Bona fide resident landowners or their resident chil-
4 dren, or bona fide resident tenants of such land, may hunt,
5 trap or fish on their own land during open seasons in ac-
6 cordance with the laws and regulations applying to such
7 hunting, trapping and fishing without obtaining a license to
8 do so unless such lands have been designated as a wildlife
9 refuge or preserve.

10 (b) Any bona fide resident of this state who is totally
11 blind may fish in this state without obtaining a fishing license
12 to do so. A written statement or certificate from a duly
13 licensed physician of this state showing the said resident
14 to be totally blind shall serve in lieu of a fishing license and
15 shall be carried on the person of said resident at all times
16 while he is fishing in this state.

17 (c) Any resident or in-patient in any state mental health,
18 health or benevolent institution or facility may fish in this

***Clerk's note.** This act added subdivision (c) to the section. A subsequent reenactment of the section (Chapter 85) added two new subdivisions, (g) and (h), but omitted (c) as it appears in this chapter.

19 state, under proper supervision of the institution involved,
20 without obtaining a fishing license to do so. A written state-
21 ment or certificate signed by the superintendent of the mental
22 health, health or benevolent institution or facility in which the
23 resident or in-patient, as the case may be, is institutionalized
24 shall serve in lieu of a fishing license and shall be carried on
25 the person of the resident or in-patient at all times while he
26 is fishing in this state.

27 (d) All residents of West Virginia on active duty in the
28 armed forces of the United States of America, while on
29 leave or furlough, shall have the right and privilege to
30 hunt, trap or fish in season in West Virginia without ob-
31 taining a license to do so. Leave or furlough papers shall
32 serve in lieu of any such license and shall be carried on the
33 person at all times while trapping, hunting or fishing.

34 (e) In accordance with the provisions of section twenty-
35 seven of this article, any resident sixty-five years of age
36 or older shall not be required to have a license to hunt, trap
37 or fish during the legal seasons in West Virginia, but in lieu
38 of such license any such person shall at all times while hunting,
39 trapping or fishing, carry on his person a card issued by the
40 director stating his name, address and date of birth.

41 (f) Residents of the state of Maryland who carry hunting
42 or fishing licenses valid in that state may hunt or fish from
43 the West Virginia banks of the Potomac river without obtaining
44 licenses to do so, but such hunting or fishing shall be confined
45 to the fish and waterfowl of the river proper and not on its
46 tributaries: *Provided*, That the state of Maryland shall first
47 enter into a reciprocal agreement with the director extending
48 a like privilege of hunting and fishing on the Potomac river
49 from the Maryland banks of said river to licensed residents
50 of West Virginia, without requiring said residents to obtain
51 Maryland hunting and fishing licenses.

52 (g) Residents of the state of Ohio who carry hunting or
53 fishing licenses valid in that state may hunt or fish on the
54 Ohio river or from the West Virginia banks of said river
55 without obtaining licenses to do so, but such hunting or
56 fishing shall be confined to fish and waterfowl of the river
57 proper and not on its tributaries: *Provided, however*, That

58 the state of Ohio shall first enter into a reciprocal agreement
 59 with the director extending a like privilege of hunting and
 60 fishing from the Ohio banks of said river to licensed residents
 61 of West Virginia without requiring said residents to obtain
 62 Ohio hunting and fishing licenses. In the event the state of
 63 Ohio accords this privilege to residents of West Virginia, such
 64 Ohio residents will not be required to obtain the license pro-
 65 vided for by section forty-two of this article.

CHAPTER 85*

(H. B. 922—By Mr. Lehr)

[Passed March 9, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-eight, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to natural resources; wildlife resources; when licenses or permits not required; permitting any resident who was honorably discharged from the armed forces and receives a veteran's pension based on total service connected or nonservice connected disability to hunt, trap or fish without obtaining a license, promulgation of rules and regulations governing same; permitting any disabled veteran who is a resident, and eligible to be exempt from the payment of any motor vehicle registration fee in this state to hunt, trap or fish without obtaining a license, promulgation of rules and regulations governing same.

Be it enacted by the Legislature of West Virginia:

That section twenty-eight, 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.

§20-2-28. When licenses or permits not required.

- 1 Persons in the following categories shall not be required
- 2 to obtain licenses or permits as indicated:

* Clerk's note. See note to Chapter 84.

3 (a) Bona fide resident landowners or their resident children,
4 or bona fide resident tenants of such land, may hunt, trap or
5 fish on their own land during open season in accordance with
6 the laws and regulations applying to such hunting, trapping
7 and fishing without obtaining a license to do so unless such
8 lands have been designated as a wildlife refuge or preserve.

9 (b) Any bona fide resident of this state who is totally blind
10 may fish in this state without obtaining a fishing license to do
11 so. A written statement or certificate from a duly licensed
12 physician of this state showing the said resident to be totally
13 blind shall serve in lieu of a fishing license and shall be carried
14 on the person of said resident at all times while he is fishing
15 in this state.

16 (c) All residents of West Virginia on active duty in the
17 armed forces of the United States of America, while on leave
18 or furlough, shall have the right and privilege to hunt, trap or
19 fish in season in West Virginia without obtaining a license to
20 do so. Leave or furlough papers shall serve in lieu of any such
21 license and shall be carried on the person at all times while
22 trapping, hunting or fishing.

23 (d) In accordance with the provisions of section twenty-
24 seven of this article, any resident sixty-five years of age or
25 older shall not be required to have a license to hunt, trap or
26 fish during the legal seasons in West Virginia, but in lieu of
27 such license any such person shall at all times while hunting,
28 trapping or fishing, carry on his person a card issued by the
29 director stating his name, address and date of birth.

30 (e) Residents of the state of Maryland who carry hunting
31 or fishing licenses valid in that state may hunt or fish from
32 the West Virginia banks of the Potomac river without obtain-
33 ing licenses to do so, but such hunting or fishing shall be
34 confined to the fish and waterfowl of the river proper and
35 not on its tributaries: *Provided*, That the state of Maryland
36 shall first enter into a reciprocal agreement with the director
37 extending a like privilege of hunting and fishing on the Poto-
38 mac river from the Maryland banks of said river to licensed
39 residents of West Virginia, without requiring said residents to
40 obtain Maryland hunting and fishing licenses.

41 (f) Residents of the state of Ohio who carry hunting or
42 fishing licenses valid in that state may hunt or fish on the
43 Ohio river or from the West Virginia banks of said river
44 without obtaining licenses to do so, but such hunting or fish-
45 ing shall be confined to fish and waterfowl of the river proper
46 and not on its tributaries: *Provided*, That the state of Ohio shall
47 first enter into a reciprocal agreement with the director ex-
48 tending a like privilege of hunting and fishing from the Ohio
49 banks of said river to licensed residents of West Virginia with-
50 out requiring said residents to obtain Ohio hunting and fishing
51 licenses. In the event the state of Ohio accords this privilege
52 to residents of West Virginia, such Ohio residents will not be
53 required to obtain the license provided for by section forty-
54 two of this article.

55 (g) Any resident of West Virginia who was honorably dis-
56 charged from the armed forces of the United States of Ameri-
57 ca, and who receives a veteran's pension based on total service
58 connected or nonservice connected disability as certified to
59 by the veterans administration, shall be permitted to hunt, trap
60 or fish in this state without obtaining a license therefor. The
61 director shall promulgate rules and regulations setting forth
62 the procedure for the certification of the veteran, manner of
63 applying for and receiving the certification and requirements
64 as to identification while said veteran is hunting, trapping or
65 fishing.

66 (h) Any disabled veteran, who is a resident of West Vir-
67 ginia, and who, as certified to by the commissioner of motor
68 vehicles, is eligible to be exempt from the payment of any fee
69 on account of registration of any motor vehicle owned by such
70 disabled veteran as provided for in section eight, article ten,
71 chapter seventeen-a of this code, shall be permitted to hunt,
72 trap or fish in this state without obtaining a license therefor.
73 The director shall promulgate rules and regulations setting
74 forth the procedure for the certification of the disabled
75 veteran, manner of applying for and receiving the certification
76 and requirements as to identification while said disabled veteran
77 is hunting, trapping or fishing.

CHAPTER 86

(Com. Sub. for H. B. 651—By Mr. Balloux and Mr. Ours)

[Passed February 26, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section forty-six-b, relating to Class N special deer hunting license for antlerless deer; specifying fee; authority of director to establish rules and regulations; time when season to be held; individuals not required to have a Class N license; providing that two bucks per square mile of deer range must have been killed during the regular deer hunting season the prior year.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-46b. Class N special deer hunting license; fee; exceptions; regulations; limitations; authority of director.

1 A Class N license shall be a special deer hunting license for
2 antlerless deer of either sex and shall entitle the licensee to
3 hunt for and kill one antlerless deer of either sex during the
4 Class N license season: *Provided*, That if a hunter kills a buck
5 deer during the regular deer hunting season, he shall also be
6 permitted to hunt for and kill one antlerless deer during Class N
7 license season if he has applied for and has had issued to him a
8 Class N license. Only one Class N license may be acquired
9 during any calendar year in which such Class N license season
10 is held, and such Class N license can be used only by the
11 applicant. The fee for a Class N license shall be five dollars.

12 The Class N license shall be issued only for the purpose of
13 removing antlerless deer on a post-season basis when the
14 director deems it essential for proper management of wildlife
15 resources. The director shall establish such rules and regula-

16 tions governing the issuance of such Class N licenses as he
17 deems necessary to limit, on a fair and equitable basis, the
18 number of persons who may hunt for antlerless deer in any
19 county or any part of a county: *Provided, however,* That no
20 more than four Class N licenses shall be issued for each deer
21 that the director desires to have killed during the Class N
22 season.

23 When the director deems it essential that Class N license
24 season be held in a particular county or part of a county, such
25 season shall be held on the Friday and Saturday following
26 regular deer hunting season, and shall be extended beyond
27 such two-day period only upon order of the director when
28 necessary to accomplish the desired kill.

29 Bona fide resident landowners or their resident children, or
30 bona fide resident tenants of such land shall not be required
31 to have a Class N license in their possession while hunting
32 antlerless deer on their own land during the Class N license
33 season.

34 Notwithstanding any provision of this code to the contrary,
35 no Class N license shall be issued for a county or a part of a
36 county unless, during the regular deer hunting season in
37 the previous year, two bucks have been killed per square mile
38 of deer range in that county or part of the county in which the
39 hunt is to be held, and the director deems the holding of such
40 Class N season advisable.

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CHAPTER 87

(H. B. 743—By Mr. Ballouz)

[Passed February 28, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section forty-six-c, relating to resident trout fishing license; collection of fee and use of proceeds.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-46c. Class O resident trout fishing license.

1 A Class O license shall be a resident statewide trout fishing
2 license and shall entitle the licensee to fish for trout in all
3 counties of the state, except as prohibited by rules or regula-
4 tions of the director. It shall be issued only to citizens of the
5 United States who are residents of this state.

6 The fee shall be three dollars. The revenue derived from
7 the sale of this license shall be deposited in the state treasury
8 and credited to the department of natural resources and shall
9 be used and paid out, upon order of the director, for state
10 trout hatchery production.

11 This license shall be issued in the form of a stamp prescribed
12 by the director, shall be in addition to a Class AB or B
13 license and shall be valid only when affixed thereto.

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CHAPTER 88

(Com. Sub. for S. B. 83—By Mr. Gainer and Mr. Gilligan)

[Passed March 9, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and three, article six-c, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section seven-a, all relating to authorizing the department of natural resources to reclaim abandoned coal refuse disposal piles; defining the terms "abandoned coal refuse disposal pile" and "reclamation of abandoned coal refuse disposal pile"; declaring reclamation of same

to be for a public purpose; specifying the powers of the department which may be exercised in accomplishing reclamation.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6C. COAL REFUSE DISPOSAL CONTROL ACT.

§20-6C-2. Definitions.

§20-6C-3. Legislative findings; purpose and intent of article; declaration of public purpose.

§20-6C-7a. Reclamation of abandoned coal refuse disposal piles; duties of the director; powers of the director; rules and regulations.

§20-6C-2. Definitions.

1 As used in this article:

2 (a) "Abandoned coal refuse disposal pile" means any
3 coal refuse disposal pile which is located on the surface
4 of either public or private property, or both, which
5 has not been operated in whole or in part since the first
6 day of January, one thousand nine hundred sixty-nine, and
7 the operator or owner of which cannot be determined, or
8 if the operator is known, he cannot be compelled to re-
9 claim the coal refuse disposal pile;

10 (b) "Coal refuse" means any waste coal, rock, shale,
11 slurry, culm, gob, boney, slate, clay and related materials,
12 associated with or near a coal seam, which are either
13 brought above ground or otherwise removed from a coal
14 mine in the process of mining coal, or which are separated
15 from coal during the cleaning or preparation operations;

16 (c) "Coal refuse disposal pile" means any deposit of
17 coal refuse on or buried in the earth and intended as per-
18 manent disposal or long-term storage of such material;

19 (d) "Director" means the director of the department
20 of natural resources;

21 (e) "Operate" means to enter upon a coal refuse dis-
22 posal pile, or part thereof, for the purpose of disposing,
23 depositing or dumping coal refuse thereon, or to employ
24 a coal refuse disposal pile for retarding the flow of or
25 the impoundment of water;

26 (f) "Operator" means any person operating any coal
27 refuse disposal pile, or part thereof; and

28 (g) "Reclamation of abandoned coal refuse disposal
29 piles" means any activity which operates to eliminate the
30 undesirable environmental effects or dangers to public
31 welfare and safety attributable to abandoned coal refuse
32 piles; including but not limited to activities designed to
33 extinguish any fire present in such piles, the prevention
34 of such fires, the abating of water and air pollution at-
35 tributable to such piles, the prevention of water accumu-
36 lation behind such piles or in such piles, the prevention
37 of erosion resulting from such piles, the covering of such
38 piles, the removal of such piles to an underground loca-
39 tion or for use in backfilling or landfilling, with soil or
40 with suitable soil conditioners, the revegetation of such
41 piles or any similar activity.

**§20-6C-3. Legislative findings; purpose and intent of article;
declaration of public purpose.**

1 The Legislature finds and hereby declares that the dis-
2 position of materials displaced in the mining of coal
3 creates coal refuse disposal piles which have in the past
4 and may in the future:

5 (a) Endanger the lives and properties of persons re-
6 siding in the hollows and valleys of the affected water-
7 sheds;

8 (b) Threaten streams, roads, schools and other public
9 properties and facilities;

10 (c) Result in the creation of an emergency situation
11 in which there can be no delay in taking remedial action
12 if resulting perils to persons and properties are to be al-
13 leviated; and

14 (d) Destroy or decrease the value of land upon which

15 a coal refuse disposal pile is located and the surrounding
16 environs for residential, agricultural, industrial, business
17 or recreational uses; counteract efforts of the state and
18 local governments within the state to conserve water,
19 soil and other valuable natural resources; and destroy or
20 impair the health, safety, welfare and property rights of
21 citizens of this state where proper reclamation of such
22 coal refuse disposal piles is not practiced.

23 It is the purpose and intent of the Legislature in enact-
24 ing this article to provide for the location, inspection and
25 evaluation of all coal refuse disposal piles and any asso-
26 ciated water impoundments in this state; for the deter-
27 mination of their degree of stability, safety, adequacy and
28 hazard to life and property; for remedial action necessary
29 and expedient to prevent, correct or abate danger to life
30 caused by any coal refuse disposal pile and any associated
31 water impoundment; and for the reclamation of aban-
32 doned coal refuse disposal piles; and all of the foregoing
33 are hereby declared by the Legislature to be for a public
34 purpose.

**§20-6C-7a. Reclamation of abandoned coal refuse disposal
piles; duties of the director; powers of the direc-
tor; rules and regulations.**

1 (a) In addition to all other authority, powers, duties
2 and responsibilities granted or assigned to the department
3 of natural resources or its director or various divisions
4 under the provisions of this or any other article of this
5 chapter, the department of natural resources, acting by
6 and through its director, division of reclamation, or its
7 chief of the division of reclamation, shall have the duty
8 and responsibility to undertake the reclamation of aban-
9 doned coal refuse disposal piles located within this state.

10 The director is hereby authorized to expend any funds
11 which the Legislature may appropriate for the reclama-
12 tion of abandoned coal refuse disposal piles, but the direc-
13 tor shall first use such funds for matching purposes to ob-
14 tain any federal funds which may be available for such
15 purpose.

16 (b) The department of natural resources, acting by
17 and through its director, or its division of reclamation and
18 chief of the division of reclamation, upon approval of the
19 director, is hereby authorized to exercise the following
20 powers in implementing its duty and responsibility to re-
21 claim abandoned coal refuse disposal piles located within
22 this state:

23 1. To make any investigation or inspection necessary to
24 implement or enforce the provisions of this article and to
25 enter upon the public or private property of any coal re-
26 fuse disposal pile owner as may be necessary to make such
27 investigations or inspections. Such inspections or entries
28 shall not be made until five days have elapsed after giving
29 written notice to the pile owner or other persons in charge
30 of such pile;

31 2. To promulgate in accordance with the provisions of
32 chapter twenty-nine-a of this code a plan for the reclama-
33 tion of abandoned coal refuse piles located within this
34 state within fifteen months of the effective date of this
35 act. Such plan shall establish priorities for action to be
36 taken to reclaim said abandoned coal refuse piles. In
37 promulgating such plan the director shall consider with
38 regard to each area to be reclaimed the number of per-
39 sons affected by hazards resulting from abandoned coal
40 refuse piles in such area, the adverse environmental ef-
41 fects of such piles, the health and safety of persons re-
42 siding or working in close proximity to such piles, the
43 potential of such piles for recreational and industrial
44 development, the potential of such piles for the sale or re-
45 cycling of its constituent materials, the potential of elimi-
46 nating surface subsidence damage by removing such piles
47 to a nearby abandoned mine or other underground loca-
48 tion or for backfilling nearby surface mines, and the cost
49 effectiveness of each potential project;

50 3. To promulgate and adopt, modify, repeal and en-
51 force reasonable rules and regulations in order to imple-
52 ment the provisions of this section, which it shall do in
53 accordance with the provisions of chapter twenty-nine-a
54 of this code as if the provisions of said chapter were set
55 forth in *extenso* herein;

56 4. To acquire by donation, agreement, lease or pur-
57 chase such real and personal property, rights, land ease-
58 ments and rights-of-way as are necessary to implement
59 the provisions of this article;

60 5. To enter upon abandoned coal refuse piles with the
61 permission of the owner thereof, if known, and to under-
62 take pursuant to any agreement arrived at by negotia-
63 tions with said owner the reclamation of abandoned coal
64 refuse piles. Upon the completion of said reclamation,
65 the department may accept any payments to the state
66 made pursuant to agreements with the land owner. Funds
67 received by the state for rendering such services shall be
68 paid into the general revenues;

69 6. To cooperate and coordinate with agencies of the
70 federal government, this state and counties and munici-
71 palities of this state to reclaim abandoned coal waste dis-
72 posal piles;

73 7. To contract with, sell to, buy from and otherwise
74 deal with private and public bodies providing such goods,
75 services, machinery and equipment necessary to imple-
76 ment the provisions of this article, and in doing so com-
77 ply with the provisions of article three, chapter five-a of
78 this code;

79 8. To sell reclaimed land acquired or owned by the
80 state subject to the provision or condition that the prop-
81 erty will be reclaimed by the purchaser, or, if already re-
82 claimed by the state, subject to the condition that the
83 property will not be used for the purpose of coal waste
84 disposal at any time thereafter;

85 9. To consult with the commissioner of highways, the
86 director of the department of mines, the director of the
87 air pollution control commission, the director of the state
88 department of health, other state departments and agen-
89 cies, county and local governments, universities and col-
90 leges in the state and private businesses and industries
91 to develop ways to use abandoned coal refuse disposal
92 piles for highway construction, landfills, business, in-
93 dustrial, recreational and residential site development and^d
94 for other such useful purposes, and to take all actions,

95 which are legally available to him, to make abandoned
96 coal refuse disposal piles useful for such purposes; and

97 10. To exercise such other powers as it may have under
98 any other article or provision of this chapter in the im-
99 plementation of the provisions of this article. In no case
100 shall the powers set forth in this subsection be deemed
101 to authorize the department of natural resources, its di-
102 rector or any of its divisions, to condemn real estate solely
103 for the purpose of reclamation.

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CHAPTER 89

(H. B. 1043—By Mr. Whitlow and Mr. Ballouz)

[Passed March 2, 1974; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to penalties for violation of chapter twenty of the code; and penalties for speeding or illegal parking on state lands.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. LAW ENFORCEMENT, PROCEDURES AND PENALTIES; MOTORBOATING.

§20-7-9. Violations of chapter generally; penalties.

1 Any person violating any of the provisions of this chapter or
2 rules and regulations promulgated under the provisions of this
3 chapter, the punishment for which is not prescribed, shall be
4 guilty of a misdemeanor, and, upon conviction thereof, shall
5 for each offense be fined not less than twenty nor more than
6 three hundred dollars, or confined in jail not less than ten nor
7 more than one hundred days, or be both fined and imprisoned
8 within the limitations aforesaid, and, in the case of a violation

9 by a corporation, every officer or agent thereof directing or
10 engaging in such violation shall be guilty of a misdemeanor,
11 and, upon conviction thereof, shall be subject to the same pen-
12 alties and punishment as herein provided: *Provided*, That any
13 person violating subdivision three, section five, article two of
14 this chapter shall be guilty of a misdemeanor, and, upon con-
15 viction thereof, shall be fined not less than one hundred dol-
16 lars nor more than five hundred dollars and shall be imprison-
17 ed for not less than ten days nor more than one hundred days:
18 *Provided, however*, That any person violating sections forty-
19 three and forty-five, article two of this chapter shall be guilty
20 of a misdemeanor, and, upon conviction thereof, shall be fined
21 not less than fifty dollars nor more than three hundred dollars,
22 or confined in jail not less than ten nor more than one hun-
23 dred days, or both fined and imprisoned within the limitations
24 aforesaid: *Provided further*, That any person violating any
25 parking or speeding regulations as promulgated by the director
26 on any state parks, state forests, public hunting and fishing
27 areas and all other lands and waters owned, leased or under
28 the control of the department of natural resources, shall be
29 guilty of a misdemeanor, and, upon conviction thereof, shall
30 be fined not less than two nor more than one hundred dollars,
31 or imprisoned in the county jail not more than ten days, or
32 both fined and imprisoned.

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CHAPTER 90

(H. B. 1029—By Mr. Seibert)

[Passed February 23, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections eleven, twelve and fourteen, article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to motorboats, their registration and identification numbers; fees; reciprocity; state boating program and renewals.

Be it enacted by the Legislature of West Virginia:

That sections eleven, twelve and fourteen, article seven, chapter

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

**ARTICLE 7. LAW ENFORCEMENT, PROCEDURES AND PENALTIES;
MOTORBOATING.**

§20-7-11. Motorboats and other terms defined.

§20-7-12. Motorboat identification numbers required; application for numbers; fee; displaying; reciprocity; change of ownership; conformity with United States regulations; issuing agents; records; renewal of certificate; transfer of interest, abandonment, etc.; change of address; unauthorized numbers; information to be furnished assessors.

§20-7-14. Motorboats exempt from numbering.

PART II. MOTORBOATING.

§20-7-11. Motorboats and other terms defined.

1 As used in this section and subsequent sections of this
2 article, unless the context clearly requires a different mean-
3 ing:

4 (1) "Vessel" means every description of watercraft, other
5 than a seaplane on the water, used or capable of being used
6 as a means of transportation on water;

7 (2) "Motorboat" means any vessel propelled by machinery,
8 whether or not such machinery is the principal source of
9 propulsion, but shall not include a vessel which has a valid
10 marine document issued by the bureau of customs of the
11 United States government or any federal agency successor
12 thereto, nor to a vessel powered by a motor of less than
13 three horsepower; and

14 (3) "Owner" means a person, other than a lienholder,
15 having the property in or title to a motorboat. The term
16 includes a person entitled to the use or possession of a
17 motorboat subject to an interest in another person, reserved
18 or created by agreement and securing payment or perform-
19 ance of an obligation, but the term excludes a lessee under
20 a lease not intended as security.

§20-7-12. Motorboat identification numbers required; application for numbers; fee; displaying; reciprocity; change of ownership; conformity with United States regulations; issuing agents; records; renewal of certificate; transfer of interest, abandonment, etc.; change of address; unauthorized numbers; information to be furnished assessors.

1 Every motorboat, as herein defined, operating upon public
2 waters within the territorial limits of this state, shall be num-
3 bered as herein provided:

4 (a) The owner of each motorboat requiring numbering by
5 this state shall file an application for a number with the
6 director on forms approved by him. The application shall
7 be signed by the owner of the motorboat and shall be ac-
8 companied by a fee of five dollars if powered by a motor of
9 three or more horsepower. All such fees shall be deposited in
10 the state treasury and shall be credited to the department of
11 natural resources and shall be used and paid out, upon order
12 of the director, solely for the state boating program. Upon
13 receipt of the application in approved form, the director
14 shall enter the same upon the records of his office and issue
15 to the applicant a number awarded to the motorboat and the
16 name and address of the owner. The owner shall paint on or
17 attach to each side of the bow of the motorboat the identifica-
18 tion number in such manner as may be prescribed by rules and
19 regulations of the director in order that it may be clearly
20 visible. The number shall be maintained in legible condition.
21 The certificate of number shall be pocket size and shall be
22 available at all times for inspection on the motorboat for which
23 issued, whenever such motorboat is in operation.

24 (b) The owner of any motorboat already covered by a
25 number in full force and effect which has been awarded
26 to it pursuant to then operative federal law or a federally
27 approved numbering system of another state shall record the
28 number prior to operating the motorboat on the waters of this
29 state in excess of the sixty-day reciprocity period provided
30 for in section fourteen of this article. Such recordation shall
31 be in the manner and pursuant to procedure required for
32 the award of a number under subdivision (a) of this section,
33 except that no additional or substitute number shall be issued.

34 (c) Should the ownership of a motorboat change, a new
35 application form with fee shall be filed with the director and
36 a new certificate of number shall be awarded in the same
37 manner as provided for in an original award of number.

38 (d) In the event that an agency of the United States
39 government shall have in force an overall system of
40 identification numbering for motorboats within the United
41 States, the numbering system employed pursuant to this
42 article by the commission shall be in conformity there-
43 with.

44 (e) The director may designate as issuing agent the clerk
45 of any county court and such other persons in each county
46 as he deems advantageous to provide for the issuance of
47 certificates of number in accordance with the provisions of
48 this article. For services rendered in issuing such certificates,
49 and collecting and paying over such numbering fees, each
50 issuing agent, other than a state or county official, shall charge
51 and retain an additional fee of twenty-five cents from the
52 person obtaining the certificate of number. Every such issuing
53 agent, unless already under bond with the director as an
54 agent for the collection of its moneys, shall file a bond with
55 the director, payable to the state of West Virginia, in an
56 amount to be fixed by the director at not more than one
57 thousand dollars, before the supply of certificates of number
58 is delivered to him, conditioned upon the faithful performance
59 of his obligation to issue certificates only in conformance with
60 the provisions of this article and the regulations of the director.
61 Each issuing agent, on the first day of each month, shall
62 remit to the director all moneys collected for the director
63 during the preceding month, and shall accompany his remit-
64 tance with a report showing the name of the county, the
65 names and addresses of the persons paying the same, and the
66 date of receipt thereof.

67 (f) All records of the director made or kept pursuant to
68 this section shall be public records.

69 (g) Such license shall be valid only until the last day of the
70 fiscal year, in which the same is issued. If at the end of such
71 year ownership has remained unchanged, such owner shall,
72 upon application and payment of a fee of five dollars, be

73 granted a renewal of such certificate of number for an addi-
74 tional one-year period.

75 (h) The owner shall furnish the director notice of the
76 transfer of all or any part of his interest, other than the
77 creation of a security interest, in a motorboat numbered in
78 this state pursuant to subdivisions (a) and (b) of this section,
79 or of the destruction or abandonment of such motorboat, within
80 fifteen days thereof. Such transfer, destruction or abandon-
81 ment shall terminate the certificate of number for such motor-
82 boat, except that in the case of a transfer of a part interest
83 which does not affect the owner's right to operate such motor-
84 boat, such transfer shall not terminate the certificate of
85 number.

86 (i) Any holder of a certificate of number shall notify the
87 director within fifteen days if his address no longer conforms
88 to the address appearing on the certificate and shall, as a part
89 of such notification, furnish the director with his new address.
90 The director may provide in his rules and regulations for the
91 surrender of the certificate bearing the former address and its
92 replacement with a certificate bearing the new address or for
93 the alteration of an outstanding certificate to show the new
94 address of the holder.

95 (j) No number other than the number awarded to a
96 motorboat or granted reciprocity pursuant to this article shall
97 be painted, attached or otherwise displayed on either side of
98 the bow of such motorboat.

99 (k) It shall be the duty of the director on or before August
100 thirty-first of each year, commencing with the year one thou-
101 sand nine hundred sixty-seven, to forward to the assessor of
102 each county a list of the names and addresses of all persons,
103 firms and corporations owning vessels and operating the same
104 or other boats registered with the director under the provisions
105 of this article. In furnishing this information to each county
106 assessor, the director shall include in his report such informa-
107 tion as is made available to him in the reports and registrations
108 he receives as to make, model, value and cost price of such
109 vessels and other equipment required to be registered for use
110 by said owner or operator thereof under the provisions of this
111 article: *Provided*, That the director need not furnish such

112 information to the assessor if the cost price of such vessel does
113 not exceed two hundred dollars or the cost of the motor does
114 not exceed one hundred seventy-five dollars. In order to deal
115 equitably with overlapping license periods, the director may
116 issue a six months' license from the period January, one
117 thousand nine hundred sixty-eight through June, one thousand
118 nine hundred sixty-eight. This six months' license is to be
119 issued to avoid the necessity of motorboat owners who have
120 purchased their licenses from January thirtieth, one thousand
121 nine hundred sixty-eight, losing a six months' period of license
122 entitlement.

123 (1) No person shall operate an unlicensed motorboat upon
124 any waters of this state without first acquiring such certificate
125 of number or license as required by law.

§20-7-14. Motorboats exempt from numbering.

1 A motorboat shall not be required to be numbered under
2 this article if it is: (1) Already covered by a number in full
3 force and effect which has been awarded to it pursuant to
4 federal law or a federally approved numbering system of
5 another state: *Provided*, That such boat shall not have been
6 within this state for a period in excess of sixty consecutive days;
7 (2) A motorboat from a country other than the United States
8 temporarily using the waters of this state; (3) Motorboats used
9 exclusively for racing while participating in races, and the
10 preparation therefor, which have been authorized pursuant
11 to the provisions of section twenty of this article.

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CHAPTER 91

(H. B. 782—By Mr. McCuskey and Mr. Moats)

[Passed March 5, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections twelve, fourteen and fifteen, article four, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to notaries public and commissioners; permitting the governor

to appoint commissioners for the purpose of acknowledging signatures on deeds, leases and other writings, either within or without this state; relating to the term of office of such commissioners; requiring a bond; specifying certain fees; pertaining to acknowledgments taken by such commissioners; and relating to the official seal of such commissioners.

Be it enacted by the Legislature of West Virginia:

That sections twelve, fourteen and fifteen, article four, 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 4. NOTARIES PUBLIC AND COMMISSIONERS.

§29-4-12. Commissioners out of state; qualifications; fee.

§29-4-14. Power of such commissioner to take acknowledgments.

§29-4-15. Seal of such commissioner.

§29-4-12. Commissioners out of state; qualifications; fee.

1 The governor, if he deems it proper, may appoint any per-
 2 sons residing within or without this state and within the United
 3 States, its territories or possessions as commissioners to ac-
 4 knowledge signatures performed in or out of state by persons
 5 residing in or out of the state of West Virginia, covering
 6 deeds, leases and other writings pertaining to West Virginia
 7 property for recordation in the state of West Virginia.

8 Such commissioners shall hold office for ten years, unless
 9 sooner removed by the governor. Any commissioner in office
 10 upon the effective date of this act shall continue therein until
 11 his term expires or until sooner removed in the manner pre-
 12 scribed by law.

13 Before performing any duties as such, the commissioner
 14 shall enter into a bond in the penalty sum of one thousand
 15 dollars with corporate surety to be approved by the secretary
 16 of state and filed in his office.

17 A fee of one hundred dollars for such commission issued
 18 shall be paid to the secretary of state.

§29-4-14. Power of such commissioner to take acknowledgments.

1 Such commissioners, under regulations prescribed by law,
 2 may take, within or any place out of the state of West Vir-

3 ginia, the acknowledgments of deeds and other writings to be
 4 admitted to record in the state of West Virginia, but each such
 5 acknowledgment shall reflect where the acknowledgment was
 6 taken, as, for example, the state and county, the territory, etc.

§29-4-15. Seal of such commissioner.

1 Every such commissioner shall provide an official seal, on
 2 which shall be inscribed his name and residence, and the words
 3 "Commissioner for West Virginia." An impression of such
 4 seal, together with his signature, shall be forthwith transmitted
 5 to and filed in the office of the secretary of state.

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CHAPTER 92

(S. B. 522—By Mr. Gilligan and Mr. Rogerson)

[Passed March 1, 1974; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article five, chapter twenty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the penitentiary and residence and duties of warden and his entitlement to vote.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. THE PENITENTIARY.

§28-5-3. Duties of warden; bond; residence.

1 The warden shall be the chief executive officer of the
 2 penitentiary and shall have charge of its internal police
 3 and management, and provide for feeding, clothing, work-
 4 ing and taking care of the convicts, subject to the control
 5 of the state commissioner of public institutions. The war-
 6 den shall promptly enforce all orders, rules and regula-
 7 tions made by the commissioner of public institutions,
 8 enforce strict discipline among the convicts, protect and

9 preserve the property of the state, and may for that pur-
 10 pose punish the convicts, or cause them to be punished, in
 11 the manner authorized by the commissioner of public in-
 12 stitutions. He shall have the custody and control of all the
 13 real and personal property at the penitentiary, subject to
 14 the orders of the commissioner of public institutions. The
 15 warden shall give bond in such sum as the commissioner
 16 of public institutions may require, with one or more
 17 sureties satisfactory to the commissioner of public insti-
 18 tutions, conditioned for the faithful performance of the
 19 duties of his office, and for accounting for and paying over,
 20 as required by law, all moneys which may come into his
 21 hands by virtue of such office, which bond, when approved
 22 by the commissioner of public institutions, shall be filed
 23 with and recorded by the commissioner. The warden shall
 24 reside in the warden's apartments at the penitentiary, or
 25 at any other place in Marshall county, convenient to the
 26 penitentiary.

CHAPTER 93

(H. B. 714—By Mrs. Withrow and Mr. Greer)

[Passed February 16, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article five, chapter twenty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the right of guards at the penitentiary to carry firearms and concealed weapons only during the performance of their duties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. THE PENITENTIARY.

§28-5-5. Appointment of other assistants and employees; duties of guard; right to carry weapons.

1 The warden of the penitentiary shall, in the manner pro-

2 vided in section eleven, article one, chapter twenty-five of
3 this code, appoint all assistants and employees required for
4 the management of the penitentiary, including a sufficient
5 number of guards to preserve order and enforce discipline
6 among the convicts, to prevent escapes, and to remove all
7 persons convicted and sentenced to the penitentiary from the
8 place where confined to the penitentiary, all of whom shall
9 be under the control of the warden. The warden may at his
10 discretion issue a certificate authorizing any guard to carry
11 firearms and concealed weapons while on duty. Any guard
12 appointed as herein provided and authorized by the warden
13 shall have the right, without a state license therefor, to carry
14 firearms and concealed weapons while on duty. Each guard
15 appointed as aforesaid shall carry with him a certificate,
16 authorizing him to carry a firearm or concealed weapon
17 when he is performing his official duties as a guard, bearing
18 the official signature of the warden of the penitentiary. Such
19 right shall be extended to a guard during the time he travels
20 from place to place within the state for the purpose of re-
21 moving prisoners from county jails to the penitentiary, and
22 during the time he is pursuing and apprehending escaped
23 convicts, and during any other time he is performing his
24 official duties as a guard, but a guard shall not have the
25 right to carry a firearm or concealed weapon for any other
26 purpose or during any other time, including when he travels
27 to and from his residence and the penitentiary, unless he
28 shall have obtained a state license therefor in the manner
29 prescribed in section two, article seven, chapter sixty-one
30 of this code.

CHAPTER 94

(H. B. 1227—By Mr. Polen)

[Passed March 9, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to authorize and empower the commissioner of the department of public institutions to transfer a certain parcel of real estate, located in Marshall County and owned by that depart-

ment, to the city of Moundsville, and a certain parcel to the County of Marshall.

Be it enacted by the Legislature of West Virginia:

TRANSFER OF STATE-OWNED REAL PROPERTY.

§1. Commissioner of the department of public institutions authorized to transfer certain department-owned land to the city of Moundsville and the County of Marshall.

1 The commissioner of the department of public institutions
 2 is hereby authorized and empowered to transfer to the city of
 3 Moundsville, a tract of land, together with the improvements
 4 thereon and the appurtenances thereunto belonging, owned
 5 by the department, consisting of thirty acres, more or less, and
 6 to transfer to the County of Marshall, a tract of land, together
 7 with the improvements thereon and the appurtenances there-
 8 unto belonging, owned by the department, consisting of eighty
 9 acres, more or less, both being portions of the prison farm,
 10 situated and located in Marshall County.

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CHAPTER 95

(H. B. 984—By Mr. Polen and Mr. Myles)

[Passed March 8, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article fourteen, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to pre-need burial agreements, contracts and plans, relating to funds held in trust thereunder; and providing that certain financial institutions shall not be considered to be a trustee within the meaning of such article.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14. PRE-NEED BURIAL CONTRACTS.**§47-14-2. Money paid under pre-need contracts to be trust funds and deposited within ten days.**

1 Any person, association, partnership, firm or corporation
2 who shall receive any money under any agreement, contract
3 or plan entered into after the effective date of this article, for
4 the final disposition of a deceased person, or for the embalm-
5 ing, cremation or other services relating to the actual inter-
6 ment of a dead human body, or for funeral or burial services,
7 or for the furnishing of funeral or burial merchandise, includ-
8 ing vaults and other outside burial receptacles, wherein the
9 said embalming, cremation or other services or the delivery of
10 funeral or burial merchandise or the furnishing of professional
11 services by a funeral director or embalmer or both is not im-
12 mediately required but shall be required at an undetermined
13 future time, is hereby declared to be trustee thereof, and shall
14 deposit any and all such money paid thereunder in a bank,
15 trust company, or savings and loan association, insured by an
16 agency of the United States federal government, and which is
17 authorized to do business in this state, and subject to the
18 terms of the said agreement, contract or plan for the benefit
19 of the purchaser of the same, or of a third party beneficiary of
20 the purchaser's designation, which are not inconsistent with
21 the provisions of this article.

22 All such money shall be so deposited within ten days of pay-
23 ment, and shall be held by such bank, trust company or savings
24 and loan association in a separate interest-bearing account in
25 the name of the trustee, as trustee, and shall be held in trust
26 subject to the provisions of this article. The trustee at the
27 time of making deposit shall furnish to the depository a copy of
28 each such agreement, contract or plan, the name of each
29 payor, and the amount of payment on each such account
30 for which deposit is being so made. Notwithstanding any
31 other provision of this article to the contrary, whenever an
32 individual enters into any such agreement, contract or plan
33 directly with a bank, trust company, or savings and loan
34 association, insured by an agency of the United States govern-
35 ment, and which is authorized to do business in this state,
36 such bank, trust company or savings and loan association

37 shall not be considered to be a trustee within the meaning of
38 the word "trustee" as used in this article.

CHAPTER 96

(H. B. 1079—By Mr. Harman and Mr. Polan)

[Passed March 8, 1974; in effect July 1, 1974. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article one, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing compensation of members of every board of examination or registration.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE
BOARDS OF EXAMINATION OR REGISTRATION RE-
FERRED TO IN CHAPTER.**

§30-1-11. Compensation of members; expenses.

1 Each member of every such board shall receive thirty-five
2 dollars for each day actually spent in attending the sessions
3 of the board, or of its committees, and in necessary travel,
4 and shall be reimbursed for all actual and necessary expenses
5 incurred in carrying out the provisions of this chapter
6 applicable to such board. The secretary shall receive such
7 salary as may be prescribed by the board, but in proceedings
8 relative to the fixing of his salary the secretary shall have no
9 vote. All authorized compensation and all expenses certified
10 by the board as properly and necessarily incurred in the
11 discharge of its duties shall be paid out of the state treasury,
12 from funds appropriated for that purpose, on warrants of the
13 state auditor issued on requisitions signed by the president
14 and secretary of the board.

CHAPTER 97

(S. B. 236—By Mr. Hubbard and Mr. Sharpe)

[Passed March 9, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four, four-a, six and seven, article three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to persons permitted to practice medicine and surgery in this state, biennial registration, refusal to issue, suspend, or revoke licenses and fixing of fee for reciprocal endorsement.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. PHYSICIANS AND SURGEONS.

§30-3-4. Who permitted to practice medicine and surgery in this state; licensing of licensed practitioners from other states; permits to practice in prescribed areas.

§30-3-4a. Biennial registration of physicians and surgeons.

§30-3-6. Refusal to issue, suspension or revocation of license.

§30-3-7. Fees for reciprocal endorsement.

§30-3-4. Who permitted to practice medicine and surgery in this state; licensing of licensed practitioners from other states; permits to practice in prescribed areas.

- 1 The following persons and no others shall hereafter be
- 2 permitted to practice medicine and surgery in this state:
- 3 (a) All such persons as shall be legally entitled to prac-
- 4 tice medicine and surgery in this state including those per-
- 5 sons holding temporary permits to practice in prescribed
- 6 areas as of the effective date of this section; (b) all such
- 7 persons as shall be graduates of medical schools, as ap-
- 8 proved by the medical licensing board of West Virginia,
- 9 and who provide their original diplomas or evidence
- 10 thereof for authentication by the medical licensing board,

11 and who shall pass an examination before the medical
12 licensing board and shall receive a certificate therefrom
13 as hereinafter provided: *Provided*, That the said board,
14 or a majority of them, may accept in lieu of an examina-
15 tion of applicants, the certificate of the national board of
16 medical examiners, or diplomate certificate from an
17 American specialty board, such certification shall be lim-
18 ited to that specific specialty in the practice of medicine
19 and surgery in this state, or the certificate of license to
20 practice medicine and surgery legally granted by the state
21 board of registration or examination or licensing board of
22 another state or territory, whose standard of qualification
23 for the practice of medicine and surgery is equivalent to
24 that of this state, and grant to such applicant a certificate
25 of license to practice medicine and surgery in this state:
26 *Provided, however*, That whenever in the judgment of
27 the medical licensing board a condition exists in which
28 medical service may be required, the said board is autho-
29 rized to grant permits for the practice of medicine to
30 qualified physicians in prescribed areas, and such permits
31 shall be subject to revocation when the agreement, under
32 which they were issued, has been violated. A fee of one
33 hundred dollars shall accompany each application for
34 licensure by examination, reexamination, or reciprocity,
35 twenty-five dollars of which shall be retained by the board
36 in the event an application is withdrawn or rejected. A
37 fee of twenty-five dollars shall accompany each applica-
38 tion for temporary permits and a fee of ten dollars shall
39 accompany each application for an extension thereof.

§30-3-4a. Biennial registration of physicians and surgeons.

1 Every person who, on or before the thirty-first day of
2 August, one thousand nine hundred forty-nine, is licensed
3 as a physician or surgeon to practice medicine and surgery
4 in this state, shall, on or before the said thirty-first day of
5 August, one thousand nine hundred forty-nine, make ap-
6 plication to the medical licensing board for registration,
7 and shall be registered by the said board, as the holder of
8 such license, which registration shall be for the period
9 ending on the thirtieth day of June, one thousand nine
10 hundred fifty-one. On or before the said thirtieth day of

11 June, one thousand nine hundred fifty-one, and biennially
12 thereafter, on or before the thirtieth day of June of each
13 biennial period, every person licensed as a physician or
14 surgeon in this state shall apply to the said board for
15 registration, or a renewal of registration, as such license
16 holder: *Provided*, That no registration shall be required of
17 any holder of a certificate of licensure for the biennial
18 period, or any portion thereof, during which such certi-
19 ficate is issued.

20 Each applicant for registration or renewal thereof shall
21 remit to the board, with his application, a fee of ten dol-
22 lars. In addition, any request for renewal of a license
23 which has lapsed for a period of more than one biennial
24 registration period shall be accompanied by a sworn affi-
25 davit from the physician indicating his location and activ-
26 ities for the period of time he was not licensed in this
27 state.

28 The failure of any person to comply with the provisions
29 of this section shall operate automatically, and without
30 further proceedings, to cancel the certificate of such per-
31 son, and the license issued thereunder. Continued practice
32 by any such person after such cancellation of his certifi-
33 cate and license shall constitute practicing without a
34 license, and any person so practicing shall be subject to
35 all of the penalties provided by law for practicing with-
36 out a license.

37 Any certificate and license cancelled pursuant to the
38 provisions of this section, and not for any other reason,
39 shall be reinstated by the said board upon submission to it
40 of an application for registration by the person whose
41 certificate has been cancelled, together with current and
42 delinquent fees, and ten dollars reinstatement fee.

§30-3-6. Refusal to issue, suspension or revocation of license.

1 The medical licensing board may refuse to grant a cer-
2 tificate of license to a person who has been found guilty
3 of a felony as decreed by a court of law, or to a person
4 known to indulge in gross immorality, or to a person who
5 is addicted to drunkenness or the habitual use of narcotic

6 drugs, or to a person known to engage in malpractice, or
 7 to a person who resorts to fraud in procuring the certifi-
 8 cate and may suspend or revoke a certificate for like cause.
 9 No such refusal, suspension or revocation shall be ordered
 10 by reason of the individual belonging to or practicing in
 11 any particular school or system of medicine.

§30-3-7. Fees for reciprocal endorsement.

1 The medical licensing board shall be entitled to charge
 2 and collect the following fee, in addition to those pro-
 3 vided in article one and article three of this chapter: The
 4 sum of twenty-five dollars for a reciprocal endorsement.



CHAPTER 98

(S. B. 372—By Mr. Nelson and Mr. Poffenbarger)

[Passed March 9, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three, four and five, article ten-f, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to handicapped persons and public buildings and facilities; purpose and application of article; rules and regulations; board of public buildings; enforcement; types of building subject to article.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, four and five, article ten-f, 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 10F. HANDICAPPED PERSONS AND PUBLIC BUILDINGS AND FACILITIES.

- §18-10F-1. Purpose; definition of "public building or facility."
- §18-10F-2. Application of article.
- §18-10F-3. Rules and regulations.
- §18-10F-4. State board of public buildings created; membership; expenses.
- §18-10F-5. Enforcement of article.

§18-10F-1. Purpose; definition of "public building or facility."

1 It is hereby declared to be the public policy of this state
2 that all public buildings, sidewalks, curbs and facilities
3 covered by this article, as specified in section two of this
4 article, be accessible to and functional for the physically
5 handicapped, without loss of function, space or facilities
6 insofar as the general public is concerned.

7 As used in this article a public building or facility is one to
8 which the public has a general right of access and includes
9 the ways of travel to and from the same, but does not in-
10 clude:

11 1. Apartment houses with less than twenty units, row
12 houses or rooming houses;

13 2. Convents or monasteries;

14 3. Jails or other places of detention;

15 4. Garages, hangars or boat houses;

16 5. Buildings classified as hazardous occupancies;

17 6. Warehouses;

18 7. Building specifically built for field service purposes
19 such as, but not limited to, conservation fire towers, fish
20 hatcheries or tree nursery buildings; or

21 8. Residence halls at colleges or universities which
22 have at least two other resident halls for men and two
23 other resident halls for women so constructed as to allow
24 physically handicapped persons reasonable means of ac-
25 cess and use of such buildings.

§18-10F-2. Application of article.

1 (a) The provisions of this article and the reasonable
2 rules and regulations promulgated hereunder shall apply
3 to all temporary, emergency or permanent buildings, side-
4 walks, curbs and facilities to be used by the public which
5 are constructed after the effective date of this article.

6 (b) Notwithstanding the provisions of subsection (a)
7 of this section, the provisions of this article and the rea-

8 sonable rules and regulations promulgated hereunder
9 shall also be applicable to all buildings, sidewalks, curbs
10 and facilities to be used by the public and which are under
11 construction on the effective date of this article unless
12 the director shall determine that the construction has
13 reached a state where compliance is impractical.

§18-10F-3. Rules and regulations.

1 In order to implement the provisions of this article, the
2 director of the division of vocational rehabilitation of the
3 state board of education, with the approval of the state
4 board of public buildings hereinafter created, shall pro-
5 mulgate reasonable rules and regulations. The director
6 and the board in promulgating and approving such rea-
7 sonable rules and regulations, shall take into account the
8 following:

9 (1) Use of buildings, sidewalks, curbs and facilities by
10 persons confined to wheelchairs, persons using crutches or
11 other walking aids, persons afflicted by sight or hearing
12 loss, persons disabled by age and any other persons whose
13 mobility is limited; and data shall be gathered to deter-
14 mine the needs of any such persons;

15 (2) Frequency of use by disabled persons as above
16 enumerated; and

17 (3) Additional construction cost required to comply
18 with the provisions of this article and such reasonable
19 rules and regulations.

20 The director shall have the authority to except build-
21 ings, sidewalks, curbs and facilities from the provisions
22 of this article and such reasonable rules and regulations,
23 in whole or in part, if, in his opinion, compliance therewith
24 would create a financial hardship, be impractical or serve
25 no benefit.

26 All such reasonable rules and regulations shall be pro-
27 mulgated in accordance with the provisions of article
28 three, chapter twenty-nine-a of this code, and shall in-
29 clude, but not be limited to, provisions pertaining to the
30 following:

- 31 (1) Reservation of parking spaces for the disabled
32 where possible;
- 33 (2) Construction of exterior walkways, curbs and
34 ramps;
- 35 (3) Design and construction of doorways;
- 36 (4) Design and construction of interior floors, steps,
37 ramps and doorways;
- 38 (5) Design of and accessibility to elevators;
- 39 (6) Design and construction of toilet facilities for use
40 by the disabled;
- 41 (7) Design and location of public telephones, water
42 fountains and other conveniences to facilitate their use by
43 the disabled; and
- 44 (8) Accessibility of at least one primary entrance to
45 individuals in wheelchairs.
- 46 No rule or regulation promulgated hereunder shall re-
47 quire the construction of elevators in buildings or fa-
48 cilities not constructed in whole or in part by the use of
49 state, county or municipal funds or the funds of any other
50 political subdivision of this state when such buildings or
51 facilities are less than three stories in height.

**§18-10F-4. State board of public buildings created; member-
ship; expenses.**

1 There is hereby created the state board of public build-
2 ings which shall consist of five members appointed by the
3 governor, one member to be a representative of the state
4 building commission, one member to be a representative
5 of a municipality, one member to be a representative of
6 the state board of education, and one member to be an
7 architect. Each member shall serve at the will and plea-
8 sure of the governor. The members of the board shall re-
9 ceive no compensation for their services on such board,
10 but they shall be reimbursed for all reasonable and neces-
11 sary expenses actually incurred in the performance of
12 their duties as members of the board.

§18-10F-5. Enforcement of article.

1 It shall be the duty of the director to enforce the pro-
2 visions of this article and all reasonable rules and regu-
3 lations promulgated hereunder, and it shall be the duty
4 of the state, any county, municipality or other political
5 subdivision thereof, or any department, agency, commis-
6 sion, board, bureau or individual responsible for the con-
7 struction of any public building, sidewalk, curb or facility
8 to comply with the provisions of this article and all such
9 reasonable rules and regulations. Whenever the director
10 ascertains that any such public building, sidewalk, curb
11 or facility is about to be constructed or is under construc-
12 tion (which construction began after the effective date of
13 this article) in violation of the provisions of this article
14 or any such reasonable rules and regulations, he may
15 petition the circuit court of the county wherein the con-
16 struction is to be or is taking place for an order to compel
17 compliance with the provisions of this article and such
18 reasonable rules and regulations, and the court may com-
19 pel compliance unless such court finds that compliance
20 would create a financial hardship, be impractical or serve
21 no benefit.

CHAPTER 99

(H. B. 1139—By Mr. Speaker, Mr. McManus, and Mr. Seibert)

[Passed March 5, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to composition and appointment of the board of trustees of the public employees retirement system.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-5. Board of trustees created; powers and duties generally; composition.

1 The board of trustees of the West Virginia public employees
2 retirement system is hereby created. The administration and
3 management of the retirement system, the responsibility for
4 making effective the provisions of this article, and the authority
5 to make all rules and regulations therefor, are hereby vested in
6 the said board of trustees, except as is otherwise specifically
7 provided in this article. The board shall consist of five trustees,
8 as follows:

9 (a) The auditor of the state, by virtue of his office;

10 (b) The treasurer of the state, by virtue of his office;

11 (c) The commissioner of finance and administration, by
12 virtue of his office;

13 (d) A resident of the state, who is not a member, retirant
14 or beneficiary of the retirement system, to be appointed by the
15 governor, by and with the advice and consent of the Senate;

16 (e) One member of the retirement system, who is an em-
17 ployee of a participating public employer other than the state
18 of West Virginia, to be appointed by the governor, by and with
19 the advice and consent of the Senate.

CHAPTER 100

(H. B. 1112—By Mr. Speaker, Mr. McManus, and Mr. Seibert)

[Passed March 8, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections six and seven, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to correction of references to appointed members of the board of trustees of the public employees retirement system, their terms of office and vacancies.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-6. Trustees' terms of office.

§5-10-7. Vacancies on board.

§5-10-6. Trustees' terms of office.

1 The first terms of office for the trustees provided for in
2 subdivisions (d) and (e) of section five of this article shall
3 expire June thirty, one thousand nine hundred sixty-five, June
4 thirty, one thousand nine hundred sixty-four and June thirty,
5 one thousand nine hundred sixty-three, respectively, as the
6 governor shall designate at the time of the appointments.
7 Thereafter, the terms of office for the said trustees shall be
8 five years. Each trustee shall serve as trustee until his
9 successor is appointed and has qualified. In order to make the
10 preliminary arrangements for the operation of the retire-
11 ment system as of its effective date, the governor shall make
12 the appointments provided for in section five hereof as
13 soon as practicable after the passage of this article.

§5-10-7. Vacancies on board.

1 In the event any trustee, provided for in subdivisions (d)
2 and (e) of section five of this article leaves the employ of a
3 participating public employer, or fails to attend three con-
4 secutive meetings of the board of trustees, unless in each
5 case excused for cause by the remaining trustees attending
6 such meeting or meetings, he shall be considered to have
7 resigned from the board and the board shall, by resolution,
8 declare his office of trustee vacated. If a vacancy occurs in
9 the office of such trustee, the governor shall, within thirty
10 days from and after the date of the vacancy, fill the vacancy,
11 by appointment, for the unexpired term.

CHAPTER 101

(H. B. 1180—By Mr. Speaker, Mr. McManus, and Mr. Seibert)

[Passed March 5, 1974; in effect July 1, 1974. Approved by the Governor.]

AN ACT to amend and reenact section thirty, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to refund of accumulated contributions in the event a member of the public employees retirement system leaves the employ of a participating public employer before he is entitled to an annuity.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-30. Refund of accumulated contributions.

1 (a) In the event a member leaves the employ of a partici-
2 pating public employer prior to the date he becomes entitled
3 to retire with an annuity payable by the retirement system
4 he shall be paid, upon his written application filed with the
5 board of trustees, his accumulated contributions standing
6 to his credit in the members deposit fund, if his separation
7 from the employ of a participating public employer occurs
8 subsequent to a period of two years from and after the date
9 he last became a member of the system. If his said separation
10 from the employ of a participating public employer occurs
11 within a period of two years from and after the date he last
12 became a member of the system, he shall be paid his ac-
13 cumulated contributions standing to his credit in the members
14 deposit fund less the total interest credited to his individual
15 account therein; and the said total interest credit shall be trans-
16 ferred to the income fund.

17 (b) In the event a member dies and does not leave a
18 beneficiary entitled to an annuity payable by the retirement
19 system, his accumulated contributions standing to his credit

20 in the members deposit fund at the time of his death shall
21 be paid to such person or persons as he shall have nominated
22 by written designation duly executed and filed with the board
23 of trustees. If there be no such designated person or persons
24 surviving the said member, his said accumulated contributions
25 shall be paid to his estate.

26 (c) Refunds of a member's contributions or accumulated
27 contributions, as the case may be, may be made in equal
28 installments according to such rules and regulations as the
29 board of trustees may from time to time adopt.

30 (d) In the event a member dies and a refund of his
31 contributions is due to be made to an infant child or chil-
32 dren by reason of being the person or persons nominated
33 by written designation duly executed and filed with the re-
34 tirement system, and the amount of said refund is less
35 than one thousand dollars, then, and in said event, the board
36 of trustees may make said refund, upon written application, to
37 the closest relative or natural guardian for the use of said
38 infant child or children. The board of trustees may, at its
39 discretion, require that said relative or natural guardian post
40 bond with the retirement system to insure that said money
41 will be used for the benefit of said infant child or children.
42 In any event, before said refund is made to said relative or
43 natural guardian of the said infant or infants, said relative or
44 natural guardian shall give the retirement system an indemnify-
45 ing release of said sums so paid over.

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CHAPTER 102

(H. B. 1141—By Mr. Speaker, Mr. McManus, and Mr. Seibert)

[Passed March 8, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section forty-eight, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the amount of compensation a retirant, under the public employees retirement system,

may receive from temporary employment and continue to draw his annuity.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-48. Reemployment after retirement.

1 In the event a retirant becomes employed by a participating
2 public employer, payment of his annuity shall be suspended
3 during the period of his reemployment and he shall become
4 a contributing member to the retirement system. If his reem-
5 ployment is for a period of one year or longer, his annuity shall
6 be recalculated and he shall be granted an increased annuity
7 due to such additional employment, said annuity to be com-
8 puted according to section twenty-two of this article. A re-
9 tirant may accept temporary employment for a participating
10 employer so long as he shall not receive compensation in ex-
11 cess of twenty-four hundred dollars per year and continue to
12 draw his annuity.

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CHAPTER 103

(H. B. 1140—By Mr. Speaker, Mr. McManus, and Mr. Seibert)

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[Passed March 9, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section seven, article thirteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to payment of annuities when a member, with reciprocal service credit, retires from the public employees retirement or the state teachers retirement systems.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13. PUBLIC EMPLOYEES' AND TEACHERS' RECIPROCAL SERVICE CREDIT ACT.

§1. Repeal of section relating to payment of annuities when a member, with reciprocal service credit, retires from the public employees retirement or the state teachers retirement systems.

- 1 Section seven, article thirteen, chapter five of the code of
- 2 West Virginia, one thousand nine hundred thirty-one, as
- 3 amended, is hereby repealed.

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CHAPTER 104

(S. B. 325—By Mr. Huffman)

[Passed March 8, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article nine, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the state tax commissioner as chief inspector and supervisor of public offices; relating to a uniform system of accounting and reporting for local governmental offices and agencies and all public accounts of the same class; authorizing the prescribing of receipt forms and the formulation, prescribing and installing of a uniform system with respect to the utilization, processing and disposition of receipts given as evidence of moneys or property collected or received by local governmental offices and agencies; and specifying that the power and authority granted shall be in addition to all other power and authority vested in the state tax commissioner as chief inspector and supervisor of public offices or otherwise.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9. SUPERVISION OF PUBLIC OFFICES.**§6-9-2. Uniform system of accounting and reporting for local governmental offices and agencies; form and uniform system for receipts; additional power and authority.**

1 The chief inspector shall formulate, prescribe and in-
2 stall a system of accounting and reporting in conformity
3 with the provisions of this article, which shall be uniform
4 for all local governmental offices and agencies (including
5 district offices, justices of the peace and constables) and
6 for all public accounts of the same class and which shall
7 exhibit true accounts and detailed statements for all
8 public funds collected, received and expended for any
9 purpose by all local governmental officers, employees or
10 other persons. Such accounts shall show the receipt, use
11 and disposition of all public property under the control of
12 such local governmental officers, employees or other per-
13 sons, and any income derived therefrom and of all sources
14 of such public income, the amounts due and received from
15 each source, all receipts, vouchers and other documents
16 kept or required to be kept and necessary to identify and
17 prove the validity of every transaction, all statements and
18 reports made or required to be made for the internal ad-
19 ministration of the office to which they pertain and all
20 reports published or required to be published for the in-
21 formation of the people regarding any and all details of
22 the financial administration of such public affairs. The
23 chief inspector shall prescribe receipt forms for all such
24 local governmental offices and agencies and shall formu-
25 late, prescribe and install a uniform system with respect
26 to the utilization, processing and disposition of receipts
27 given as evidence of moneys or property collected or re-
28 ceived by such local governmental offices and agencies.
29 The chief inspector shall also formulate, prescribe and in-
30 stall a system of accounting for the civil accounts of the
31 justices of the peace, which shall exhibit true accounts
32 and detailed statements of the services rendered, the name
33 and address of the persons for whom rendered, the charges
34 made and collected therefor and such other information
35 as may be necessary to identify the transaction.

36 The power and authority herein granted shall be in
 37 addition to all other power and authority vested by law
 38 in the state tax commissioner as chief inspector or other-
 39 wise.

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CHAPTER 105

(Com. Sub. for H. B. 811—By Mr. Speaker, Mr. McManus, and Mr. Seibert)

[Passed February 12, 1974; in effect July 1, 1974. Approved by the Governor.]

AN ACT to amend and reenact section sixteen, article one-b, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to pay and allowances for members of the national guard while in active service of the state.

Be it enacted by the Legislature of West Virginia:

That section sixteen, 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-16. Pay and allowances.

1 (a) Pay and allowances for officers and men of the national
 2 guard for drill, encampment or other duty for training pre-
 3 scribed or ordered by the federal government, shall be such as
 4 are provided by the laws of the United States.

5 (b) Officers and men of the national guard in active ser-
 6 vice of the state shall receive the same pay and allowances, in
 7 accordance with their rank and service, as are prescribed for
 8 the armed forces of the United States: *Provided*, That no mem-
 9 ber of the national guard shall receive base pay of less than
 10 twenty-five dollars per day while he is in active service of the
 11 state.

12 (c) Notwithstanding any of the provisions of this article,
 13 members of the national guard, may, with their consent, per-

14 form without pay, or without pay and allowances any duties
15 prescribed by section thirteen of this article pursuant to com-
16 petent orders therefor; *Provided*, That necessary expense may
17 be furnished such personnel within the discretion of the adj-
18 tant general.

CHAPTER 106

(Com. Sub. for H. B. 998--By Mr. Shaffer and Mrs. Smirl)

[Passed March 9, 1974; in effect July 1, 1974. Approved by the Governor.]

AN ACT to amend and reenact section three, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the organization of the companies and platoons of the department of public safety; training; salaries and bonds of members.

Be it enacted by the Legislature of West Virginia:

That section three, 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.

§15-2-3. Companies and platoons; how constituted; training of members and other peace officers; salaries and bonds of members.

1 The superintendent shall create, appoint and equip a de-
2 partment of public safety, which shall, in addition to the
3 personnel provided for in section two of this article, consist of
4 four companies or platoons. They shall be designated as com-
5 panies "A," "B," "C" and "D." Each company or platoon
6 shall be composed of one captain, one lieutenant, one first
7 sergeant, seven sergeants, not more than seventeen corporals
8 and such number of troopers and troopers first class as the
9 superintendent may decide best, but such number of troopers
10 and troopers first class in any company or platoon shall not
11 at any time be less than twenty-five.

12 The superintendent shall provide adequate facilities for the

13 training of all members of the department and shall prescribe
14 a basic training course for newly enlisted members. He shall
15 also provide advanced or in-service training from time to time
16 for all members of the department. The superintendent shall
17 hold training classes for other peace officers in the state
18 without cost to such officers, except actual expenses for food,
19 lodging and school supplies.

20 Members of the department shall receive salaries, as follows:

21 The inspector shall receive an annual salary of fourteen thou-
22 sand three hundred four dollars; the major shall receive an an-
23 nual salary of twelve thousand nine hundred thirty-one dollars;
24 captains shall each receive an annual salary of eleven thousand
25 six hundred sixty-four dollars; lieutenants shall each receive
26 an annual salary of eleven thousand fifty-seven dollars; the
27 master sergeants and first sergeants shall each receive an
28 annual salary of ten thousand three hundred eighty-four
29 dollars; sergeants shall each receive an annual salary of ten
30 thousand eighty dollars; corporals shall each receive an an-
31 nual salary of nine thousand six hundred seventy-one dol-
32 lars; troopers first class shall receive an annual salary of nine
33 thousand three hundred eighty dollars; and each newly enlisted
34 trooper shall receive a salary of six hundred fifty-seven dol-
35 lars during the period of his basic training, and upon the
36 satisfactory completion of such training and assignment to
37 active duty each trooper shall receive, during the remainder of
38 his first year's service a salary of seven hundred twenty-eight
39 dollars monthly. During the second year of his service in the
40 department each trooper shall receive an annual salary of eight
41 thousand nine hundred five dollars; during the third year
42 of his service each trooper shall receive an annual salary
43 of nine thousand seventy-seven dollars; and during the
44 fourth and fifth years of his service and for each year
45 thereafter each trooper shall receive an annual salary of
46 nine thousand two hundred thirty-five dollars. Each mem-
47 ber of the department entitled thereto by the provisions here-
48 of shall receive an increase in salary over that hereinbefore
49 set forth in this section, for grade and rank, based on length of
50 service, including that heretofore and hereafter served, with
51 the department, as follows: At the end of five years of service
52 with the department, such member of the department shall

53 receive a salary increase of three hundred dollars per year
54 to be effective during his next three years of service and like
55 increases at three-year intervals thereafter, until a total of six
56 such increases shall be received and such increases shall be
57 cumulative.

58 In applying the foregoing salary schedule where salary in-
59 creases are provided for length of service, members of the de-
60 partment in service at the time this article becomes effective
61 shall be given credit for prior service and shall be paid such
62 salaries as the same length of service will entitle them to re-
63 ceive under the provisions hereof.

64 Each member of the department of public safety, except the
65 superintendent and civilian employees, shall, before entering
66 upon the discharge of his duties, execute a bond with security
67 in the sum of three thousand five hundred dollars payable to the
68 state of West Virginia, conditioned for the faithful performance
69 of his duties as such, and such bond shall be approved as to
70 form by the attorney general, and as to sufficiency by the
71 governor, and the same shall be filed with the secretary of state
72 and preserved in his office.

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CHAPTER 107

(H. B. 841—By Mr. Speaker, Mr. McManus)

[Passed March 9, 1974; in effect July 1, 1974. Approved by the Governor.]

AN ACT to amend and reenact sections eleven and twenty-seven, article two, chapter fifteen; and section fourteen, article seventeen, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the department of public safety; arrest, seizure, mileage and other fees to be paid into the state general revenue fund; justices may not make payment directly to any member of the department of public safety any fee collected on account of the department of public safety.

Be it enacted by the Legislature of West Virginia:

That sections eleven and twenty-seven, article two, chapter

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

Chapter

15. Public Safety.

50. Justices and Constables.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.

§15-2-11. Powers of superintendent, officers and members; fee to which members entitled.

§15-2-27. Death, disability and retirement fund; retirement board.

§15-2-11. Powers of superintendent, officers and members; fee to which members entitled.

1 The superintendent and each of the officers and members
2 of the department of public safety are hereby authorized and
3 empowered as follows:

4 (a) To make arrests anywhere within the confines of the
5 state of any and all persons charged with the violation of
6 any law of this state, or of the United States, and when a
7 witness to the perpetration of any offense or crime, or to
8 the violation of any law of this state, or of the United
9 States, may arrest without warrant; to arrest and detain any
10 and all persons suspected of the commission of any felony or
11 misdemeanor whenever complaint is made and a warrant is
12 issued thereon for such arrest, and any and all persons so
13 arrested shall be forthwith brought before the proper tribunal
14 for examination and trial in the county where the offense
15 for which any such arrest has been made was committed;

16 (b) To serve criminal process issued by any court or
17 justice of the peace anywhere within this state, except that
18 they shall not serve civil process;

19 (c) To cooperate with local authorities in detecting crime
20 and in apprehending any person or persons engaged in or
21 suspected of the commission of any crime, misdemeanor or
22 offense against the law of this state, or of the United States,
23 or of any ordinance of any municipality in this state; and to
24 take affidavits in connection with any application to the

25 state road commission, department of motor vehicles and
26 department of public safety of West Virginia for any license,
27 permit or certificate that may be lawfully issued by these
28 departments of state government;

29 (d) Members of the department of public safety shall be
30 and are hereby created forest patrolmen and game and fish
31 wardens throughout the state to do and perform any and all
32 duties and exercise any and all powers of such officers, and
33 may apprehend and bring before any court or justice of the
34 peace having jurisdiction of such matters, anyone violating
35 any of the provisions of chapters twenty, sixty and sixty-one of
36 this code, and any and all amendments thereto; and the de-
37 partment of public safety shall at any time be subject to the
38 call of the West Virginia alcohol beverage control com-
39 missioner to aid in apprehending any person violating any
40 of the provisions of said chapter sixty. They shall serve and
41 execute warrants for the arrest of any person and warrants
42 for the search of any premises issued by any properly con-
43 stituted authority, and shall exercise all of the powers con-
44 ferred by law upon a sheriff, constable or any other peace of-
45 ficer of this state, except that they shall not serve any civil
46 process or exercise any of the powers of such officers in mat-
47 ters of a civil nature;

48 (e) Any member of the department of public safety know-
49 ing or having reason to believe that anyone has violated the
50 law may make complaint in writing before any court or offi-
51 cer having jurisdiction and procure a warrant for such offen-
52 der, execute the same and bring such person before the proper
53 tribunal having jurisdiction. He shall make return on all
54 such warrants to such tribunals and his official title shall be
55 "member of the department of public safety." Members of
56 the department of public safety may execute any summons or
57 process issued by any tribunal having jurisdiction requiring
58 the attendance of any person as a witness before such tribunal
59 and make return thereon as provided by law, and any return
60 by a member of the department of public safety showing the
61 manner of executing such warrant of process shall have the
62 same force and effect as if made by a sheriff;

63 (f) Each member of the department of public safety, when

64 called by the sheriff of any county, or when the governor
65 by proclamation so directs, shall have full power and author-
66 ity within such county, or within the territory defined by the
67 governor, to direct and command absolutely the assistance of
68 any sheriff, deputy sheriff, constable, chief of police, police-
69 man, town marshal, game and fish warden, and any and every
70 peace officer of the state, or of any county or municipality
71 therein, or of any able-bodied citizen of the United States, to
72 assist and aid in accomplishing the purposes expressed in this
73 article. When so called, any officer or person shall, during the
74 time his assistance is required, be and be considered to be, for
75 all purposes, a member of the department of public safety force
76 and subject to all the provisions of this article.

77 For official services rendered in any criminal case, a mem-
78 ber of the department of public safety shall be entitled to re-
79 ceive the same fees as a constable is entitled to receive for
80 the same services pursuant to section twelve, article seven-
81 teen, chapter fifty of this code, when such fees are actually
82 paid by or for the defendant in such criminal case, pur-
83 suant to the order made and entered therein, to the justice
84 of the peace, the clerk of the court or other officer for the
85 services of such member: *Provided*, That under no circum-
86 stances shall any member of the department of public safety
87 be entitled to any mileage fees for services rendered in crim-
88 inal cases and under no circumstances shall any county court
89 or municipal corporation be required to pay any fees or
90 costs which the county court would be required to pay were
91 the services rendered by a constable.

92 All such fees shall be collected by the justice of the peace,
93 who shall quarterly, on the first day of January, April, July and
94 October, certify and submit to the state tax commissioner a list
95 of all such collection, along with the amount so collected.
96 Such certification shall be submitted on forms prescribed
97 by and furnished by the state tax commissioner. Upon re-
98 ceipt of such collections the state tax commissioner shall pay
99 the same to the state treasurer which shall be deposited by
100 him to the credit of the general revenue of the state. The
101 Legislature shall then appropriate annually to the department
102 of public safety death, disability and retirement fund an

103 amount equal to the total funds deposited into the state
104 treasury by the state tax commissioner as set forth in this article.

§15-2-27. Death, disability and retirement fund; retirement board.

1 There shall be continued the death, disability and retire-
2 ment fund heretofore created for the benefit of members of
3 the department of public safety, and any dependent of a
4 retired or deceased member thereof.

5 There shall be deducted from the monthly payroll of each
6 member of the department of public safety and paid into
7 such fund six percent of the amount of his salary, and an
8 additional twelve percent of the monthly salary of each
9 member of said department shall be paid by the state of West
10 Virginia monthly into such fund out of the biennial appro-
11 priation for said department. All moneys payable into such
12 fund shall be deposited in the state treasury, and the
13 treasurer and auditor shall keep a separate account thereof
14 on their respective books.

15 The moneys in this fund, and the right of a member to a
16 retirement allowance, to the return of contributions, or to
17 any benefit under the provisions of this article, are hereby
18 exempt from any state or municipal tax; shall not be subject
19 to execution, garnishment, attachment or any other process
20 whatsoever; and shall be unassignable except as is provided
21 in this article.

22 The death, disability and retirement fund shall be ad-
23 ministered by a retirement board which shall consist of the
24 attorney general, state treasurer, the superintendent and two
25 members in active service of the department of public safety:
26 *Provided*, That members of said retirement board shall not
27 be entitled to receive any compensation in addition to the
28 salary of their respective offices for any service rendered
29 as a member of said retirement board: *Provided, however*,
30 That the superintendent may pay out of funds appropriated
31 for operation of said department the reasonable expenses of
32 members of said board necessarily incurred in connection with
33 dispatch of any business properly before such board. The
34 two members of said department shall be elected to membership
35 on the retirement board by vote of the members of the depart-
36 ment of public safety; such election to be held on the first

37 Tuesday in June next following the passage of this act and
38 on the first Tuesday in June each two years thereafter. The
39 attorney general, state treasurer and the superintendent of
40 the department of public safety shall promulgate any and all
41 necessary rules and regulations for holding in a fair and
42 impartial manner the election on the first Tuesday in June
43 next following the passage of this act and thereafter the retire-
44 ment board consisting of the attorney general, state treasurer,
45 superintendent and the two duly elected members of said
46 department shall have authority to promulgate and, from
47 time to time, revise rules and regulations for holding all
48 subsequent elections in a fair and impartial manner. All elec-
49 tions shall be held under the direction of the superintendent of
50 said department in accordance with said rules and regula-
51 tions. The members of the department chosen to serve on
52 said retirement board shall hold office for a period of two
53 years commencing on the first day of July next following the
54 date of such election. When any member elected to the re-
55 tirement board shall die, resign from the board, resign or be
56 discharged from service in the department, make application
57 for retirement, be retired, or become disabled, the office of
58 such member of the retirement board shall be declared vacant
59 by the superintendent of said department, and said superin-
60 tendent, to fill such vacancy, shall appoint the member in ac-
61 tive service of said department who as an unsuccessful can-
62 didate at the preceding election of members to said retirement
63 board received the greatest number of votes. No member of
64 the retirement board shall participate in any hearing at which
65 his own petition for retirement or the petition of any member
66 of said department who is related to him by blood or mar-
67 riage shall be presented for consideration.

68 At its first meeting following each election of members to
69 the retirement board said board shall elect one of its mem-
70 bers to serve as chairman and a second member to serve as
71 secretary thereof. The retirement board shall have the power
72 to make rules and regulations, not inconsistent with the pro-
73 visions hereof, governing procedure and order and man-
74 ner of business by and before such board. The retirement
75 board shall have the power to make awards and to revise and
76 terminate awards previously made for such times and under

77 such terms and conditions as are hereinafter provided. The
78 votes of a majority of the five members of the board shall be
79 necessary to decision of any matter by the board. Decisions
80 made by the board shall be supreme and final and there shall
81 be no appeal therefrom.

82 It shall be the duty of the retirement board on or before
83 the first day of July of each year to cause all future awards
84 from such fund to be valued and, to the extent that moneys
85 shall be available, reserves based on sound actuarial prin-
86 ciples for payment thereof to be carried on the funds ac-
87 count as a liability against the reserve fund. The board shall
88 have the authority to employ an actuary for such purpose. The
89 board shall cause a system of accounting to be installed and
90 maintained to reflect currently and truly all transactions or
91 developments pertaining to age of members and eligible de-
92 pendents surviving deceased members, periods of service and
93 aggregate earnings of all members eligible to participate in
94 said fund and any other matter relating to maintenance of
95 said fund or administration thereof, and each year to cause to
96 be made and submitted to each member of said department a
97 statement of the condition of said fund. Costs and expenses in-
98 curred in making actuarial studies, audits and installations and
99 maintenance of such accounting system shall be paid by the su-
100 perintendent from funds appropriated for operation of the de-
101 partment of public safety.

102 All moneys paid into and accumulated in said death, disabil-
103 ity and retirement fund, except such amounts as shall be des-
104 ignated or set aside by the retirement board for payments of
105 death, disability and retirement benefits and awards, shall
106 be invested by the state board of public works in bonds of the
107 government of the United States, the state of West Virginia,
108 or any political subdivision thereof selected or approved by
109 the retirement board.

CHAPTER 50. JUSTICES AND CONSTABLES.

ARTICLE 17. FEES, FINES AND COSTS.

§50-17-14. Recovery of fees not paid by parties.

1 In all cases and proceedings before a justice in relation to
2 both felonies and misdemeanors, not triable on the merits

3 of the case, the fees provided by section eleven shall be
4 audited and paid by the county court as other claims against
5 the county. Fees in misdemeanor cases, triable on the merits
6 thereof, may be paid as provided by section fifteen, article
7 five, chapter seven of the code.

8 The justice may issue executions for all fines and costs
9 imposed by him in criminal proceedings which are not
10 paid by the parties, and shall deliver such executions to a
11 constable of his district of the county and such constable
12 shall collect the same by levy or otherwise if the same can
13 be collected, and shall return such executions to the justice
14 issuing the same, showing how he has executed the same,
15 and the justice shall note such returns on his docket. All
16 costs collected by the justice by executions or otherwise shall
17 be paid by him to the sheriff in like manner as the justice
18 is required by section fifteen of this article to pay to the
19 sheriff all fines collected by him: *Provided*, That the justice
20 need not pay to the sheriff but may pay direct to any
21 constable, and to any witness such lawful fees as he may
22 have collected on their behalf and which they are lawfully
23 entitled to receive.

24 No payment of fees or costs shall be made to any justice as
25 provided herein until the claim shall have been submitted
26 to the prosecuting attorney and the approval or disapproval
27 of the prosecuting attorney shall have been noted thereon.



CHAPTER 108

(H. B. 1363—Originating in the House Committee on the Judiciary)

[Passed March 9, 1974; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section eighteen, article twenty-seven, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to amend and reenact section one, article five, chapter twenty-four-a of said code, all relating to urban mass transportation systems and the authority, powers and duties of the public service commission with respect thereto.

Be it enacted by the Legislature of West Virginia:

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

Chapter

8. Municipal Law, Municipalities and Counties; Intergovernmental Relations.

24A. Motor Carriers of Passengers and Property for Hire.

**CHAPTER 8. MUNICIPAL LAW, MUNICIPALITIES
AND COUNTIES; INTERGOVERNMENTAL
RELATIONS.**

**ARTICLE 27. INTERGOVERNMENTAL RELATIONS—URBAN MASS
TRANSPORTATION SYSTEMS.**

§8-27-18. Authority and duty of public service commission. .

1 Each authority which undertakes to engage in transporting
2 passengers for hire by motor vehicles or other conveyances
3 over regular routes shall be deemed a common carrier of pas-
4 sengers for hire and shall be subject to the jurisdiction and
5 authority of the public service commission of West Virginia as
6 provided in chapter twenty-four and chapter twenty-four-a of
7 this code, to the same extent as any other common carrier of
8 passengers for hire, except that the public service commission
9 shall not have the power to originate, establish, promulgate,
10 change, investigate and enforce routes and schedules for any
11 urban mass transportation system established pursuant to this
12 article: *Provided*, That it shall be the mandatory duty of the
13 public service commission to fix and establish, from time
14 to time, such fees, rates or other charges for each
15 authority as will provide revenues in each year at least
16 sufficient to pay the principal of and interest on all bonds
17 issued by that authority, and reasonable reserves there-
18 for, as the same shall become due in each year, together
19 with the cost of administration, maintenance, repair and
20 operation of such system or systems in each year, to-
21 gether with all other payments required in each year by the
22 resolution which authorized the issuance of such bonds or the

23 trust indenture securing the same, including reasonable re-
 24 serves, margins or sinking funds for any of such purposes.

CHAPTER 24A. MOTOR CARRIERS OF PASSENGERS AND PROPERTY FOR HIRE.

ARTICLE 5. POWERS AND DUTIES OF COMMISSION.

§24A-5-1. Powers of commission as to rates, schedules, etc.

1 The commission shall have power to originate, establish,
 2 promulgate, change, investigate and enforce tariffs, rates, joint
 3 rates, classifications, and schedules for all motor carriers, ex-
 4 cept for routes and schedules of urban mass transportation sy-
 5 stems established and maintained pursuant to article twenty-
 6 seven, chapter eight of this code, and the practices, services and
 7 facilities of all motor carriers. And whenever the commission
 8 shall, after hearing, find any existing rates, tariffs, joint rates,
 9 classifications, schedules, practices, services, or facilities un-
 10 just, unreasonable, insufficient, or unjustly discriminatory or
 11 otherwise in violation of any of the provisions of this chapter,
 12 the commission shall, by order, fix and require reasonable rates,
 13 joint rates, tariffs, classifications, schedules, practices, services,
 14 or facilities to be followed or established in the future in lieu
 15 of those found to be unjust, unreasonable, insufficient, or un-
 16 justly discriminatory or otherwise in violation of any provisions
 17 of law.

CHAPTER 109

(Com. Sub. for S. B. 37—By Mr. Oates)

[Passed March 9, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article two, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the procedure for changing public utility rates; relating to the rate of interest to be paid by a public utility on a refund of all or a portion of money received from an increased rate; establishing a minimum and maximum rate of interest;

authorizing the public service commission to specify the applicable interest rate; and establishing guidelines to be taken into account by the public service commission in specifying the applicable interest rate.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-4. Procedure for changing rates.

1 No public utility subject to this chapter shall change,
2 suspend or annul any rate, joint rate, charge, rental or
3 classification except after thirty days' notice to the com-
4 mission and the public, which notice shall plainly state
5 the changes proposed to be made in the schedule then in
6 force and the time when the changed rates or charges
7 shall go into effect; but the commission may enter an
8 order suspending the proposed rate as hereinafter pro-
9 vided. The proposed changes shall be shown by printing
10 new schedules, or shall be plainly indicated upon the
11 schedules in force at the time, and kept open to public
12 inspection: *Provided*, That the commission may, in its
13 discretion, and for good cause shown, allow changes upon
14 less time than the notice herein specified, or may modify
15 the requirements of this section in respect to publishing,
16 posting and filing of tariffs, either by particular instruc-
17 tions or by general order.

18 Whenever there shall be filed with the commission any
19 schedule stating a change in the rates or charges, or joint
20 rates or charges, or stating a new individual or joint rate
21 or charge or joint classification or any new individual or
22 joint regulation or practice affecting any rate or charge,
23 the commission shall have authority, either upon com-
24 plaint or upon its own initiative without complaint, to
25 enter upon a hearing concerning the propriety of such
26 rate, charge, classification, regulation or practice; and, if
27 the commission so orders, it may proceed without answer

28 or other form of pleading by the interested parties, but
29 upon reasonable notice, and, pending such hearing and
30 the decision thereon, the commission, upon filing with
31 such schedule and delivering to the public utility affected
32 thereby a statement in writing of its reasons for such
33 suspension, may suspend the operation of such schedule
34 and defer the use of such rate, charge, classification, regu-
35 lation or practice, but not for a longer period than one
36 hundred and twenty days beyond the time when such
37 rate, charge, classification, regulation or practice would
38 otherwise go into effect; and after full hearing, whether
39 completed before or after the rate, charge, classification,
40 regulation or practice goes into effect, the commission
41 may make such order in reference to such rate, charge,
42 classification, regulation or practice as would be proper
43 in a proceeding initiated after the rate, charge, classifi-
44 cation, regulation or practice had become effective: *Pro-*
45 *vided, however,* That if any such hearing and decision
46 thereon cannot be concluded within the period of suspen-
47 sion, as above stated, such rate, charge, classification,
48 regulation or practice shall go into effect at the end of
49 such period. In such case the commission may require
50 such public utility to enter into a bond in an amount
51 deemed by the commission to be reasonable and condi-
52 tioned for the refund to the persons or parties entitled
53 thereto of the amount of the excess, plus interest at the
54 rate of not less than six nor more than ten percent per-
55 annum as specified by the commission, if such rates so
56 put into effect are subsequently determined to be higher
57 than those finally fixed for such utility. In specifying the
58 applicable interest rate between the aforesaid minimum
59 and maximum, the commission shall be guided by the
60 interest rate which such public utility would in all prob-
61 ability have to agree to pay if such public utility at that
62 time borrowed in the marketplace a sum of money
63 equivalent to the amount of money the commission es-
64 timates the increase in rates will produce between the
65 effective date of such increase and the anticipated date
66 the rates will be finally fixed for such public utility, it
67 being intended that a public utility should be discouraged
68 from imposing higher rates than it should reasonably

69 anticipate will be finally fixed as a means in effect of
70 borrowing money at a rate of interest less than such
71 public utility would have to agree to pay if it borrowed
72 money in the marketplace. No such accrued interest paid
73 on any such refund shall be deemed part of the cost of
74 doing business in a subsequent application for changing
75 rates or any decision thereon. At any hearing involving
76 a rate sought to be increased or involving the change of
77 any fare, charge, classification, regulation or practice,
78 the burden of proof to show that the increased rate or
79 proposed increased rate, or the proposed change of fare,
80 charge, classification, regulation or practice is just and
81 reasonable shall be upon the public utility making ap-
82 plication for such change. When in any case pending
83 before the commission all evidence shall have been taken,
84 and the hearing completed, the commission shall, within
85 three months, render a decision in such case.

86 Where more than twenty members of the public are af-
87 fected by a proposed change in rates, it shall be a suf-
88 ficient notice to the public within the meaning of this
89 section if such notice is published as a Class II legal ad-
90 vertisement in compliance with the provision of article
91 three, chapter fifty-nine of this code, and the publication
92 area for such publication shall be the community where
93 the majority of the resident members of the public af-
94 fected by such change reside or, in case of nonresidents,
95 have their principal place of business within this state.

CHAPTER 110

(S. B. 508—By Mr. Hubbard and Mr. Fanning)

[Passed March 6, 1974; in effect July 1, 1974. Approved by the Governor.]

AN ACT to amend and reenact section six, article three, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to special license fee; "public service commission fund."

Be it enacted by the Legislature of West Virginia:

That section six, article three, 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 3. DUTIES AND PRIVILEGES OF PUBLIC UTILITIES
SUBJECT TO REGULATIONS OF COMMISSION.**

§24-3-6. Special license fee; "public service commission fund."

1 (a) All public utilities subject to the provisions of this
2 chapter shall pay a special license fee in addition to those
3 now required by law. The amount of such fees shall be
4 fixed by the public service commission and such fee shall
5 not exceed five cents on each one hundred dollars of
6 value and shall be levied by it upon each of such public
7 utilities according to the value of its property as ascer-
8 tained by the last assessment, and shall be apportioned
9 among such public utilities upon the basis of such valu-
10 ation, which fees shall be paid on or before the twentieth
11 day of January in each year. Such sum, together with
12 that provided in subsection (b) hereof shall be paid into
13 the state treasury and kept as a special fund, designated
14 "public service commission fund," to be appropriated as
15 provided by law for the purpose of paying the salaries of
16 the commission, as fixed by this chapter, its expenses and
17 salaries, compensations, costs and expenses of its em-
18 ployees.

19 (b) All public utilities subject to the provisions of this
20 chapter shall pay a special license fee in addition to any
21 and all fees now required by law. The amount of such
22 fees shall be fixed by the public service commission and
23 such fee shall not exceed twenty cents on each one hun-
24 dred dollars of total gross revenue and shall be levied
25 by it upon each of such public utilities, in the proportion
26 which the total gross revenue derived from intrastate
27 business done by each of such public utilities in the cal-
28 endar year next preceding bears to the total gross revenue
29 derived from intrastate business done in such year by all
30 public utilities subject to regulation by the public service
31 commission, in addition to such fees as may be fixed by
32 the public service commission under the provisions of

33 subsection (a) hereof and which fees shall be paid on
34 or before the first day of July in each year. Such sum
35 shall be paid into the state treasury and be kept, appro-
36 priated and used as provided in subsection (a) hereof.

37 (c) Any balance remaining in said fund at the end of
38 any fiscal year shall not revert to the treasury but shall
39 remain in said fund and may be appropriated and used
40 as provided in subsection (a) hereof in the ensuing fiscal
41 years.

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CHAPTER 111

(H. B. 939—By Mr. Kopp and Mr. Jones, of Kanawha)

[Passed March 5, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-a, relating to railroad crossings; prohibiting the blocking of a street, road or highway by a railroad train for longer than a prescribed period of time, under certain circumstances and subject to certain exceptions; defining terms; relating to the authority of municipalities, counties and other public authorities with respect to the blocking of any such street, road or highway; relating to responsibility of railroad; providing a presumption as to the identity of the carrier operating a train; relating to service of process; providing criminal offenses and penalties; and providing a severability clause.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2A. RAILROAD CROSSING.

§31-2A-1. Definitions.

§31-2A-2. Blocking of crossing prohibited; time limit.

§31-2A-3. Responsibility of railroad company.

§31-2A-4. Presumption.

§31-2A-5. Service of process.

§31-2A-6. Fines and penalties.

§31-2A-7. Severability.

§31-2A-1. Definitions.

1 As used in this article:

2 (a) "Carrier," "railroad" or "railroad company" means a
3 common carrier by railroad.

4 (b) "Train" or "trains" mean engines, cars and any type
5 of railroad equipment or rolling stock, or any part thereof, cap-
6 able of blocking any crossing of a railroad track or tracks and
7 any public street, road or highway.

§31-2A-2. Blocking of crossing prohibited; time limit.

1 It shall be unlawful for any railroad company, except in
2 an emergency, to order, allow or permit the operation of or to
3 operate or to so operate its system so that a train blocks the
4 passage of vehicular traffic over the railroad crossing of any
5 public street, road or highway of this state for a period longer
6 than ten minutes. This section does not apply to an ob-
7 struction of any such street, road or highway caused by a
8 continuously moving train or caused by circumstances wholly
9 beyond the control of the railroad, but does apply to all other
10 obstructions as aforesaid, including, but not limited to, those
11 caused by a stopped train or a train engaged in switching,
12 loading or unloading operations: *Provided*, That, if any such
13 train is within the jurisdictional limits of any municipality
14 which now has or hereafter shall have in force and effect an
15 ordinance limiting the time a railroad crossing may be blocked
16 by a train, such ordinance shall govern, and the provisions
17 of this article shall not be applicable.

§31-2A-3. Responsibility of railroad company.

1 The railroad company shall be solely responsible for the
2 acts of its agents and employees in violating any provision of
3 this article or any provision of any ordinance of any municipi-
4 pality or any provision of any order of a county or other public
5 authority regulating the period of time any such street, road
6 or highway may be so blocked by a train.

§31-2A-4. Presumption.

1 There shall be a rebuttable presumption that a train
2 is operated by the carrier whose marks, numbers, signs and
3 symbols of identification appear on the engine or caboose of
4 such train.

§31-2A-5. Service of process.

1 Process issuing for a violation of this article may be served
2 upon the engineer or conductor of the train causing a violation
3 of the provisions of this article or any other officer, agent or
4 attorney-in-fact of the railroad company authorized by law to
5 receive service of summons or other process issuing against
6 said railroad company.

§31-2A-6. Fines and penalties.

1 If any railroad company, carrier or railroad shall violate
2 the provisions of this article it shall be guilty of a misdemeanor,
3 and, upon conviction thereof, shall be fined not less than
4 fifty dollars.

§31-2A-7. Severability.

1 If any provision of this article or the application thereof to
2 any person or circumstance be held invalid, such invalidity
3 shall not affect other provisions or applications of the article,
4 and to this end the provisions of this article are hereby de-
5 clared to be severable.

CHAPTER 112

(S. B. 352—By Mr. Hubbard)

[Passed March 4, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section sixteen, article two-a, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to verified statement of vendors and eliminating duplicate filing of vendor statements.

Be it enacted by the Legislature of West Virginia:

That section sixteen, article two-a, 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 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.

§17-2A-16. Prequalification disclosure by vendors; register of vendors.

1 Every person, firm or corporation selling or offering to
2 sell to the commissioner of the West Virginia department
3 of highways, upon competitive bids or otherwise, any
4 materials, supplies or equipment shall comply with all of
5 the provisions of section fourteen-a, article three, chapter
6 five-a of this code and shall file with the director of the
7 purchasing division of the state of West Virginia the affi-
8 davit required therein.

9 Any person, firm or corporation failing or refusing to
10 comply with said statute as herein required shall be in-
11 eligible to sell or offer to sell commodities to the commis-
12 sioner as hereinabove set forth.

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CHAPTER 113

(H. B. 1094—By Mr. Shingleton and Mr. Hawkins)

[Passed March 9, 1974; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section forty-three, article six, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to updating time; certain building and loan associations authorized to make loans and investments permitted to be made by federal savings and loan associations doing business in this state.

Be it enacted by the Legislature of West Virginia:

That section forty-three, article six, 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 6. BUILDING AND LOAN ASSOCIATIONS.

§31-6-43. Certain building and loan associations may make loans and investments permitted to be made by federal savings and loan associations doing business in this state.

1 In addition to all other powers conferred by this article,
2 building and loan associations whose accounts are insured
3 by the federal savings and loan insurance corporation are
4 authorized and empowered to make any loan or investment
5 permitted to be made by any federal savings and loan
6 association doing business in this state on the second day of
7 January, one thousand nine hundred seventy-four: *Provided,*
8 That all such loans and investments shall be made upon the
9 same terms and conditions and subject to the same restric-
10 tions and limitations as were at said date prescribed for
11 loans and investments made by such a federal savings and
12 loan association doing business in this state under the pro-
13 visions of the Homeowners Loan Act of one thousand nine
14 hundred thirty-three, as amended, and the "Rules and Regu-
15 lations for the Federal Savings and Loan System," as amended,
16 promulgated by the federal home loan bank board: *Provided,*
17 *however,* That (a) whenever and wherever authorization by
18 charter or bylaws of such a federal savings and loan associa-
19 tion was at said date required by said law or said rules and
20 regulations as a prerequisite to the making of any such
21 loan or investment, such authorization in the case of a build-
22 ing and loan association may be granted by its charter or
23 constitution and bylaws, as the case may be, or by amend-
24 ments thereto heretofore or hereafter duly adopted; (b)
25 whenever or wherever authorization of the members of such
26 a federal savings and loan association was at said date
27 required by said law or by said rules and regulations as a
28 prerequisite to the making of any such loan or investment,
29 such authorization may in the case of a building and loan
30 association be granted by its shareholders; and (c) whenever
31 and wherever approval by the board of directors of such
32 a federal savings and loan association was at said date
33 required by said law or by said rules and regulations as a
34 prerequisite to the making of any such loan or investment,
35 such approval may in the case of a building and loan

36 association be granted by the board of directors of such
37 building and loan association.

38 Building and loan associations are authorized and em-
39 powered to amend their charters, constitutions and bylaws
40 to provide for the making of all loans and investments
41 permitted by this section and their shareholders and boards
42 of directors are authorized to take any and all actions re-
43 quired to authorize the making of such loans and invest-
44 ments.

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CHAPTER 114

(S. B. 303—By Mr. Hubbard)

[Passed March 1, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen-h, article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to acquisition, construction and maintenance of parking facilities upon premises of state institutions of higher education; regulation of such parking facilities; regulation of the speed and flow of traffic on campus roadways; filing of such regulations with the secretary of state; penalty for violation.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-13h. Acquisition and operation of parking facilities at state institutions of higher education; regulation of parking facilities; regulation of speed and flow of traffic on campus roadways; filing of regulations with secretary of state; penalty for violation of regulations.

1 The board of regents is hereby authorized to construct,
2 maintain and operate automobile parking facilities upon

3 any premises owned or leased at any college or university
4 under its jurisdiction for use by student, faculty, staff and
5 visitors. Such facilities shall be open to use on such terms
6 and subject to such reasonable regulations as may be pre-
7 scribed by the board of regents. A summary of the regula-
8 tions shall be posted conspicuously in each parking area
9 and shall be filed with the secretary of state in the man-
10 ner prescribed by chapter twenty-nine-a of this code, and
11 when so filed shall have the force and effect of law.

12 The board of regents shall have authority to charge fees
13 for use of the parking facilities under its control. All
14 moneys collected for such use shall be paid into a special
15 fund which is hereby created in the state treasury. The
16 moneys in such fund shall be used first to pay the cost
17 of maintaining and operating such facilities, but any
18 excess not needed for this purpose may be used for the
19 acquisition of property by lease or purchase and the con-
20 struction thereof of additional parking facilities. Any
21 money in the fund not needed immediately for the ac-
22 quisition, construction, maintenance or operation of such
23 facilities may be temporarily invested in the state sinking
24 fund to the credit of the institution.

25 Notwithstanding any other motor vehicle or traffic law
26 or regulation to the contrary, the board of regents is also
27 authorized to regulate and control at any college or uni-
28 versity under its jurisdiction, the speed and flow of traffic,
29 including the parking of vehicles, on campus roads and
30 driveways. Rules and regulations for such purpose shall
31 be filed with the secretary of state in the manner pre-
32 scribed by section one, article two, chapter twenty-nine-a
33 of this code, and when so filed shall have the force and
34 effect of law. The board of regents shall cause to be con-
35 spicuously posted along such roadways notice signs per-
36 taining to the speed of vehicles, spaces available for park-
37 ing, directional flow of traffic and penalties which may be
38 imposed for violations of such rules and regulations.

39 Any person parking any vehicle or operating a vehicle
40 contrary to the rules and regulations upon conviction shall
41 be subject to a fine of not less than one dollar nor more
42 than five dollars for each offense. Justices of the peace

43 located in the county in which the college or university is
44 located shall have jurisdiction of such offenses, as well as
45 the judge of the municipal police court, in the event the
46 college or university is located within a municipality hav-
47 ing such an official. Moneys derived from such fines shall
48 be deposited in the special fund established by this section.

49 Whenever a vehicle is parked on any college or univer-
50 sity parking facility or campus roadway in violation of the
51 posted regulations, the institution shall have the authority
52 to remove the vehicle, by towing or otherwise, to an estab-
53 lished garage or parking lot for storage until called for
54 by the owner or his agent. The owner shall be liable for
55 the reasonable cost of such removal and storage, and un-
56 til payment of such cost the garage or parking lot operator
57 may retain possession of the vehicle subject to a lien for
58 the amount due. Notice to this effect shall be posted con-
59 spicuously in each parking area. The garage or parking
60 lot operator may enforce his lien for towing and storage
61 in the manner provided in section fourteen, article eleven,
62 chapter thirty-eight of this code, for the enforcement of
63 other liens.

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CHAPTER 115

(H. B. 827—By Mr. Speaker, Mr. McManus and Mrs. Merritt)

[Passed March 6, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-seven, relating to empowering state board of education to enter into contracts for programs, services and facilities with other agencies, institutions and bodies.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. STATE BOARD OF EDUCATION.**§18-2-27. Authority to contract for programs, services and facilities.**

1 The state board of education is authorized and empowered to
2 enter into contracts and expend funds for programs, services
3 and facilities provided by public and private educational
4 institutions, associations, boards, agencies, consortia, corpora-
5 tions, partnerships, individuals and local, state and federal
6 governmental bodies within and outside of West Virginia in
7 order that maximum educational opportunities of high quality
8 may be provided to the citizens of the state in the most
9 economical manner: *Provided*, That in no event shall a con-
10 tract for such services and facilities be entered into unless the
11 board has determined that said services and/or facilities are
12 necessary and that said services and/or facilities would be
13 at a savings to the state.

14 Notwithstanding the provisions of this section, nothing herein
15 contained shall supersede the responsibility and respective
16 duties of the commissioner of finance and administration, the
17 director of the purchasing division of such department and
18 the attorney general, for the execution and approval of the
19 contracts entered into under this article and such contracts
20 shall be in complete conformity with the provisions of articles
21 three and five, chapter five-a of this code.

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CHAPTER 116

(S. B. 42—By Mr. Neeley and Mrs. Leonard)

[Passed March 5, 1974; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the authority of county boards of education to provide transportation for participants in projects operated, financed, sponsored or approved by the state commission on aging.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-13. Authority of boards generally.

1 The boards, subject to the provisions of this chapter
2 and the rules and regulations of the state board, shall have
3 authority:

4 (1) To control and manage all of the schools and
5 school interests for all school activities and upon all school
6 property, whether owned or leased by the county, in-
7 cluding the authority to require that records be kept of
8 all receipts and disbursements of all funds collected or
9 received by any principal, teacher, student or other per-
10 son in connection therewith, any programs, activities or
11 other endeavors of any nature operated or carried on by
12 or in the name of the school, or any organization or body
13 directly connected with the school, to audit such records
14 and to conserve such funds, which shall be deemed quasi-
15 public moneys, including securing surety bonds by ex-
16 penditure of board moneys;

17 (2) To establish schools, from preschool through high
18 school, inclusive of vocational schools; and to establish
19 schools and programs, or both, for post high school in-
20 struction, subject to approval of the state board of edu-
21 cation;

22 (3) To close any school which is unnecessary and to
23 assign the pupils thereof to other schools: *Provided*, That
24 such closing shall be officially acted upon and teachers
25 and service personnel involved notified on or before the
26 first Monday in May, in the same manner as provided in
27 section four of this article, except in an emergency,
28 subject to the approval of the state superintendent, or
29 under subdivision (5) of this section;

30 (4) To consolidate schools;

31 (5) To close any elementary school whose average
32 daily attendance falls below twenty pupils for two months
33 in succession, and send the pupils to other schools in the
34 district or to schools in adjoining districts. If the teachers
35 in the school so closed are not transferred or reassigned to
36 other schools, they shall receive one month's salary;

37 (6) (a) To provide at public expense adequate means
38 of transportation, including transportation across county
39 lines, for all children of school age who live more than
40 two miles distance from school by the nearest available
41 road and to provide at public expense and according to
42 such regulations as the board may establish, adequate
43 means of transportation for school children participating
44 in board-approved curricular and extracurricular activ-
45 ities; and to provide in addition thereto, at public ex-
46 pense, by rules and regulations and within the available
47 revenues, transportation for those within two miles dis-
48 tance; and to provide in addition thereto, at no cost
49 to the board and according to rules and regulations
50 established by the board, transportation for partici-
51 pants in projects operated, financed, sponsored or ap-
52 proved by the commission on aging: *Provided*, That all
53 costs and expenses incident in any way to transportation
54 for projects connected with the commission on aging shall
55 be borne by such commission, or the local or county chap-
56 ter thereof: *Provided further*, That in all cases the buses
57 or other transportation facilities owned by the board of
58 education shall be driven or operated only by drivers regu-
59 larly employed by the board of education: *Provided, how-*
60 *ever*, That buses shall be used for extracurricular activ-
61 ities as herein provided only when the insurance provided
62 for by this section shall have been effected;

63 (b) To enter into agreements with one another to pro-
64 vide, on a cooperative basis, adequate means of trans-
65 portation across county lines for children of school age
66 subject to the conditions and restrictions of subdivisions
67 (6) and (7) of this section;

68 (7) To provide at public expense for insurance against
69 the negligence of the drivers of school buses, trucks or

70 other vehicles operated by the board; and if the trans-
71 portation of pupils be let out to contract, then the con-
72 tract therefor shall provide that the contractor shall carry
73 insurance against negligence in such an amount as the
74 board shall specify;

75 (8) To employ and to provide in-service training for
76 teacher aides, the training to be in accordance with rules
77 and regulations of the state board;

78 (9) To establish and conduct a self-supporting dorm-
79 itory for the accommodation of the pupils attending a
80 high school or participating in a post high school program
81 and of persons employed to teach therein;

82 (10) To employ legal counsel;

83 (11) To provide, at public expense, adequate public
84 liability insurance, including professional liability in-
85 surance for board employees.

86 No policy or contract of public liability insurance pro-
87 viding coverage for public liability shall be purchased
88 as provided herein, unless it shall contain a provision or
89 endorsement whereby the company issuing such policy
90 waives, or agrees not to assert as a defense to any
91 claim covered by the terms of such policy, the de-
92 fense of governmental immunity. In any action against
93 the board, its officers, agents or employees, in which
94 there is in effect liability insurance coverage in an
95 amount equal to or greater than the amount sued
96 for, the attorney for such board, the attorney for such
97 insurance carrier, or any other attorney who may ap-
98 pear on behalf of the board, its agents, officers or
99 employees shall not set up the defense of govern-
100 mental immunity in any such action.

101 "Quasi-public funds" as used herein are defined as any
102 money received by any principal, teacher, student or other
103 person for the benefit of the school system as a result of
104 curricular or noncurricular activities.

105 The board of each county shall expend under such
106 regulations as it establishes for each child an amount not
107 to exceed the proportion of all school funds of the district

108 that each child would be entitled to receive if all the funds
109 were distributed equally among all the children of
110 school age in the district upon a per capita basis.

CHAPTER 117

(H. B. 937—By Mr. Goodwin and Mr. Lohr)

[Passed March 9, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections thirteen and seventeen, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to membership in the retirement system; cessation of membership; payment for membership rights and statement and computation of teachers' service.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-13. Membership in retirement system; cessation of membership; payments for membership rights.

§18-7A-17. Statement and computation of teachers' service.

§18-7A-13. Membership in retirement system; cessation of membership; payments for membership rights.

1 The membership of the retirement system shall consist of
2 the following:

3 (a) All persons, except new entrants, employed as teachers
4 at the time they become eligible for membership who, within
5 a year after becoming eligible for membership, notify the re-
6 tirement board in writing of their decision to become members.
7 Any such persons who fail to notify the board shall automati-
8 cally be constituted members one year after they become eligi-
9 ble, unless the retirement board receives written notice from
10 them declining membership in the system.

11 (b) New entrants, whose membership in the system shall be
12 compulsory upon employment as teachers.

13 (c) The membership of the retirement system shall not in-
14 clude any person who is an active member of or who has been
15 retired by the West Virginia public employees retirement sy-
16 stem, the judge's retirement system, or the retirement system
17 of the department of public safety.

18 The membership of any person in the retirement system shall
19 cease:

20 (1) Upon the withdrawal of his accumulated contributions
21 after the cessation of teaching service, or (2) upon retirement,
22 or (3) at death, or (4) if service amounts to less than five
23 years in any period of ten consecutive years. For the sole
24 purpose of preventing loss of membership under subdivision
25 (4), a deposit by the member to his individual account in the
26 teachers accumulation fund of an amount equaling his last
27 annual contribution shall be the amount necessary to maintain
28 membership status for a period of one year.

29 Any former member of the retirement system who has
30 withdrawn his accumulated contributions but subsequently re-
31 enters the retirement system shall be permitted to repay to the
32 retirement fund the amount withdrawn, plus payment for ab-
33 sence as provided herein, and shall be accorded all the rights
34 to prior service and experience as he held at the time of with-
35 drawal of such accumulated contributions.

36 Any person in subdivision (a) of this section who elects to
37 become a member after having declined to accept membership,
38 shall be permitted to enter the retirement system, but shall be
39 accorded only the rights of a new entrant, unless he deposits
40 in the reserve fund twenty-five dollars for each year of his
41 prior service. After making such a deposit, he shall be deemed
42 a present teacher, and may elect to contribute retroactively
43 to retirement account for those years, if any, during which he
44 served as a teacher but elected not to contribute. No member
45 shall be eligible for prior service credit unless he is eligible for
46 prior service pension, as prescribed by section twenty-two of
47 this article; however, a new entrant who becomes a present
48 teacher as provided in this paragraph shall be deemed eligible
49 for prior service pension upon retirement.

§18-7A-17. Statement and computation of teachers' service.

1 Under such rules and regulations as the retirement board
2 may adopt, each teacher shall file a detailed statement of his
3 length of service as a teacher for which he claims credit. The
4 retirement board shall determine what part of a year is the
5 equivalent of a year of service. In computing such service,
6 however, it shall credit no period of more than a month's dur-
7 ation during which a member was absent without pay, nor
8 shall it credit for more than one year service performed in any
9 calendar year.

10 For the purpose of this article, the retirement board shall
11 grant prior service credit to new entrants and other members of
12 the retirement system for service in any of the armed forces of
13 the United States in any period of national emergency within
14 which a federal selective service act was in effect. For purposes
15 of this section, "armed forces" shall include Women's Army
16 Corps, Women's Appointed Volunteers for Emergency Service,
17 Army Nurse Corps, Spars, Women's Reserve and other similar
18 units officially parts of the military service of the United States.
19 Such military service shall be deemed equivalent to public
20 school teaching, and the salary equivalent for each year of such
21 service shall be the actual salary of the member as a teacher
22 for his first year of teaching after discharge from military ser-
23 vice. Prior service credit for military service shall not exceed
24 ten years for any one member, nor shall it exceed twenty-five
25 percent of total service at the time of retirement.

26 For service as a teacher in the employment of the federal
27 government, or a state or territory of the United States, or a
28 governmental subdivision of such state or territory the retire-
29 ment board shall grant credit to the same extent and on the
30 same conditions, if any, as a retirement system established for
31 teachers in such employment would grant credit for service as
32 a teacher in the public schools of West Virginia.

33 No member shall be deemed absent from service as a teach-
34 er while serving as a member of the Legislature of the state of
35 West Virginia during any duly constituted session of that
36 body.

37 The teachers retirement board shall grant service credit to
38 any former or present member of the West Virginia public

39 employees retirement system who have been contributing mem-
40 bers for more than three years, for service previously credited
41 by the public employees retirement system, and (1) shall re-
42 quire the transfer of the member's contributions to the teach-
43 ers retirement system or (2) shall require a repayment of the
44 amount withdrawn any time prior to the member's retirement:
45 *Provided*, That there shall be added by the member to the
46 amounts transferred or repaid under this paragraph an
47 amount which shall be sufficient to equal the contributions
48 he would have made had the member been under the
49 teachers retirement system during the period of his member-
50 ship in the public employees retirement system. Payments
51 for absence as provided in section thirteen of this article, shall
52 be paid in addition to the above amount, if applicable.

53 If a member is not eligible for prior service credit or pen-
54 sion as provided in this article, then his prior service shall not
55 be deemed a part of his total service.

56 A member who withdrew from membership shall be per-
57 mitted to regain his former membership rights as specified in
58 section thirteen of this article only in case he has served two
59 years since his last withdrawal.

60 Subject to the above provisions, the board shall verify as
61 soon as practicable, the statements of service submitted. The
62 retirement board shall issue prior service certificates to all
63 persons eligible therefor under the provisions of this article.
64 Such certificates shall state the length of such prior service
65 credit, but in no case shall the prior service credit exceed
66 forty years.

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CHAPTER 118

(H. B. 1015—By Mr. Greer and Mr. Donley)

[Passed March 9, 1974; in effect July 1, 1974. Approved by the Governor.]

AN ACT to amend and reenact section twenty-three, article seven-a, chapter eighteen of the code of West Virginia, one thousand

nine hundred thirty-one, as amended, relating to withdrawal and death benefits of the state teachers retirement system; qualification of the surviving spouse for monthly benefits.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-23. Withdrawal and death benefits.

1 Benefits upon withdrawal from service prior to retirement
2 under the provisions of this article shall be as follows:

3 (a) A contributor who withdraws from service as a
4 teacher for any cause other than death or retirement shall,
5 on demand, be paid his accumulated contributions plus refund
6 interest up to but not including the date of his last contri-
7 bution, if he is then no longer under contract, verbal or other-
8 wise, to serve as a teacher; or

9 (b) If such contributor has completed twenty years of total
10 service he may elect to receive at retirement age an annuity
11 which shall be computed as provided in this article. The con-
12 tributor must notify the retirement board in writing concerning
13 such election.

14 Benefits upon the death of a contributor prior to retirement
15 under the provisions of this article shall be paid as follows:

16 (1) If the contributor was at least fifty years old, and if
17 his total service as a teacher was at least twenty-five years at
18 the time of his death, then the surviving spouse of the deceased,
19 provided said spouse is designated as the refund beneficiary,
20 shall be deemed eligible for an annuity which shall be computed
21 as though the deceased were actually a retired teacher at the
22 time of death, and had selected a survivorship option which
23 pays such spouse the same monthly amount which would have
24 been received by the deceased; or

25 (2) If the facts do not permit payment under the preceding
26 paragraph (1), then the following sum shall be paid to the
27 refund beneficiary of the contributor: His accumulated con-

28 tributions with refund interest up to the year of his death
 29 plus the amount of his accumulated contributions. The latter
 30 sum shall emanate from the employers accumulation fund.

CHAPTER 119

(H. B. 980—By Mr. Speaker, Mr. McManus, and Mr. Seibert)

[Passed March 8, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and eight, article ten-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the division of vocational rehabilitation; services to include motor vehicles, initial business stocks and supplies, and books and materials.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10A. VOCATIONAL REHABILITATION.

§18-10A-1. Definitions.

§18-10A-8. Eligibility for vocational rehabilitation.

§18-10A-1. Definitions.

1 As used in this article:

2 (1) "State board" means the state board of education.

3 (2) "Division" means the division of vocational rehabilita-
 4 tion established by this article.

5 (3) "Director" means the director of the division of voca-
 6 tional rehabilitation.

7 (4) "Employment handicap" means a physical or mental
 8 condition which constitutes, contributes to, or if not corrected
 9 will probably result in, an obstruction to occupational per-
 10 formance.

11 (5) "Disabled individual" means any person who has a
 12 substantial employment handicap.

13 (6) "Vocational rehabilitation" and "vocational rehabilita-
14 tion services" means any services, provided directly or through
15 public or private instrumentalities, found by the director to be
16 necessary to compensate a disabled individual for his em-
17 ployment handicap and to enable him to engage in a remuner-
18 ative occupation including, but not limited to, medical and
19 vocational diagnosis, vocational guidance, counseling and
20 placement, rehabilitation training, physical restoration, trans-
21 portation, occupational licenses, occupational tools and equip-
22 ment, including motor vehicles, maintenance, and training
23 books and materials.

24 (7) "Rehabilitation training" means all necessary training
25 provided to a disabled individual to compensate for his em-
26 ployment handicap including, but not limited to, manual, pre-
27 conditioning, prevocational, vocational, and supplementary
28 training and training provided for the purpose of achieving
29 broader or more remunerative skills and capacities.

30 (8) "Physical restoration" means any medical, surgical or
31 therapeutic treatment necessary to correct or substantially re-
32 duce a disabled individual's employment handicap within a
33 reasonable length of time including, but not limited to, medi-
34 cal, psychiatric, dental and surgical treatment, nursing services,
35 hospital care not to exceed ninety days, convalescent home
36 care, drugs, medical and surgical supplies, and prosthetic ap-
37 pliances, but excluding curative treatment for acute or transi-
38 tory conditions.

39 (9) "Prosthetic appliance" means any artificial device nec-
40 essary to support or take the place of a part of the body or to
41 increase the acuity of a sense organ.

42 (10) "Occupational licenses" means any license, permit or
43 other written authority required by any governmental unit to
44 be obtained in order to engage in an occupation.

45 (11) "Maintenance" means money payments not exceeding
46 the estimated cost of subsistence during vocational rehabili-
47 tation.

48 (12) "Regulations" means regulations made by the director
49 with the approval of the state board.

§18-10A-8. Eligibility for vocational rehabilitation.

1 Vocational rehabilitation services shall be provided to any
2 disabled individual who is present in the state at the time
3 of filing his application therefor, if the director after full
4 investigation shall determine that his rehabilitation can be
5 satisfactorily achieved. Such services shall also be provided
6 to any person who is eligible therefor under the terms of an
7 agreement with another state or with the federal government.

8 Except as otherwise provided by law or as specified in an
9 agreement with the federal government with respect to classes
10 of individuals certified to the state board thereunder, the
11 following rehabilitation services shall be provided at public
12 cost only to disabled individuals found to require financial
13 assistance with respect thereto:

14 (1) Physical restoration.

15 (2) Transportation, for any other purpose than that of
16 determining the eligibility of the individual for vocational
17 rehabilitation services and the nature and extent of the services
18 necessary.

19 (3) Occupational licenses.

20 (4) Occupational tools, equipment, initial stocks and sup-
21 plies, books and training material; the title to any or all of
22 which may be conveyed to the individual.

23 (5) Maintenance.

24 The rights of a disabled individual under the provisions of
25 this article shall not be transferable or assignable at law or in
26 equity.

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CHAPTER 120

(Com. Sub. for S. B. 371—By Mr. Nelson and Mr. Susman)

[Passed March 9, 1974; in effect ninety days from passage. Approved by the Governor.]

**AN ACT to amend and reenact sections one, two and three,
article twelve-a, chapter eighteen of the code of West Vir-**

ginia, one thousand nine hundred thirty-one, as amended, relating to revenue bonds for Marshall University capital improvements; increasing maximum amount of bonds authorized from five million seven hundred thousand dollars; and providing for acquiring land and to improve and add parking, educational and athletic facilities.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12A. REVENUE BONDS FOR MARSHALL UNIVERSITY CAPITAL IMPROVEMENTS.

- §18-12A-1. Authority of board of regents to issue revenue bonds for certain capital improvements.
- §18-12A-2. Creation of special university capital improvements fund; revenues payable into special fund; authority of board of regents to pledge revenues to sinking and reserve funds.
- §18-12A-3. Issuance of revenue bonds.

§18-12A-1. Authority of board of regents to issue revenue bonds for certain capital improvements.

1 The West Virginia board of regents shall have authority,
2 as provided in this article, to issue revenue bonds of the
3 state, not to exceed eight million five hundred thousand
4 dollars in principal amount thereof, which shall be in
5 addition to the revenue bonds heretofore authorized pur-
6 suant to this article, to finance the cost of providing a
7 new classroom and office building, an addition to the li-
8 brary, renovation of administration building, additional
9 land for a new student center building for Marshall Uni-
10 versity; and to acquire land and to improve and add
11 parking, educational and athletic facilities. The principal
12 of and interest on such bonds shall be payable solely
13 from the special nonrevolving fund herein provided for
14 such payment. The costs of any such building or buildings
15 or improvements shall include the cost of acquisition of
16 land, the construction and equipment of any such build-
17 ing or buildings, and the provision of roads, utilities and
18 other services necessary, appurtenant or incidental to such
19 building or buildings; and shall also include all other

20 charges or expenses necessary, appurtenant or incidental
21 to the construction, financing and placing in operation
22 of any such building or buildings.

**§18-12A-2. Creation of special university capital improve-
ments fund; revenues payable into special fund;
authority of board of regents to pledge revenues
to sinking and reserve funds.**

1 There is hereby created in the state treasury a special
2 nonrevolving Marshall University capital improvements
3 fund. On and after the first day of July, one thousand
4 nine hundred sixty-three, or on and after the date of the
5 final payment of all principal of and interest on the rev-
6 enue bonds heretofore issued pursuant to this article,
7 or the making of adequate provision for the payment of
8 all principal of and interest on said revenue bonds, which-
9 ever is later, there shall be paid into such special fund
10 all fees collected under the provisions of section one,
11 article twenty-four, chapter eighteen of this code, from
12 students at Marshall University, except such fees as are
13 required by that section to be paid into other special
14 funds.

15 The board of regents shall have authority to pledge all
16 or such part of the revenue paid into the special Marshall
17 University capital improvements fund as may be needed
18 to meet the requirements of the sinking fund established
19 in connection with any revenue bond issue authorized by
20 this article, including a reserve fund for the payment of
21 the principal of and interest on such revenue bond issue
22 when other moneys in the sinking fund are insufficient
23 therefor; and may provide in the resolution authorizing
24 any issue of such bonds, and in any trust agreement made
25 in connection therewith, for such priorities on the rev-
26 enues paid into the special fund as may be necessary for
27 the protection of the prior rights of the holders of bonds
28 issued at different times under the provisions of this
29 article. The board of regents shall also have authority
30 to use all or any part of the revenue paid into the special
31 Marshall University capital improvements fund for the
32 payment of all or any part of the cost of providing said

33 classroom and office building, addition to the library,
34 renovation of administration building and additional land
35 for a new student center building for Marshall University
36 and, to acquire land and to improve and add parking,
37 educational and athletic facilities: *Provided*, That in the
38 event all or any part of such revenue is so used and ap-
39 plied, the amount of revenue bonds which the board of
40 regents may issue pursuant to this article shall be cor-
41 respondingly reduced so that the total amount expended
42 pursuant to this article for the payment of the cost of
43 providing said classroom and office building, addition to
44 the library, renovation of administration building and
45 additional land for a new student center building for
46 Marshall University and, to acquire land and to improve
47 and add parking, educational and athletic facilities, shall
48 not exceed the total amount of bonds authorized herein
49 exclusive of any appropriations, grants, gifts, or contri-
50 butions therefor.

51 If any balance shall remain in the special Marshall
52 University capital improvements fund after the board
53 has issued the maximum amount of bonds authorized by
54 this article, and after the requirements of all sinking
55 funds and reserve funds established in connection with
56 the issue of such bonds have been satisfied in each year
57 as provided in the resolution or trust agreement autho-
58 rizing the issuance of such bonds, such balance shall be
59 used solely for the redemption of any of the outstanding
60 bonds issued hereunder which by their terms are then
61 redeemable, or for the purchase of bonds at the market
62 price, but at not exceeding the price, if any, at which such
63 bonds shall be redeemable on the next ensuing date upon
64 which such bonds are redeemable prior to maturity, and
65 all bonds redeemed or purchased shall forthwith be can-
66 celled and shall not again be issued. Whenever all out-
67 standing bonds issued under this article shall have been
68 paid, the special Marshall University capital improve-
69 ments fund shall cease to exist and any balance then re-
70 maining in such fund shall be transferred to the general
71 revenue fund of the state. Thereafter all fees formerly
72 paid into such special fund shall be paid into the general
73 revenue fund of the state.

§18-12A-3. Issuance of revenue bonds.

1 The issuance of bonds under the provisions of this arti-
2 cle shall be authorized by a resolution of the board of
3 regents, which resolution shall recite an estimate by the
4 board of the cost of the proposed building or buildings,
5 improvements and land; and shall provide for the issu-
6 ance of bonds in an amount sufficient, when sold as here-
7 inafter provided, to provide moneys sufficient to pay such
8 cost, less the amount of revenue paid into the special
9 Marshall University capital improvements fund which is
10 used to pay any part of the cost of providing such class-
11 room and office building, addition to the library, renova-
12 tion of administration building and additional land for
13 a new student center building for Marshall University
14 and, to acquire land and to improve and add parking,
15 educational and athletic facilities, as authorized by sec-
16 tion two of this article and exclusive of the amount of
17 any other funds available for the construction or acqui-
18 sition of the building or buildings, improvements and land
19 from any appropriation, grant, gift or contribution there-
20 for. Such resolution shall prescribe the rights and duties
21 of the bondholders and the board, and for such purpose
22 may prescribe the form of the trust agreement herein-
23 after referred to. The bonds shall be of such series, bear
24 such date or dates, mature at such time or times not ex-
25 ceeding thirty years from their respective dates, bear in-
26 terest at such rates or rates, not exceeding seven per
27 centum per annum, payable semiannually; be in such de-
28 nominations; be in such form, either coupon or fully regis-
29 tered without coupons, carrying such registration ex-
30 changeability and interchangeability privileges; be pay-
31 able in such medium of payment and at such place or
32 places; be subject to such terms of redemption at such
33 prices not exceeding one hundred five percent of the prin-
34 cipal amount thereof, and be entitled to such priorities on
35 the revenues paid into the special Marshall University
36 capital improvements fund as may be provided in the
37 resolution authorizing the issuance of the bonds or in any
38 trust agreement made in connection therewith. The bonds
39 shall be signed by the governor, and by the president of
40 the board of regents, under the great seal of the state, at-

41 tested by the secretary of state, and the coupons attached
42 thereto shall bear the facsimile signature of the president
43 of the board. In case any of the officers whose signatures
44 appear on the bonds or coupons cease to be such officers
45 before the delivery of such bonds, such signatures shall
46 nevertheless be valid and sufficient for all purposes the
47 same as if such officers had remained in office until such
48 delivery.

49 Such bonds shall be sold in such manner as the board
50 may determine to be for the best interests of the state,
51 taking into consideration the financial responsibility of the
52 purchaser, the terms and conditions of the purchase, and
53 especially the availability of the proceeds of the bonds
54 when required for payment of the cost of such building or
55 buildings, improvements and land, such sale to be made
56 at a price not lower than a price, which when computed
57 upon standard tables of bond values, will show a net re-
58 turn of not more than eight percent per annum to the
59 purchaser upon the amount paid therefor. The proceeds
60 of such bonds shall be used solely for the payment of the
61 cost of such building or buildings, improvements and land,
62 and shall be deposited in the state treasury in a special
63 fund and checked out as provided by law for the dis-
64 bursement of other state funds. If the proceeds of such
65 bonds, by error in calculation or otherwise, shall, together
66 with any other funds used therefor as hereinbefore in this
67 article authorized, be less than the cost of such building
68 or buildings, improvements and land, additional bonds
69 may in like manner be issued to provide the amount of
70 the deficiency, but in no case to exceed the total amount
71 of bonds authorized herein less the amount of any other
72 funds used therefor as hereinbefore in this article autho-
73 rized; and unless otherwise provided for in the resolution
74 or trust agreement hereinafter mentioned, shall be
75 deemed to be of the same issue, and shall be entitled to
76 payment from the same fund, without preference or
77 priority, as the bonds before issued for such building or
78 buildings. If the proceeds of bonds issued for such build-
79 ing or buildings, improvements and land shall, together
80 with the amount of any other funds used therefor as here-
81 inbefore in this article authorized, exceed the cost there-

82 of, the surplus shall be paid into the sinking fund or re-
 83 serve fund to be established for payment of the principal
 84 and interest of such bonds as hereinafter provided. Prior
 85 to the preparation of definitive bonds, the board may,
 86 under like restrictions, issue temporary bonds with or
 87 without coupons, exchangeable for definitive bonds upon
 88 their issuance.

89 The bonds issued under the provisions of this article
 90 shall be and have all the qualities of negotiable instru-
 91 ments under the law merchant and the Uniform Com-
 92 mercial Code of this state.

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CHAPTER 121

(S. B. 307—By Mr. Palumbo)

[Passed March 1, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article seventeen, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new sections, designated sections eight and nine, relating to continuing contract status for teachers and nonteaching personnel at schools for the deaf and blind; dismissal and suspension procedures.

Be it enacted by the Legislature of West Virginia:

That article seventeen, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto two new sections, designated sections eight and nine, to read as follows:

ARTICLE 17. WEST VIRGINIA SCHOOLS FOR THE DEAF AND THE BLIND.

§18-17-8. Continuing contract status established; dismissal and suspension procedures.

§18-17-9. Employment of auxiliary and service personnel, dismissal and suspension procedures.

§18-17-8. Continuing contract status established; dismissal and suspension procedures.

1 Before entering upon their duties, all teachers shall exe-
2 cute a contract with the state board of education, which
3 contract shall state the salary to be paid and shall be in
4 the form prescribed by the state superintendent of schools.
5 Every such contract shall be signed by the teacher and by
6 the president and secretary of the state board of education.

7 A teacher's contract, under this section, shall be for a
8 term of not less than one nor more than three years; and
9 if, after three years of such employment, the teacher who
10 holds a professional certificate, based on at least a bache-
11 lor's degree, has met the qualifications for the same, and
12 the board of education enter into a new contract of em-
13 ployment, it shall be a continuing contract.

14 Notwithstanding any other provisions of law, the state
15 board of education may suspend or dismiss any teacher
16 subject to the provisions of this article, with continuing
17 contract status, for immorality, incompetency, cruelty,
18 insubordination, intemperance or willful neglect of duty,
19 but the charges shall be stated in writing and the teacher
20 affected shall be given an opportunity to be heard by the
21 state board upon not less than ten days' written notice,
22 which charges and notice shall be served on the teacher
23 within five days of the presentation of the charges to the
24 state board. The hearing may be held at a regular meeting
25 of the state board or at a special meeting called for that
26 purpose.

§18-17-9. Employment of auxiliary and service personnel, dismissal and suspension procedures.

1 The state board is authorized to employ such auxiliary
2 and service personnel as is deemed necessary for meeting
3 the needs of the schools for the deaf and blind. Before
4 entering upon their duties such personnel shall execute
5 with the board a written contract which may be in a
6 letter form and shall state the classification and terms of
7 work, the employment period and pay, and shall certify
8 that said employment has been made a matter of minute
9 record. The letter shall provide space for an acceptance

10 provision and shall be signed and returned to the board by
 11 the employee, or otherwise he shall forfeit his right to
 12 employment.

13 After three years of acceptable employment each
 14 auxiliary and service personnel, at the end of his con-
 15 tractual period of employment shall be notified in writing
 16 on or before the first day of May in the year in which
 17 such employment shall terminate if he is not to be re-
 18 employed for the ensuing year. Such notice shall be by
 19 certified mail, return receipt requested, and the employee
 20 shall have the right of a hearing before the state board, if
 21 requested, before final action is taken by the board upon
 22 the termination of such employment.

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CHAPTER 122

(H. B. 646—By Mr. Shaffer and Mrs. Given)

[Passed March 8, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and two, article nineteen, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to education; educational opportunities for children of deceased soldiers, sailors and marines; appropriation to provide educational opportunities; eligibility of applicant for benefits; application forms; preference.

Be it enacted by the Legislature of West Virginia:

That sections one and two, article nineteen, 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 19. EDUCATIONAL OPPORTUNITIES FOR CHILDREN OF DECEASED SOLDIERS, SAILORS AND MARINES.

§18-19-1. Appropriation to provide educational opportunities.

§18-19-2. Eligibility of applicant for benefits; application forms; preference.

§18-19-1. Appropriation to provide educational opportunities.

1 For the purpose of providing educational opportunities for

2 the children of those who served in the army, navy or marine
3 corps of the United States during the world war from April
4 sixth, one thousand nine hundred seventeen, to July second,
5 one thousand nine hundred twenty-one, or served in the armed
6 forces of the United States of America at any time between
7 December first, one thousand nine hundred forty-one, and the
8 declaration of peace by the Congress of the United States,
9 or served in the armed forces of the United States of America
10 at any time between June twenty-seventh, one thousand nine
11 hundred fifty, and January thirty-first, one thousand nine
12 hundred fifty-five, or served in the armed forces of the United
13 States of America at any time between February one, one
14 thousand nine hundred fifty-five, and the official cessation of
15 hostilities in Southeast Asia as declared by the United States
16 government, all dates inclusive, and who were killed in action
17 or have died or may hereafter die from disease or disability
18 resulting from such war service, there shall be appropriated
19 from the state fund general revenue the sum of at least five
20 thousand dollars for each fiscal year commencing July first
21 and ending on June thirty of each year of the next biennium
22 to be used for the benefit of such children while attending
23 state education or training institutions.

§18-19-2. Eligibility of applicant for benefits; application forms; preference.

1 To be eligible for the benefits of this article, said children
2 must be at least sixteen and not more than twenty-two years
3 of age and have had their domiciles in this state for at least
4 twelve months preceding their application for said benefits.
5 Such application shall be made to, and upon forms provided
6 by, the West Virginia department of veterans affairs, which
7 department shall determine the eligibility of those who make
8 such application and the yearly amount to be allotted each ap-
9 plicant, which amount in the discretion of the department may
10 vary from year to year, but shall not exceed the sum of five
11 hundred dollars in any one year. In selecting those to receive
12 the benefits of this article, preference shall be given those who
13 are otherwise financially unable to secure said educational op-
14 portunities and to those whose parent was domiciled in this
15 state during the period of such parent's war service.

CHAPTER 123

(H. B. 1271—By Mrs. Merritt and Mrs. Gillispie)

[Passed March 9, 1974; in effect July 1, 1974. Approved by the Governor.]

AN ACT to amend and reenact article twenty, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to education of exceptional children.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.

- §18-20-1. Establishment of special programs and teaching services for exceptional children.
- §18-20-2. Providing suitable educational facilities, equipment and services.
- §18-20-3. County reports.
- §18-20-4. Examination and report by medical or other specialists.
- §18-20-5. Powers and duties of state superintendent.
- §18-20-6. Advisory council for the education of exceptional children.

§18-20-1. Establishment of special programs and teaching services for exceptional children.

1 In accordance with the following provisions, county boards
 2 of education throughout the state shall establish and maintain
 3 for all exceptional children between five and twenty-three years
 4 of age special educational programs, including but not limited to
 5 special schools, classes, regular classroom programs, home-
 6 teaching or visiting-teacher services for such type or classifica-
 7 tion as the state board of education shall approve. Provisions
 8 shall be made for educating such exceptional children (includ-
 9 ing the handicapped and the gifted) who differ from the average
 10 or normal in physical, mental or emotional characteristics, or in
 11 communicative or intellectual deviation characteristics, or in
 12 both communicative and intellectual deviation characteristics,
 13 to the extent that they cannot be educated safely or profitably
 14 in the regular classes of the public schools or to the extent
 15 that they need special educational provisions within the
 16 regular classroom in order to educate them in accordance

17 with their capacities, limitations and needs. In addition,
18 county boards of education may establish and maintain other
19 educational services for exceptional children as the state
20 superintendent of schools may approve.

21 By the school year beginning on the first day of July,
22 one thousand nine hundred seventy-four, county boards of
23 education shall establish and maintain these special educational
24 programs, including but not limited to special schools, classes,
25 regular class programs, home-teaching and visiting-teacher
26 services. The state board of education shall adopt rules and
27 regulations to advance and accomplish this program.

28 Nothing in this section shall be construed to prevent county
29 boards of education from providing special educational pro-
30 grams, including but not limited to special schools, classes,
31 regular class programs, home-teaching or visiting-teacher
32 services for such exceptional children who are three years of age
33 or older.

§18-20-2. Providing suitable educational facilities, equipment and services.

1 The board of education of each county is empowered and
2 is responsible for providing suitable educational facilities, spe-
3 cial equipment, and such special services as may be necessary.
4 Special services include provisions and procedures for finding
5 and enumerating exceptional children of each type, diagnosis
6 by appropriate specialists who will certify the child's need and
7 eligibility for special education and make recommendations for
8 such treatment and prosthesis as may alleviate his disability,
9 special teaching by qualified and especially trained teachers,
10 transportation, lunches, and remedial therapeutic services.
11 Qualifications of teachers and therapists shall be in accordance
12 with standards prescribed or approved by the state board of
13 education.

14 Counties may provide for educating their resident exception-
15 al children by contracting with other counties or other educa-
16 tional agencies which maintain such special education facili-
17 ties. Fiscal matters will follow policies approved by the state
18 board of education.

§18-20-3. County reports.

1 Counties maintaining special schools, classes, regular class
2 programs, home-teaching or visiting services and receiving or
3 requesting reimbursement from state appropriated funds shall
4 file with the state superintendent of schools on forms supplied
5 by his office, applications, annual reports and such other re-
6 ports as he may require.

§18-20-4. Examination and report by medical or other specialists.

1 Each child prior to enrolling in a special education program
2 shall be examined by an appropriate medical specialist, psy-
3 chologist, or educational specialist (reading specialist, speech
4 and language clinician, or other specialists as required by the
5 state board of education for specific areas of exceptionality)
6 who shall report to the county superintendent of schools. The
7 specialists' report shall carry recommendation for eligibility
8 and placement in regular school or in the special education
9 facility, indicate the nature and extent of disability, and advise
10 with reference to treatment and prosthesis for alleviating the
11 child's disability.

12 No educationally exceptional child shall be excused or ex-
13 cluded from attending school except with expressed written
14 approval of the county superintendent of schools.

§18-20-5. Powers and duties of state superintendent.

1 The state superintendent of schools shall have power to or-
2 ganize, promote and administer this program under his present
3 organization and be responsible for:

4 (1) Stimulating and assisting county boards of education in
5 establishing, organizing and maintaining special schools,
6 classes, regular class programs, home-teaching and visiting-
7 teacher services.

8 (2) Cooperating with all other public and private agencies
9 engaged in relieving, caring for, curing, educating and rehabili-
10 tating exceptional children, and in helping coordinate the ser-
11 vices of such agencies.

12 (3) Preparing the necessary rules, regulations, formula for
13 distribution of available appropriated funds, reporting forms

14 and procedures necessary to define minimum standards in pro-
15 viding suitable facilities for education of exceptional children,
16 ensuring the employment, certification and approval of quali-
17 fied teachers and therapists subject to approval by the state
18 board of education.

19 (4) Receiving from county boards of education their appli-
20 cations, annual reports, and claims for reimbursement from
21 such moneys as are appropriated by the Legislature, auditing
22 such claims and preparing vouchers to reimburse said counties
23 the amounts reimbursable to them.

24 (5) Performing such other duties and assuming such other
25 responsibilities in connection with this program as may be
26 needed.

27 (6) Nothing herein contained shall be construed to prevent
28 any county board of education from establishing and main-
29 taining special schools, classes, regular class programs, home-
30 teaching or visiting-teaching services out of funds available
31 from local revenue.

**§18-20-6. Advisory council for the education of exceptional chil-
dren.**

1 There shall be an advisory council for the education of
2 exceptional children which shall advise and consult with
3 the state board of education on matters pertinent thereto.
4 The advisory council shall be composed of nine members
5 appointed by the state superintendent of free schools, four
6 of which shall be parents of exceptional children utilizing
7 the services of the special educational programs established
8 hereunder. Officers and employees of the state shall not be
9 eligible for appointment to the advisory council. Members shall
10 be appointed for terms of three years. The members of the
11 advisory council shall be citizens and residents of this state,
12 who by reason of their training, education or experience are
13 qualified to carry out the functions of the advisory council
14 under this article.

15 The first term of office for the members shall begin the
16 thirtieth day of June, one thousand nine hundred seventy-
17 four.

18 At its first meeting, to be held the second Wednesday in
19 July, one thousand nine hundred seventy-four, the advisory
20 council shall elect a chairman from among its members, who
21 shall preside over its meetings until the second Wednesday in
22 July of the next year. Thereafter, the advisory council shall
23 elect a chairman on the second Wednesday in July of each year.

24 All members shall be eligible for reappointment. A member
25 shall, unless sooner removed, continue to serve until his term
26 expires and his successor has been appointed and has qualified.
27 A vacancy caused by the death, resignation or removal of a
28 member prior to the expiration of his term shall be filled only
29 for the remainder of such term.

30 For the purpose of carrying out its functions under this
31 article, five members of the advisory council shall constitute
32 a quorum. The advisory council shall meet at least four times
33 each year at a building in the state capitol complex and at a
34 time designated by the chairman. Additional meetings may be
35 held when called by the chairman or when requested by five
36 members of the advisory council.

37 Members of the council shall not receive any compensation
38 for their services on the council, but shall be reimbursed any
39 actual expenses incurred by them in carrying out their duties
40 from funds appropriated to the department of education.

41 The council shall:

42 (a) Consult with the state board of education concerning
43 any rules and regulations formulated by such board in imple-
44 menting this article;

45 (b) Consider and advise the state board and superintendent
46 concerning any problems presented to the council;

47 (c) Hold public meetings at such times and places as the
48 advisory council deems appropriate;

49 (d) Periodically review the state plan for special programs
50 and make any recommendations it may have concerning
51 changes it may deem proper.

CHAPTER 124

(Com. Sub. for S. B. 81—By Mr. Hamilton and Mr. Williams)

[Passed March 7, 1974; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-two-c, relating to state aid to eligible students attending Greenbrier College of Osteopathic Medicine, and declaration of legislative policy.

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-c, to read as follows:

ARTICLE 22C. STATE AID FOR STUDENTS ATTENDING GREENBRIER COLLEGE OF OSTEOPATHIC MEDICINE.

§18-22C-1. Legislative intent.

§18-22C-2. State aid for students of osteopathy.

§18-22C-1. Legislative intent.

1 The Legislature declares that there exists within the
2 state of West Virginia the Greenbrier College of Osteo-
3 pathic Medicine which is an accredited, private institu-
4 tion of graduate study for the purpose of training doctors
5 of osteopathic medicine. This article, therefore, is adopted
6 as a measure of providing additional graduate education
7 opportunities to citizens of the state of West Virginia.

§18-22C-2. State aid for students of osteopathy.

1 The board of regents is hereby authorized to enter into
2 a contract with the Greenbrier College of Osteopathic
3 Medicine to offer training in osteopathic medicine, by the
4 terms of which the board of regents may obligate itself to
5 pay such institution within the limits of any appropriation
6 made for the purpose, a stated amount per year for each
7 West Virginia student the institution will agree to accept
8 for training in osteopathic medicine.

9 The board of regents shall each year send to the Green-
 10 brier College of Osteopathic Medicine a certified list of
 11 all persons, applying to the board for training in osteo-
 12 pathic medicine, who are bona fide citizens and residents
 13 of this state prior to the filing of their applications, and
 14 who have completed either within or without the state
 15 the course of study required by such institution as a pre-
 16 requisite to the study of osteopathic medicine.

17 Any person who receives state aid under this section
 18 shall, upon graduation from an educational institution for
 19 study of osteopathic medicine, be required to practice
 20 osteopathic medicine for a period of two years in this
 21 state, or in lieu thereof shall, within sixty days from the
 22 date of graduation, reimburse the board of regents for any
 23 tuition advance by it in his behalf.

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CHAPTER 125

(H. B. 668—By Mr. Speaker, Mr. McManus, and Mr. Seibert)

[Passed March 8, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twenty-six, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section ten-a, relating to empowering the West Virginia board of regents to enter into contracts for programs, services and facilities with other agencies, institutions and bodies.

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 ten-a, to read as follows:

ARTICLE 26. WEST VIRGINIA BOARD OF REGENTS.

§18-26-10a. Authority to contract for programs, services and facilities.

1 The board of regents is authorized and empowered to enter
 2 into contracts and expend funds for programs, services and

3 facilities provided by public and private educational institu-
4 tions, associations, boards, agencies, consortia, corporations,
5 partnerships, individuals and local, state and federal govern-
6 mental bodies within and outside of West Virginia in order
7 that maximum higher educational opportunities of high quality
8 may be provided to the citizens of the state in the most econo-
9 mical manner: *Provided*, That in no event shall a contract
10 for such services and facilities be entered into unless the
11 board has determined that such services and facilities are
12 necessary and that such services and facilities would be at a
13 savings to the state.

14 Notwithstanding the provisions of this section, nothing herein
15 contained shall supersede the responsibility and respective
16 duties of the commissioner of finance and administration, the
17 director of the purchasing division of such department and
18 the attorney general, for the execution and approval of the
19 contracts entered into under this article and such contracts
20 shall be in complete conformity with the provisions of articles
21 three and five, chapter five-a of this code.

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CHAPTER 126

(H. B. 941—By Mr. Speaker, Mr. McManus, and Mr. Seibert)

[Passed March 1, 1974; 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 ten-b, relating to the participation by the board of regents in regional and interstate higher education agreements which provide reciprocal benefits for participating states.

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 ten-b, to read as follows:

ARTICLE 26. WEST VIRGINIA BOARD OF REGENTS.**§18-26-10b. Authority to participate in reciprocal regional and interstate higher educational agreements.**

1 In order to provide higher educational opportunities at
2 minimum cost to students and the state, the board of regents,
3 on behalf of the state of West Virginia, is authorized and em-
4 powered to participate in the Southern Regional Education
5 Board interstate agreement, namely the Academic Common
6 Market, and in such other regional and interstate agreements
7 determined to be mutually beneficial to the citizens of the
8 participating states and which provide an opportunity for
9 qualified nonresident students to enroll in selected programs
10 and curricula on a resident tuition and fee charge basis. The
11 board of regents is specifically authorized to waive the collec-
12 tion of nonresident tuition and fee charges for students from
13 other states enrolled in programs and curricula approved by
14 the board as a part of a regional or interstate agreement.

CHAPTER 127

(S. B. 239—By Mr Hubbard)

[Passed March 2, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT authorizing the issuance and sale, subsequent to the first day of August, one thousand nine hundred seventy-four, by the governor of bonds of the state of West Virginia, under authority of the better school buildings amendment of 1972, in the amount not exceeding fifty million dollars during the fiscal year ending the thirtieth day of June, one thousand nine hundred seventy-five, for the sole purpose of raising funds for distribution to county boards of education that qualify by meeting conditions, qualifications and requirements as are prescribed by general law and used and appropriated by such county boards of education 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 con-

struction, renovation or remodeling, and the acquisition and preparation of sites for elementary or secondary public school buildings or facilities; specifying the powers of and limitations upon the governor in the issuance and sale of such bonds; prescribing the duties of the auditor and treasurer with respect to such bonds; providing for transfer and registration fees with respect to registered bonds and the disposition of such fees; providing for places of payment of principal and interest on such bonds; exempting such bonds from taxation by the state, or by any county, district or municipality thereof; setting forth the form of coupon and registered bonds and coupons; establishing a special account designated state school buildings bond debt service account and stating what moneys shall be deposited therein and disposition thereof; providing a covenant between the state and the bondholders; providing that the proceeds from the sale of the bonds shall be paid into a separate and distinct account and for expenditures from such account and investment of the proceeds in such account; providing that the plates, etc., from which the bonds are produced or made shall be the property of the state; providing for interim certificates in lieu of permanent bonds; providing for the state treasurer to be financial advisor; providing for the attorney general or his duly appointed legal representative to serve as bond counsel; and providing that all necessary expenses, including legal expenses approved by the attorney general, incurred in the execution of this act shall be paid out of the state school buildings bond debt service account on warrants of the auditor of the state drawn on the state treasurer.

Be it enacted by the Legislature of West Virginia:

ISSUANCE AND SALE OF SCHOOL BUILDING BONDS.

- §1. School buildings bonds; amount; when may issue.
- §2. Transfer fee; registration fee; where payable; interest rate; tax exempt.
- §3. Form of bond.
- §4. Form of coupon.
- §5. Listing by auditor.
- §6. Establishment of state school buildings bond debt service account; deposits therein.
- §7. Covenants of state.
- §8. Sale by governor; minimum price.

- \$9. Proceeds paid into separate account; expenditures.
- \$10. Plates, etc., property of state.
- \$11. Auditor to be custodian of unsold bonds.
- \$12. Interim certificates.
- \$13. State treasurer to be financial advisor.
- \$14. Attorney general or his duly appointed legal representative to serve as bond counsel.
- \$15. Approval and payment of all necessary expenses.

§1. School buildings bonds; amount; when may issue.

1 Bonds of the state of West Virginia, under authority of
2 the better school buildings amendment of 1972, of the par
3 value not to exceed fifty million dollars during the fiscal
4 year ending the thirtieth day of June, one thousand nine
5 hundred seventy-five, are hereby authorized to be issued
6 and sold, at some date subsequent to the first day of
7 August, one thousand nine hundred seventy-four, for the
8 sole purpose of raising funds for distribution to county
9 boards of education that qualify by meeting conditions,
10 qualifications and requirements as are prescribed by gen-
11 eral law and used and appropriated by such county boards
12 of education solely for the construction, renovation or re-
13 modeling of elementary or secondary public school build-
14 ings or facilities, the equipping of the same in connection
15 with any such construction, renovation or remodeling, and
16 the acquisition and preparation of sites for elementary or
17 secondary public school buildings or facilities. Such
18 bonds may be issued by the governor in such amounts, in
19 coupon or registered form, in such denominations, at such
20 time, after the first day of August, one thousand nine
21 hundred seventy-four, bearing such date or dates, as the
22 governor may determine, based upon an examination of
23 the needs of the various county boards of education which
24 justify the issuance by the governor of said bonds, and
25 shall become due and payable serially, annually or semi-
26 annually, in such amounts and mature in such years as
27 the governor may determine. Such bonds shall mature
28 within and not exceeding twenty-five years from their
29 date. The governor must offer said bonds for competitive
30 bids from recognized financial investment institutions be-
31 fore said bonds may be sold.

§2. Transfer fee; registration fee; where payable; interest rate; tax exempt.

1 The auditor and the treasurer are hereby authorized to
2 arrange for the transfer of registered bonds and for each
3 such transfer a fee of one dollar shall be charged by and
4 paid to the state of West Virginia, to the credit of the state
5 school buildings bond debt service account. Bonds taken
6 in exchange shall be cancelled by the auditor and trea-
7 surer and be carefully preserved by the treasurer. The
8 treasurer shall make provisions for registering "payable
9 to bearer" bonds and for each bond registered a fee of one
10 dollar shall likewise be charged by and paid to the state
11 of West Virginia, to the credit of the state school buildings
12 bond debt service account. All such bonds shall be pay-
13 able at the office of the treasurer of the state of West Vir-
14 ginia, or, at the option of the holder, at a bank in the city
15 of New York to be designated by the governor, or, at the
16 option of the holder at such other bank or banks, within
17 the state, as may be designated or approved by the gover-
18 nor. The bonds shall bear interest, payable semiannually,
19 to bearer, at the office of the treasurer of the state of West
20 Virginia, at the capitol of the state, or at the banks desig-
21 nated and approved by the governor, upon presentation
22 and surrender of interest coupons, then due, in the case of
23 coupon bonds. For the payment of interest on registered
24 bonds, the treasurer of the state of West Virginia shall
25 requisition a warrant from the auditor of the state to be
26 drawn on the state treasurer, and shall mail such warrant
27 to the registered owner at the address as shown by the
28 record of registration. Both the principal and interest of
29 the bonds shall be payable in lawful money of the United
30 States of America and the bonds shall be exempt from
31 taxation by the state of West Virginia, or by any county,
32 district or municipality thereof, which facts shall appear
33 on the face of the bonds as part of the contract with the
34 holder thereof.

§3. Form of bond.

1 The bonds shall be executed on behalf of the state of
2 West Virginia, by the manual or facsimile signature of
3 the treasurer thereof, under the great seal of the state or

4 a facsimile thereof, and countersigned by the manual or
 5 facsimile signature of the auditor of the state: *Provided*,
 6 That one of said signatures on said bonds shall be a
 7 manual signature and said bonds shall be in the following
 8 form or to the following effect, as nearly as may be,
 9 namely:

10 COUPON SCHOOL BUILDINGS BOND
 11 (Or registered school buildings bond, as the case may be)
 12 OF THE
 13 STATE OF WEST VIRGINIA
 14 \$..... No.....

15 The state of West Virginia, under and by virtue of
 16 authority of an amendment to the constitution, which was
 17 proposed by Senate Joint Resolution No. 4, adopted the
 18 ninth day of March, one thousand nine hundred seventy-
 19 two, and was ratified by a vote of the people at the gen-
 20 eral election on the seventh day of November, one thousand
 21 nine hundred seventy-two, which is hereby made a part
 22 hereof as fully as if set forth at length herein, acknowl-
 23 edges itself to be indebted to and hereby promises to pay
 24 to the bearer hereof (in case of a coupon bond) or to
 25 or assigns (the owner of record,
 26 in case of registered bonds) on theday of
 27, 19....., in lawful money of the United
 28 States of America at the office of the treasurer of the state
 29 of West Virginia at the capitol of said state, or, at
 30 bank in the city of New York, or,
 31 at bank, at the option of the hold-
 32 er, the sum of dollars, with interest
 33 thereon at percent a year from the date,
 34 payable semiannually in like lawful money of the United
 35 States of America at the treasurer's office or banks afore-
 36 said, on the first day of and the first day
 37 of of each year (and in the case of cou-
 38 pon bonds) according to the tenor of the annexed coupons
 39 bearing the facsimile signature of the treasurer of the
 40 state of West Virginia, upon surrender of such coupons.
 41 This bond (in case of a coupon bond) may be exchanged
 42 for a registered bond of like tenor upon application to
 43 the treasurer of the state of West Virginia.

44 (Redemption provisions, if any, to be inserted here.)

45 To secure the payment of the principal and interest of
46 this bond, the state of West Virginia covenants and agrees
47 with the holder as follows: (1) That this bond shall con-
48 stitute a direct and general obligation of the state of West
49 Virginia; (2) that the full faith and credit of the state is
50 pledged to secure the payment of the principal and in-
51 terest of this bond; (3) that an annual state tax shall be
52 collected in an amount sufficient to pay as it may accrue
53 the interest on this bond and the principal as the same
54 mature; and (4) that to the full extent permitted by the
55 constitution of West Virginia any of the covenants, agree-
56 ments and provisions of this act may be enforced in any
57 court of competent jurisdiction by any holder of such
58 bonds or of any interest coupon appertaining thereto.

59 This bond is hereby made exempt from any taxation by
60 the state of West Virginia, or by any county, district or
61 municipal corporation thereof.

62 In testimony whereof, witness the manual or facsimile
63 signature of the treasurer of the state of West Virginia,
64 and the manual or facsimile countersignature of the
65 auditor of the state, hereto affixed according to law, dated
66 the day of, one thousand nine
67 hundred, and the seal of the state of
68 West Virginia or a facsimile thereof.

69 ..
70 Treasurer of the State of West Virginia
71 (SEAL)

72 Countersigned:
73
74 Auditor of the State of West Virginia

§4. Form of coupon.

1 The form of coupon shall be substantially as follows,
2 to wit:

3 STATE OF WEST VIRGINIA
4 Bond No..... Coupon No.....

5 On the first day of, 19____, the state
6 of West Virginia will pay to the bearer, in lawful money

7 of the United States of America, at the office of the
 8 treasurer of the state, or, at.....bank
 9 in the city of New York, or, at,
 10 at the option of the holder, the sum of.....
 11 dollars, the same being semiannual interest on School
 12 Buildings Bond No.....

13

14

Treasurer of the State of West Virginia

15 The signature of the treasurer to such coupon shall be
 16 by his facsimile signature and the coupons shall be num-
 17 bered in the order of their maturity, from number one
 18 consecutively. The bonds and coupons may be signed, as
 19 provided in this act, by the present treasurer and auditor,
 20 or by any of their respective successors in office, and the
 21 bonds signed by the persons now in the office may be
 22 sold by the governor or his successor in office without being
 23 signed by the successor in office of the present treasurer or
 24 auditor.

§5. Listing by auditor.

1 All coupons and registered bonds issued under this act
 2 shall be separately listed by the auditor of the state in
 3 books provided for the purpose, in each case giving the
 4 date, number, character and amount of obligations issued,
 5 and in the case of registered bonds, the name and post-
 6 office address of the person, firm or corporation registered
 7 as the owner thereof.

§6. Establishment of state school buildings bond debt service account; deposits therein.

1 The treasurer shall establish in his office a special ac-
 2 count designated state school buildings bond debt service
 3 account. Into such account and from the appropriation
 4 made by the Legislature for such purpose there shall be
 5 transferred sufficient moneys to pay the interest as the
 6 same may accrue and the principal as the same mature
 7 on such bonds. Moneys received from transfer and regis-
 8 tration fees shall likewise be deposited into said special
 9 account.

§7. Covenants of state.

1 The state of West Virginia covenants and agrees with

2 the holders of the bonds issued pursuant hereto as fol-
3 lows: (1) That such bonds shall constitute a direct and
4 general obligation of the state of West Virginia; (2) that
5 the full faith and credit of the state is hereby pledged to
6 secure the payment of the principal and interest of such
7 bonds; (3) that an annual state tax shall be collected in
8 an amount sufficient to pay as it may accrue the interest
9 on this bond and the principal as the same mature; and
10 (4) that to the full extent permitted by the constitution of
11 West Virginia any of the covenants, agreements and pro-
12 visions of this act may be enforced in any court of compe-
13 tent jurisdiction by any holder of such bonds or of any
14 interest coupon appertaining thereto.

§8. Sale by governor; minimum price.

1 The governor shall sell the bonds herein authorized at
2 such time or times after the first day of August, one
3 thousand nine hundred seventy-four, as he may deter-
4 mine necessary to provide funds for the construction,
5 renovation, remodeling and equipping of elementary or
6 secondary public school buildings or facilities as herein
7 provided, and subject to the limitations contained in this
8 act. All sales shall be at not less than par and accrued in-
9 terest. All interest coupons becoming payable prior to
10 the sale date shall be cancelled by the treasurer and
11 rendered ineffective, before the delivery of the bonds so
12 sold.

§9. Proceeds paid into separate account; expenditures.

1 The proceeds of all sales of bonds herein authorized
2 shall be paid into a separate and distinct account and shall
3 be used and appropriated solely for the construction,
4 renovation, remodeling and equipping of elementary or
5 secondary public school buildings or facilities as provided
6 for by the state constitution and the laws enacted there-
7 under. Except for such sums necessary for current operat-
8 ing balances, such account shall be invested and rein-
9 vested in short-term obligations of the United States trea-
10 sury: *Provided*, That no such investment or reinvestment

11 shall adversely affect the current operating balances of
12 such account.

§10. Plates, etc., property of state.

1 The plates, casts, dies or other forms from which the
2 bonds authorized by this act are produced or made shall
3 be the property of the state of West Virginia.

§11. Auditor to be custodian of unsold bonds.

1 The state auditor shall be the custodian of all unsold
2 bonds issued pursuant to the provisions of this act.

§12. Interim certificates.

1 The governor may authorize the issuance of interim
2 certificates to be issued to the purchasers of such bonds
3 to be held by them in lieu of permanent bonds. When
4 interim certificates are so issued, they shall become full
5 and legal obligations of the state of West Virginia under
6 all of the provisions of this act just as fully and completely
7 as the permanent bonds.

§13. State treasurer to be financial advisor.

1 The state treasurer shall serve as financial advisor to
2 the governor for the issuance and sale of such bonds.

§14. Attorney general or his duly appointed legal representative to serve as bond counsel.

1 The attorney general, or his duly appointed legal representative,
2 shall serve as bond counsel and shall be responsible for the issuance of a final approving opinion
3 regarding the legality of the sale of such bonds.
4

§15. Approval and payment of all necessary expenses.

1 All necessary expenses, including legal expenses approved by the attorney general, incurred in the execution
2 of this act shall be chargeable to and paid out of the state
3 school buildings bond debt service account on warrants of
4 the auditor of the state drawn on the state treasurer.
5

CHAPTER 128

(Com. Sub. for S. B. 23—By Mr. Gainer and Mr. Poffenbarger)

[Passed March 9, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact chapter thirty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said code by adding thereto a new chapter, designated chapter thirty-two-a, relating to securities generally; enacting the uniform securities act; prohibiting fraudulent and other practices with respect to securities; relating to and requiring the registration of broker-dealers, agents and investment advisers and securities; relating to various exempted securities and exempted transactions; relating to administrative procedures and investigatory powers; authorizing the issuance of subpoenas; relating to certain land sales and false advertising; relating to the business of issuing and selling checks, drafts, money orders, personal money orders or other instruments for the transmission or payment of money; requiring proof of financial responsibility to engage in such business and the deposit of adequate security; providing for an annual fee to engage in such business; providing certain exemptions; relating to judicial review; relating to judicial enforcement and injunctive relief; relating to civil penalties; providing criminal offenses and penalties; relating to indictments; and providing severability clauses.

Be it enacted by the Legislature of West Virginia:

That chapter thirty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said code be further amended by adding thereto a new chapter, designated chapter thirty-two-a, all to read as follows:

Chapter

32. Uniform Securities Act.

32A. Land Sales; False Advertising; Issuance and Sale of Checks, Drafts, Money Orders, Etc.

CHAPTER 32. UNIFORM SECURITIES ACT.**Article**

1. **Fraudulent and Other Prohibited Practices.**
2. **Registration of Broker-Dealers, Agents and Investment Advisers.**
3. **Registration of Securities.**
4. **General Provisions.**

ARTICLE 1. FRAUDULENT AND OTHER PROHIBITED PRACTICES.

§32-1-101. Sales and purchases.

§32-1-102. Advisory activities.

§32-1-101. Sales and purchases.

- 1 It is unlawful for any person, in connection with the
- 2 offer, sale or purchase of any security, directly or in-
- 3 directly
- 4 (1) to employ any device, scheme or artifice to de-
- 5 fraud;
- 6 (2) to make any untrue statement of a material fact
- 7 or to omit to state a material fact necessary in order to
- 8 make the statements made, in the light of the circum-
- 9 stances under which they are made, not misleading; or
- 10 (3) to engage in any act, practice or course of business
- 11 which operates or would operate as a fraud or deceit upon
- 12 any person.

§32-1-102. Advisory activities.

- 1 (a) It is unlawful for any person who receives any
- 2 consideration from another person primarily for advising
- 3 the other person as to the value of securities or their
- 4 purchase or sale, whether through the issuance of an-
- 5 alyses or reports or otherwise,
- 6 (1) To employ any device, scheme or artifice to de-
- 7 fraud the other person; or
- 8 (2) To engage in any act, practice or course of business
- 9 which operates or would operate as a fraud or deceit
- 10 upon the other person.
- 11 (b) It is unlawful for any investment adviser to enter
- 12 into, extend or renew any investment advisory contract
- 13 unless it provides in writing

14 (1) that the investment adviser shall not be compen-
15 sated on the basis of a share of capital gains upon or
16 capital appreciation of the funds or any portion of the
17 funds of the client;

18 (2) that no assignment of the contract may be made
19 by the investment adviser without the consent of the
20 other party to the contract; and

21 (3) that the investment adviser, if a partnership, shall
22 notify the other party to the contract of any change in
23 the membership of the partnership within a reasonable
24 time after the change.

25 Subdivision (1) of this section does not prohibit an in-
26 vestment advisory contract which provides for compen-
27 sation based upon the total value of a fund averaged over
28 a definite period, or as of definite dates or taken as of a
29 definite date. "Assignment," as used in subdivision (2) of
30 this section includes any direct or indirect transfer or hy-
31 pothecation of an investment advisory contract by the
32 assignor or of a controlling block of the assignor's out-
33 standing voting securities by a security holder of the as-
34 signor; but, if the investment adviser is a partnership, no
35 assignment of an investment advisory contract is con-
36 sidered to result from the death or withdrawal of a minor-
37 ity of the members of the investment adviser having only
38 a minority interest in the business of the investment ad-
39 viser, or from the admission to the investment adviser of
40 one or more members who, after admission, will be only
41 a minority of the members and will have only a minority
42 interest in the business.

43 (c) It is unlawful for any investment adviser to take
44 or have custody of any securities or funds of any client if

45 (1) the commissioner by rule prohibits custody; or

46 (2) in the absence of rule, the investment adviser fails
47 to notify the commissioner that he has or may have cus-
48 tody.

**ARTICLE 2. REGISTRATION OF BROKER-DEALERS, AGENTS AND
INVESTMENT ADVISERS.**

§32-2-201. Registration requirement.

§32-2-202. Registration procedure.

§32-2-203. Post-registration provisions.

§32-2-204. Denial, revocation, suspension, cancellation and withdrawal.

§32-2-201. Registration requirement.

1 (a) It is unlawful for any person to transact business
2 in this state as a broker-dealer or agent unless he is
3 registered under this chapter.

4 (b) It is unlawful for any broker-dealer or issuer to
5 employ an agent unless the agent is registered. The reg-
6 istration of an agent is not effective during any period
7 when he is not associated with a particular broker-dealer
8 registered under this chapter or a particular issuer. When
9 an agent begins or terminates a connection with a broker-
10 dealer or issuer, or begins or terminates those activities
11 which make him an agent, the agent as well as the
12 broker-dealer or issuer shall promptly notify the com-
13 missioner.

14 (c) It is unlawful for any person to transact business
15 in this state as an investment adviser unless (1) he is so
16 registered under this chapter, (2) he is registered as a
17 broker-dealer without the imposition of a condition under
18 section 204(b) (5), or (3) his only clients in this state
19 are investment companies as defined in the Investment
20 Company Act of 1940 or insurance companies.

21 (d) Every registration expires one year from its effec-
22 tive date unless renewed. The commissioner by rule or
23 order may prepare an initial schedule for registration re-
24 newals so that subsequent renewals of registrations effec-
25 tive on the effective date of this chapter may be staggered
26 by calendar months. For this purpose the commissioner
27 by rule may reduce the registration fee proportionately.

§32-2-202. Registration procedure.

1 (a) A broker-dealer, agent or investment adviser may
2 obtain an initial or renewal registration by filing with the
3 commissioner an application together with a consent to
4 service of process pursuant to section 414(g). The appli-
5 cation shall contain whatever information the commis-
6 sioner by rule requires concerning such matters as (1)
7 the applicant's firm and place of organization; (2) the

8 applicant's proposed method of doing business; (3) the
9 qualifications and business history of the applicant; in the
10 case of a broker-dealer or investment adviser, the quali-
11 fications and business history of any partner, officer or
12 director, any person occupying a similar status or per-
13 forming similar functions, or any person directly or in-
14 directly controlling the broker-dealer or investment
15 adviser; and, in the case of an investment adviser, the
16 qualifications and business history of any employee; (4)
17 any injunction or administrative order or conviction of a
18 misdemeanor involving a security or any aspect of the
19 securities business and any conviction of a felony; and (5)
20 the applicant's financial condition and history. The com-
21 missioner may by rule or order require an applicant for
22 initial registration to publish an announcement of the
23 application as a Class I legal advertisement in compliance
24 with the provisions of article three, chapter fifty-nine of
25 this code, and the publication area or areas for such pub-
26 lication shall be specified by the commissioner. If no de-
27 nial order is in effect and no proceeding is pending under
28 section 204, registration becomes effective at noon of the
29 thirtieth day after an application is filed. The commis-
30 sioner may by rule or order specify an earlier effective
31 date, and he may by order defer the effective date until
32 noon of the thirtieth day after the filing of any amend-
33 ment. Registration of a broker-dealer automatically con-
34 stitutes registration of any agent who is a partner, offi-
35 cer or director, or a person occupying a similar status or
36 performing similar functions, as designated by the broker-
37 dealer in writing to the commissioner and approved in
38 writing by the commissioner.

39 (b) Every applicant for initial or renewal registration
40 shall pay a filing fee of one hundred dollars in the case of
41 a broker-dealer, fifteen dollars in the case of an agent,
42 and fifteen dollars in the case of an investment adviser.
43 When application is denied or withdrawn, the commis-
44 sioner shall retain all of the fee.

45 (c) A registered broker-dealer or investment adviser
46 may file an application for registration of a successor,
47 whether or not the successor is then in existence, for the

48 unexpired portion of the year. A filing fee of five dollars
49 shall be paid.

50 (d) The commissioner may by rule require a minimum
51 capital for registered broker-dealers and investment ad-
52 visers.

53 (e) The commissioner may by rule require registered
54 broker-dealers, agents and investment advisers to post
55 surety bonds in amounts up to ten thousand dollars, and
56 may determine their conditions. Any appropriate deposit
57 of cash or securities shall be accepted in lieu of any bond
58 so required. No bond may be required of any registrant
59 whose net capital, which may be defined by rule, exceeds
60 twenty-five thousand dollars. Every bond shall provide for
61 suit thereon by any person who has a cause of action un-
62 der section 410 and, if the commissioner by rule or order
63 requires, by any person who has a cause of action not
64 arising under this chapter. Every bond shall provide that
65 no suit may be maintained to enforce any liability on the
66 bond unless brought within two years after the sale or
67 other act upon which it is based.

§32-2-203. Post-registration provisions.

1 (a) Every registered broker-dealer and investment
2 adviser shall make and keep such accounts, correspon-
3 dence, memoranda, papers, books and other records as the
4 commissioner by rule prescribes. All records so required
5 shall be preserved for three years unless the commissioner
6 by rule prescribes otherwise for particular types of
7 records.

8 (b) Every registered broker-dealer and investment
9 adviser shall file such financial reports as the commis-
10 sioner by rule prescribes.

11 (c) If the information contained in any document filed
12 with the commissioner is or becomes inaccurate or in-
13 complete in any material respect, the registrant shall
14 promptly file a correcting amendment unless notification
15 of the correction has been given under section 201 (b).

16 (d) All the records referred to in subsection (a) are
17 subject at any time or from time to time to such reason-

18 able periodic, special or other examinations by representa-
19 tives of the commissioner, within or without this state, as
20 the commissioner deems necessary or appropriate in the
21 public interest or for the protection of investors. For the
22 purpose of avoiding unnecessary duplication of examina-
23 tions, the commissioner, insofar as he deems it practicable
24 in administering this subsection, may cooperate with the
25 securities administrators of other states, the securities and
26 exchange commission, and any national securities ex-
27 change or national securities association registered under
28 the Securities Exchange Act of 1934.

§32-2-204. Denial, revocation, suspension, cancellation and withdrawal of registration.

- 1 (a) The commissioner may by order deny, suspend or
2 revoke any registration if he finds (1) that the order is in
3 the public interest and (2) that the applicant or registrant
4 or, in the case of a broker-dealer or investment adviser,
5 any partner, officer or director, any person occupying a
6 similar status or performing similar functions, or any per-
7 son directly or indirectly controlling the broker-dealer or
8 investment adviser
- 9 (A) has filed an application for registration which as
10 of its effective date, or as of any date after filing in the case
11 of an order denying effectiveness, was incomplete in any
12 material respect or contained any statement which was,
13 in light of the circumstances under which it was made,
14 false or misleading with respect to any material fact;
- 15 (B) has willfully violated or willfully failed to com-
16 ply with any provision of this chapter or a predecessor
17 act or any rule or order under this chapter or a predeces-
18 sor act;
- 19 (C) has been convicted, within the past ten years, of
20 any misdemeanor involving a security or any aspect of the
21 securities business, or any felony;
- 22 (D) is permanently or temporarily enjoined by any
23 court of competent jurisdiction from engaging in or con-
24 tinuing any conduct or practice involving any aspect of
25 the securities business;

26 (E) is the subject of an order of the commissioner
27 denying, suspending or revoking registration as a broker-
28 dealer, agent or investment adviser;

29 (F) is the subject of an order entered within the past
30 five years by the securities administrator of any other
31 state or by the securities and exchange commission deny-
32 ing or revoking registration as a broker-dealer, agent or
33 investment adviser, or the substantial equivalent of those
34 terms as defined in this chapter, or is the subject of an
35 order of the securities and exchange commission suspend-
36 ing or expelling him from a national securities exchange
37 or national securities association registered under the Se-
38 curities Exchange Act of 1934, or is the subject of a United
39 States post office fraud order; but (i) the commissioner
40 may not institute a revocation or suspension proceeding
41 under subdivision (F) more than one year from the date
42 of the order relied on, and (ii) he may not enter an order
43 under subdivision (F) on the basis of an order under an-
44 other state act unless that order was based on facts which
45 would currently constitute a ground for an order under
46 this section;

47 (G) has engaged in dishonest or unethical practices in
48 the securities business;

49 (H) is insolvent, either in the sense that his liabilities
50 exceed his ~~assets~~ or in the sense that he cannot meet his
51 obligations as they mature; but the commissioner may not
52 enter an order against a broker-dealer or investment ad-
53 viser under this subdivision without a finding of in-
54 solvency as to the broker-dealer or investment adviser;
55 or

56 (I) is not qualified on the basis of such factors as train-
57 ing, experience and knowledge of the securities business,
58 except as otherwise provided in subsection (b).

59 The commissioner may by order deny, suspend or re-
60 voke any registration if he finds (1) that the order is in
61 the public interest and (2) that the applicant or registrant

62 (J) has failed reasonably to supervise his agents if he
63 is a broker-dealer or his employees if he is an investment
64 adviser; or

65 (K) has failed to pay the proper filing fee; but the
66 commissioner may enter only a denial order under this
67 subdivision, and he shall vacate any such order when the
68 deficiency has been corrected.

69 The commissioner may not institute a suspension or
70 revocation proceeding on the basis of a fact or transaction
71 known to him when registration became effective unless
72 the proceeding is instituted within the next thirty days.

73 (b) The following provisions govern the application of
74 section 204(a) (2) (I):

75 (1) The commissioner may not enter an order against
76 a broker-dealer on the basis of the lack of qualification of
77 any person other than (A) the broker-dealer himself if
78 he is an individual or (B) an agent of the broker-dealer.

79 (2) The commissioner may not enter an order against
80 an investment adviser on the basis of the lack of qualifica-
81 tion of any person other than (A) the investment adviser
82 himself if he is an individual or (B) any other person who
83 represents the investment adviser in doing any of the acts
84 which may make him an investment adviser.

85 (3) The commissioner may not enter an order solely
86 on the basis of lack of experience if the applicant or regis-
87 trant is qualified by training or knowledge or both.

88 (4) The commissioner shall consider that an agent who
89 will work under the supervision of a registered broker-
90 dealer need not have the same qualifications as a broker-
91 dealer.

92 (5) The commissioner shall consider that an invest-
93 ment adviser is not necessarily qualified solely on the basis
94 of experience as a broker-dealer or agent. When he finds
95 that an applicant for initial or renewal registration as a
96 broker-dealer is not qualified as an investment adviser,
97 he may by order condition the applicant's registration as
98 a broker-dealer upon his not transacting business in this
99 state as an investment adviser.

100 (6) The commissioner may by rule provide for an
101 examination, which may be written or oral or both, to be

102 taken by any class of or all applicants, as well as persons
103 who represent or will represent an investment adviser in
104 doing any of the acts which make him an investment ad-
105 viser.

106 (c) The commissioner may by order summarily post-
107 pone or suspend registration pending final determination
108 of any proceeding under this section. Upon the entry of
109 the order, the commissioner shall promptly notify the ap-
110 plicant or registrant, as well as the employer or prospec-
111 tive employer if the applicant or registrant is an agent,
112 that it has been entered and of the reasons therefor and
113 that within fifteen days after the receipt of a written re-
114 quest the matter will be set down for hearing. If no
115 hearing is requested and none is ordered by the com-
116 missioner, the order will remain in effect until it is modi-
117 fied or vacated by the commissioner. If a hearing is re-
118 quested or ordered, the commissioner, after notice of and
119 opportunity for hearing, may modify or vacate the order
120 or extend it until final determination.

121 (d) If the commissioner finds that any registrant or
122 applicant for registration is no longer in existence or has
123 ceased to do business as a broker-dealer, agent or invest-
124 ment adviser, or is subject to an adjudication of mental
125 incompetence or to the control of a committee, conservator
126 or guardian, or cannot be located after reasonable search,
127 the commissioner may by order cancel the registration or
128 application.

129 (e) Withdrawal from registration as a broker-dealer,
130 agent or investment adviser becomes effective thirty days
131 after receipt of an application to withdraw or within such
132 shorter period of time as the commissioner may determine,
133 unless a revocation or suspension proceeding is pending
134 when the application is filed or a proceeding to revoke or
135 suspend or to impose conditions upon the withdrawal is
136 instituted within thirty days after the application is filed.
137 If a proceeding is pending or instituted, withdrawal be-
138 comes effective at such time and upon such conditions as
139 the commissioner by order determines. If no proceeding
140 is pending or instituted and withdrawal automatically be-
141 comes effective, the commissioner may nevertheless in-

142 stitute a revocation or suspension proceeding under sec-
143 tion 204(a) (2) (B) within one year after withdrawal
144 became effective and enter a revocation or suspension
145 order as of the last date on which registration was effec-
146 tive.

147 (f) No order may be entered under any part of this
148 section except the first sentence of subsection (c) without
149 (1) appropriate prior notice to the applicant or regis-
150 trant (as well as the employer or prospective employer
151 if the applicant or registrant is an agent), (2) opportunity
152 for hearing, and (3) written findings of fact and conclu-
153 sions of law.

ARTICLE 3. REGISTRATION OF SECURITIES.

§32-3-301. Registration requirements.

§32-3-302. Registration by notification.

§32-3-303. Registration by coordination.

§32-3-304. Registration by qualification.

§32-3-305. Provisions applicable to registration generally.

§32-3-306. Denial, suspension and revocation of registration.

§32-3-301. Registration requirement.

1 It is unlawful for any person to offer or sell any se-
2 curity in this state unless (1) it is registered under this
3 chapter or (2) the security or transaction is exempted
4 under section 402.

§32-3-302. Registration by notification.

1 (a) The following securities may be registered by
2 notification, whether or not they are also eligible for
3 registration by coordination under section 303:

4 (1) Any security, other than a security with a fixed
5 maturity or a fixed interest or dividend provision, whose
6 issuer and any predecessors have been in continuous
7 operation for at least five years if (A) there has been
8 no default during the current fiscal year or within the
9 three preceding fiscal years in the payment of principal,
10 interest or dividends on any security of the issuer (or
11 any predecessor) with a fixed maturity or a fixed interest
12 or dividend provision, and (B) the issuer and any prede-
13 cessors during the past three fiscal years have had

14 average net earnings, determined in accordance with
15 generally accepted accounting practices, (i) which are
16 applicable to all securities without a fixed maturity or
17 a fixed interest or dividend provision outstanding at the
18 date the registration statement is filed and equal at least
19 five percent of the amount of such outstanding securities
20 (as measured by the maximum offering price or the
21 market price on a day, selected by the registrant, within
22 thirty days before the date of filing the registration
23 statement, whichever is higher, or book value on a day,
24 selected by the registrant, within ninety days of the
25 date of filing the registration statement to the extent
26 that there is neither a readily determinable market price
27 nor a cash offering price), or (ii) which, if the issuer and
28 any predecessors have not had any security of the type
29 specified in clause (i) outstanding for three full fiscal
30 years, equal at least five percent of the amount (as mea-
31 sured in clause (i)) of all securities which will be out-
32 standing if all the securities being offered or proposed
33 to be offered (whether or not they are proposed to be
34 registered or offered in this state) are issued;

35 (2) any security (other than a certificate of interest
36 or participation in an oil, gas or mining title or lease or
37 in payments out of production under such a title or lease)
38 registered for nonissuer distribution if (A) any security
39 of the same class has ever been registered under this
40 chapter or a predecessor act, or (B) the security being
41 registered was originally issued pursuant to an exemp-
42 tion under this chapter or a predecessor act.

43 (b) A registration statement under this section shall
44 contain the following information and be accompanied
45 by the following documents in addition to the informa-
46 tion specified in section 305 (c) and the consent to service
47 of process required by section 414(g):

48 (1) A statement demonstrating eligibility for regis-
49 tration by notification;

50 (2) with respect to the issuer and any significant
51 subsidiary: Its name, address and form of organization;
52 the state (or foreign jurisdiction) and the date of its

53 organization; and the general character and location of
54 its business;

55 (3) with respect to any person on whose behalf any
56 part of the offering is to be made in a nonissuer distri-
57 bution: His name and address; the amount of securities
58 of the issuer held by him as of the date of the filing of
59 the registration statement; and a statement of his reasons
60 for making the offering;

61 (4) a description of the security being registered;

62 (5) the information and documents specified in sub-
63 divisions (8), (10) and (12) of section 304(b); and

64 (6) in the case of any registration under section
65 302(a) (2) which does not also satisfy the conditions of
66 section 302(a) (1), a balance sheet of the issuer as of a
67 date within four months prior to the filing of the regis-
68 tration statement, and a summary of earnings for each
69 of the two fiscal years preceding the date of the balance
70 sheet and for any period between the close of the last
71 fiscal year and the date of the balance sheet, or for the
72 period of the issuer's and any predecessors' existence if
73 less than two years.

74 (c) If no stop order is in effect and no proceeding is
75 pending under section 306, a registration statement under
76 this section automatically becomes effective at three
77 o'clock in the afternoon of the full business day after the
78 filing of the registration statement or the last amend-
79 ment, or at such earlier time as the commissioner deter-
80 mines.

§32-3-303. Registration by coordination.

1 (a) Any security for which a registration statement
2 has been filed under the Securities Act of 1933 in connec-
3 tion with the same offering may be registered by coordi-
4 nation.

5 (b) A registration statement under this section shall
6 contain the following information and be accompanied
7 by the following documents in addition to the information
8 specified in section 305(c) and the consent to service of
9 process required by section 414(g):

10 (1) Three copies of the latest form of prospectus filed
11 under the Securities Act of 1933;

12 (2) If the commissioner by rule or otherwise requires,
13 a copy of the articles of incorporation and bylaws (or their
14 substantial equivalents) currently in effect, a copy of any
15 agreements with or among underwriters, a copy of any
16 indenture or other instrument governing the issuance of
17 the security to be registered, and a specimen or copy of
18 the security;

19 (3) If the commissioner requests, any other infor-
20 mation, or copies of any other documents, filed under the
21 Securities Act of 1933; and

22 (4) An undertaking to forward all future amendments
23 to the federal prospectus, other than an amendment which
24 merely delays the effective date of the registration state-
25 ment, promptly and in any event not later than the first
26 business day after the day they are forwarded to or filed
27 with the securities and exchange commission, whichever
28 first occurs.

29 (c) A registration statement under this section auto-
30 matically becomes effective at the moment the federal
31 registration statement becomes effective if all the follow-
32 ing conditions are satisfied: (1) No stop order is in effect
33 and no proceeding is pending under section 306; (2) the
34 registration statement has been on file with the com-
35 missioner for at least ten days; and (3) a statement of
36 the maximum and minimum proposed offering prices
37 and the maximum underwriting discounts and the com-
38 missions has been on file for two full business days or
39 such shorter period as the commissioner permits by rule
40 or otherwise and the offering is made within those limi-
41 tations. The registrant shall promptly notify the commis-
42 sioner by telephone or telegram of the date and time when
43 the federal registration statement became effective and
44 the content of the price amendment, if any, and shall
45 promptly file a post-effective amendment containing the
46 information and documents in the price amendment.
47 "Price amendment" means the final federal amendment
48 which includes a statement of the offering price, under-

49 writing and selling discounts or commissions, amount of
50 proceeds, conversion rates, call prices and other matters
51 dependent upon the offering price. Upon failure to receive
52 the required notification and post-effective amendment
53 with respect to the price amendment, the commissioner
54 may enter a stop order, without notice or hearing, retro-
55 actively denying effectiveness to the registration state-
56 ment or suspending its effectiveness until compliance with
57 this subsection, if he promptly notifies the registrant by
58 telephone or telegram (and promptly confirms by letter or
59 telegram when he notifies by telephone) of the issuance
60 of the order. If the registrant proves compliance with the
61 requirements of this subsection as to notice and post-effec-
62 tive amendment, the stop order is void as of the time
63 of its entry. The commissioner may by rule or otherwise
64 waive either or both of the conditions specified in sub-
65 divisions (2) and (3) of subsection (b). If the federal reg-
66 istration statement becomes effective before all the condi-
67 tions in this subsection are satisfied and they are not
68 waived, the registration statement automatically becomes
69 effective as soon as all the conditions are satisfied. If the
70 registrant advises the commissioner of the date when the
71 federal registration statement is expected to become ef-
72 fective, the commissioner shall promptly advise the regis-
73 trant by telephone or telegram, at the registrant's expense
74 whether all the conditions are satisfied and whether he
75 then contemplates the institution of a proceeding under
76 section 306; but this advice by the commissioner does not
77 preclude the institution of such a proceeding at any time.

§32-3-304. Registration by qualification.

- 1 (a) Any security may be registered by qualification.
- 2 (b) A registration statement under this section shall
3 contain the following information and be accompanied by
4 the following documents in addition to the information
5 specified in section 305 (c) and the consent to service of
6 process required by section 414 (g):
 - 7 (1) With respect to the issuer and any significant
8 subsidiary: Its name, address and form of organization;
9 the state or foreign jurisdiction and date of organiza-

10 tion; the general character and location of its business; a
11 description of its physical properties and equipment; and
12 a statement of the general competitive conditions in the
13 industry or business in which it is or will be engaged;

14 (2) with respect to every director and officer of the
15 issuer, or person occupying a similar status or performing
16 similar functions: His name, address and principal occu-
17 pation for the past five years; the amount of securities
18 of the issuer held by him as of a specified date within
19 thirty days of the filing of the registration statement; the
20 amount of the securities covered by the registration
21 statement to which he has indicated his intention to
22 subscribe; and a description of any material interest in any
23 material transaction with the issuer or any significant
24 subsidiary effected within the past three years or pro-
25 posed to be effected;

26 (3) with respect to persons covered by subdivision (2):
27 The remuneration paid during the past twelve months and
28 estimated to be paid during the next twelve months, di-
29 rectly or indirectly, by the issuer (together with all
30 predecessors, parents, subsidiaries and affiliates) to all
31 those persons in the aggregate;

32 (4) with respect to any person owning of record, or
33 beneficially if known, ten percent or more of the out-
34 standing shares of any class of equity security of the
35 issuer: The information specified in subdivision (2) other
36 than his occupation;

37 (5) with respect to every promoter if the issuer was
38 organized within the past three years: The information
39 specified in subdivision (2), any amount paid to him with-
40 in that period or intended to be paid to him, and the
41 consideration for any such payment;

42 (6) with respect to any person on whose behalf any
43 part of the offering is to be made in a nonissuer distribu-
44 tion: His name and address; the amount of securities of
45 the issuer held by him as of the date of the filing of the
46 registration statement; a description of any material in-
47 terest in any material transaction with the issuer or any
48 significant subsidiary effected within the past three years

49 or proposed to be effected; and a statement of his reasons
50 for making the offering;

51 (7) the capitalization and long-term debt (on both a
52 current and a pro forma basis) of the issuer and any
53 significant subsidiary, including a description of each
54 security outstanding or being registered or otherwise
55 offered, and a statement of the amount and kind of
56 consideration (whether in the form of cash, physical as-
57 sets, services, patents, goodwill or anything else) for which
58 the issuer or any subsidiary has issued any of its securities
59 within the past two years or is obligated to issue any of
60 its securities;

61 (8) the kind and amount of securities to be offered;
62 the proposed offering price or the method by which it is to
63 be computed; any variation therefrom at which any pro-
64 portion of the offering is to be made to any person or class
65 of persons other than the underwriters, with a specifica-
66 tion of any such person or class; the basis upon which the
67 offering is to be made if otherwise than for cash; the esti-
68 mated aggregate underwriting and selling discounts or
69 commissions and finders' fees (including separately cash,
70 securities, contracts or anything else of value to accrue to
71 the underwriters or finders in connection with the offer-
72 ing) or, if the selling discounts or commissions are
73 variable, the basis of determining them and their maxi-
74 mum and minimum amounts; the estimated amounts of
75 other selling expenses, including legal, engineering and
76 accounting charges; the name and address of every un-
77 derwriter and every recipient of a finder's fee; a copy of
78 any underwriting or selling-group agreement pursuant
79 to which the distribution is to be made, or the proposed
80 form of any such agreement whose terms have not yet
81 been determined; and a description of the plan of distri-
82 bution of any securities which are to be offered otherwise
83 than through an underwriter;

84 (9) the estimated cash proceeds to be received by the
85 issuer from the offering; the purposes for which the
86 proceeds are to be used by the issuer; the amount to be
87 used for each purpose; the order or priority in which the
88 proceeds will be used for the purpose stated; the amounts

89 of any funds to be raised from other sources to achieve
90 the purposes stated; the sources of any such funds; and, if
91 any part of the proceeds is to be used to acquire any prop-
92 erty (including goodwill) otherwise than in the ordinary
93 course of business, the names and addresses of the ven-
94 dors, the purchase price, the names of any persons who
95 have received commissions in connection with the acqui-
96 sition and the amounts of any such commissions and any
97 other expense in connection with the acquisition (includ-
98 ing the cost of borrowing money to finance the acqui-
99 sition);

100 (10) a description of any stock options or other security
101 options outstanding, or to be created in connection with
102 the offering, together with the amount of any such options
103 held or to be held by every person required to be named
104 in subdivision (2), (4), (5), (6) or (8) and by any per-
105 son who holds or will hold ten percent or more in the
106 aggregate of any such options;

107 (11) the dates of, parties to, and general effect concisely
108 stated of, every management or other material contract
109 made or to be made otherwise than in the ordinary
110 course of business if it is to be performed in whole or in
111 part at or after the filing of the registration statement or
112 was made within the past two years, together with a copy
113 of every such contract; and a description of any pending
114 litigation or proceeding to which the issuer is a party and
115 which materially affects its business or assets (including
116 any such litigation or proceeding known to be contem-
117 plated by governmental authorities);

118 (12) a copy of any prospectus, pamphlet, circular, form
119 letter, advertisement or other sales literature intended
120 as of the effective date to be used in connection with the
121 offering;

122 (13) a specimen or copy of the security being regis-
123 tered; a copy of the issuer's articles of incorporation and
124 bylaws, or their substantial equivalents, as currently in
125 effect; and a copy of any indenture or other instrument
126 covering the security to be registered;

127 (14) a signed or conformed copy of an opinion of coun-

128 sel as to the legality of the security being registered (with
129 an English translation if it is in a foreign language),
130 which shall state whether the security when sold will be
131 legally issued, fully paid and nonassessable, and, if a debt
132 security, a binding obligation of the issuer;

133 (15) the written consent of any accountant, engineer,
134 appraiser or other person whose profession gives authority
135 to a statement made by him, if any such person is named
136 as having prepared or certified a report or valuation
137 (other than a public and official document or statement)
138 which is used in connection with the registration state-
139 ment;

140 (16) a balance sheet of the issuer as of a date within
141 four months prior to the filing of the registration state-
142 ment; a profit and loss statement and analysis of surplus
143 for each of the three fiscal years preceding the date of the
144 balance sheet and for any period between the close of the
145 last fiscal year and the date of the balance sheet, or for
146 the period of the issuer's and any predecessors' existence
147 if less than three years; and, if any part of the proceeds
148 of the offering is to be applied to the purchase of any
149 business, the same financial statements which would be
150 required if that business were the registrant; and

151 (17) such additional information as the commissioner
152 requires by rule or order.

153 (c) A registration statement under this section becomes
154 effective when the commissioner so orders.

155 (d) The commissioner may by rule or order require as
156 a condition of registration under this section that a pros-
157 pectus containing any designated part of the information
158 specified in subsection (b) be sent or given to each person
159 to whom an offer is made before or concurrently with (1)
160 the first written offer made to him (otherwise than by
161 means of a public advertisement) by or for the account of
162 the issuer or any other person on whose behalf the offer-
163 ing is being made, or by any underwriter or broker-dealer
164 who is offering part of an unsold allotment or subscrip-
165 tion taken by him as a participant in the distribution, (2)
166 the confirmation of any sale made by or for the account of

167 any such person, (3) payment pursuant to any such sale,
168 or (4) delivery of the security pursuant to any such sale,
169 whichever first occurs.

§32-3-305. Provisions applicable to registration generally.

1 (a) A registration statement may be filed by the
2 issuer, any other person on whose behalf the offering
3 is to be made, or a registered broker-dealer.

4 (b) Every person filing a registration statement shall
5 pay a filing fee of one twentieth of one percent of the
6 maximum aggregate offering price at which the registered
7 securities are to be offered in this state, but the fee
8 shall in no case be less than fifty dollars or more than
9 fifteen hundred dollars. When a registration statement
10 is withdrawn before the effective date or a preeffective
11 stop order is entered under section 306, the commissioner
12 shall retain all of the fee.

13 (c) Every registration statement shall specify (1) the
14 amount of securities to be offered in this state; (2) the
15 states in which a registration statement or similar docu-
16 ment in connection with the offering has been or is to
17 be filed; and (3) any adverse order, judgment or decree
18 entered in connection with the offering by the regulatory
19 authorities in each state or by any court or the securities
20 and exchange commission.

21 (d) Any document filed under this chapter or a prede-
22 cessor act within five years preceding the filing of a
23 registration statement may be incorporated by reference
24 in the registration statement to the extent that the docu-
25 ment is currently accurate.

26 (e) The commissioner may by rule or otherwise per-
27 mit the omission of any item of information or document
28 from any registration statement.

29 (f) In the case of a nonissuer distribution, informa-
30 tion may not be required under section 304 or 305(j)
31 unless it is known to the person filing the registration
32 statement or to the persons on whose behalf the distri-
33 bution is to be made, or can be furnished by them without
34 unreasonable effort or expense.

35 (g) The commissioner may by rule or order require
36 as a condition of registration by qualification or coordi-
37 nation (1) that any security issued within the past three
38 years or to be issued to a promoter for a consideration
39 substantially different from the public offering price, or
40 to any person for a consideration other than cash, be
41 deposited in escrow; and (2) that the proceeds from the
42 sale of the registered security in this state be impounded
43 until the issuer receives a specified amount from the sale
44 of the security either in this state or elsewhere. The
45 commissioner may by rule or order determine the condi-
46 tions of any escrow or impounding required hereunder, but
47 he may not reject a depository solely because of location
48 in another state.

49 (h) The commissioner may by rule or order require
50 as a condition of registration that any security registered
51 by qualification or coordination be sold only on a specified
52 form of subscription or sale contract, and that a signed
53 or conformed copy of each contract be filed with the
54 commissioner or preserved for any period up to three
55 years specified in the rule or order.

56 (i) Every registration statement is effective for one
57 year from its effective date, or any longer period during
58 which the security is being offered or distributed in a
59 nonexempted transaction by or for the account of the
60 issuer or other person on whose behalf the offering is
61 being made or by any underwriter or broker-dealer who
62 is still offering part of an unsold allotment or subscrip-
63 tion taken by him as a participant in the distribution,
64 except during the time a stop order is in effect under
65 section 306. All outstanding securities of the same class
66 as a registered security are considered to be registered
67 for the purpose of any nonissuer transaction (1) so long
68 as the registration statement is effective and (2) between
69 the thirtieth day after the entry of any stop order sus-
70 pending or revoking the effectiveness of the registration
71 statement under section 306 (if the registration state-
72 ment did not relate in whole or in part to a nonissuer
73 distribution) and one year from the effective date of the
74 registration statement. A registration statement may not

75 be withdrawn for one year from its effective date if any
76 securities of the same class are outstanding. A registra-
77 tion statement may be withdrawn otherwise only in the
78 discretion of the commissioner.

79 (j) So long as a registration statement is effective, the
80 commissioner may by rule or order require the person
81 who filed the registration statement to file reports, not
82 more often than quarterly, to keep reasonably current
83 the information contained in the registration statement
84 and to disclose the progress of the offering.

85 (k) A registration statement relating to a security
86 issued by a face amount certificate company or a re-
87 deemable security issued by an open-end management
88 company or unit investment trust, as those terms are
89 defined in the Investment Company Act of 1940, may be
90 amended after its effective date so as to increase the
91 securities specified as proposed to be offered. Such an
92 amendment becomes effective when the commissioner
93 so orders. Every person filing such an amendment shall
94 pay a filing fee, calculated in the manner specified in
95 subsection (b), with respect to the additional securities
96 proposed to be offered.

§32-3-306. Denial, suspension and revocation of registration.

1 (a) The commissioner may issue a stop order denying
2 effectiveness to, or suspending or revoking the effective-
3 ness of, any registration statement if he finds (1) that
4 the order is in the public interest and (2) that

5 (A) the registration statement as of its effective date
6 or as of any earlier date in the case of an order denying
7 effectiveness, or any amendment under section 305(k)
8 as of its effective date, or any report under section 305(j)
9 is incomplete in any material respect or contains any
10 statement which was, in the light of the circumstances
11 under which it was made, false or misleading with respect
12 to any material fact;

13 (B) any provision of this chapter or any rule, order
14 or condition lawfully imposed under this chapter has
15 been willfully violated, in connection with the offering,

16 by (i) the person filing the registration statement, (ii)
17 the issuer, any partner, officer or director of the issuer,
18 any person occupying a similar status or performing
19 similar functions, or any person directly or indirectly
20 controlling or controlled by the issuer, but only if the
21 person filing the registration statement is directly or in-
22 directly controlled by or acting for the issuer, or (iii)
23 any underwriter;

24 (C) the security registered or sought to be registered
25 is the subject of an administrative stop order or similar
26 order or a permanent or temporary injunction of any
27 court of competent jurisdiction entered under any other
28 federal or state act applicable to the offering; but (i) the
29 commissioner may not institute a proceeding against an
30 effective registration statement under subdivision (C)
31 more than one year from the date of the order or in-
32 junction relied on, and (ii) he may not enter an order
33 under subdivision (C) on the basis of an order or in-
34 junction entered under any other state act unless that
35 order or injunction was based on facts which would
36 currently constitute a ground for a stop order under this
37 section;

38 (D) the issuer's enterprise or method of business in-
39 cludes or would include activities which are illegal where
40 performed;

41 (E) the offering has worked or tended to work a
42 fraud upon purchasers or would so operate;

43 (F) the offering has been or would be made with
44 unreasonable amounts of underwriters' and sellers' dis-
45 counts, commissions or other compensation, or promoters'
46 profits or participation, or unreasonable amounts or kinds
47 of options;

48 (G) when a security is sought to be registered by
49 notification, it is not eligible for such registration;

50 (H) when a security is sought to be registered by
51 coordination, there has been a failure to comply with the
52 undertaking required by section 303(b) (4); or

53 (I) the applicant or registrant has failed to pay the

54 proper filing fee; but the commissioner may enter only
55 a denial order under this subdivision and he shall vacate
56 any such order when the deficiency has been corrected.

57 The commissioner may not institute a stop order pro-
58 ceeding against an effective registration statement on
59 the basis of a fact or transaction known to him when the
60 registration statement became effective unless the pro-
61 ceeding is instituted within the next thirty days.

62 (b) The commissioner may by order summarily post-
63 pone or suspend the effectiveness of the registration state-
64 ment pending final determination of any proceeding under
65 this section. Upon the entry of the order, the commis-
66 sioner shall promptly notify each person specified in
67 subsection (c) that it has been entered and of the reasons
68 therefor and that within fifteen days after the receipt
69 of a written request the matter will be set down for
70 hearing. If no hearing is requested and none is ordered
71 by the commissioner, the order will remain in effect
72 until it is modified or vacated by the commissioner. If
73 a hearing is requested or ordered, the commissioner,
74 after notice of and opportunity for hearing to each per-
75 son specified in subsection (c), may modify or vacate
76 the order or extend it until final determination.

77 (c) No stop order may be entered under any part
78 of this section except the first sentence of subsection (b)
79 without (1) appropriate prior notice to the applicant or
80 registrant, the issuer and the person on whose behalf
81 the securities are to be or have been offered, (2) oppor-
82 tunity for hearing, and (3) written findings of fact and
83 conclusions of law.

84 (d) The commissioner may vacate or modify a stop
85 order if he finds that the conditions which prompted
86 entry have changed or that it is otherwise in the public
87 interest to do so.

ARTICLE 4. GENERAL PROVISIONS.

§32-4-401. Definitions.

§32-4-402. Exemptions.

§32-4-403. Filing of sales and advertising literature.

§32-4-404. Misleading filings.

- §32-4-405. Unlawful representations concerning registration or exemption.
- §32-4-406. Administration of chapter.
- §32-4-407. Investigations and subpoenas.
- §32-4-408. Injunctions.
- §32-4-409. Criminal penalties.
- §32-4-410. Civil liabilities.
- §32-4-411. Judicial review of orders.
- §32-4-412. Rules, forms, orders and hearings.
- §32-4-413. Administrative files and opinions.
- §32-4-414. Scope of the chapter and service of process.
- §32-4-415. Statutory policy.
- §32-4-416. Short title.
- §32-4-417. Severability of provisions.
- §32-4-418. Saving provisions.

§32-4-401. Definitions.

- 1 When used in this chapter, unless the context otherwise
- 2 requires:
- 3 (a) "Commissioner" means the auditor of the state of
- 4 West Virginia.
- 5 (b) "Agent" means any individual other than a
- 6 broker-dealer who represents a broker-dealer or issuer in
- 7 effecting or attempting to effect purchases or sales of se-
- 8 curities. "Agent" does not include an individual who rep-
- 9 resents an issuer in (1) effecting transactions in a security
- 10 exempted by subdivision (1), (2), (3), (10) or (11) of
- 11 section 402 (a), (2) effecting transactions exempted by
- 12 section 402 (b), or (3) effecting transactions with existing
- 13 employees, partners or directors of the issuer if no com-
- 14 mission or other remuneration is paid or given directly
- 15 or indirectly for soliciting any person in this state. A
- 16 partner, officer or director of a broker-dealer or issuer, or
- 17 a person occupying a similar status or performing similar
- 18 functions, is an agent only if he otherwise comes within
- 19 this definition.
- 20 (c) "Broker-dealer" means any person engaged in the
- 21 business of effecting transactions in securities for the ac-
- 22 count of others or for his own account. "Broker-dealer"
- 23 does not include (1) an agent, (2) an issuer, (3) a bank,
- 24 savings institution or trust company, or (4) a person who
- 25 has no place of business in this state if (A) he effects trans-
- 26 actions in this state exclusively with or through (i) the is-

27 suers of the securities involved in the transactions, (ii)
28 other broker-dealers, or (iii) banks, savings institutions,
29 trust companies, insurance companies, investment com-
30 panies as defined in the Investment Company Act of 1940,
31 pension or profit-sharing trusts, or other financial institu-
32 tions or institutional buyers, whether acting for themselves
33 or as trustees, or (B) during any period of twelve consecu-
34 tive months he does not direct more than fifteen offers to
35 sell or buy into this state in any manner to persons other
36 than those specified in clause (A), whether or not the of-
37 feror or any of the offerees is then present in this state.

38 (d) "Fraud," "deceit" and "defraud" are not limited to
39 common-law deceit.

40 (e) "Guaranteed" means guaranteed as to payment of
41 principal, interest or dividends.

42 (f) "Investment adviser" means any person who, for
43 compensation, engages in the business of advising others,
44 either directly or through publications or writings, as to
45 the value of securities or as to the advisability of investing
46 in, purchasing or selling securities, or who, for compensa-
47 tion and as a part of a regular business, issues or promul-
48 gates analyses or reports concerning securities. "Invest-
49 ment adviser" does not include (1) a bank, savings insti-
50 tution or trust company; (2) a lawyer, accountant, engi-
51 neer or teacher whose performance of those services is
52 solely incidental to the practice of his profession; (3) a
53 broker-dealer whose performance of these services is sole-
54 ly incidental to the conduct of his business as a broker-
55 dealer and who receives no special compensation for them;
56 (4) a publisher of any bona fide newspaper, news maga-
57 zine or business or financial publication of general, regular
58 and paid circulation; (5) a person whose advice, analyses
59 or reports relate only to securities exempted by section
60 402(a) (1); (6) a person who has no place of business in
61 this state if (A) his only clients in this state are other
62 investment advisers, broker-dealers, banks, savings in-
63 stitutions, trust companies, insurance companies, invest-
64 ment companies as defined in the Investment Company
65 Act of 1940, pension or profit-sharing trusts, or other finan-
66 cial institutions or institutional buyers, whether acting for

67 themselves or as trustees, or (B) during any period of
68 twelve consecutive months he does not direct business
69 communications into this state in any manner to more
70 than five clients other than those specified in clause (A),
71 whether or not he or any of the persons to whom the com-
72 munications are directed is then present in this state; or
73 (7) such other persons not within the intent of this para-
74 graph as the commissioner may by rule or order desig-
75 nate.

76 (g) "Issuer" means any person who issues or proposes
77 to issue any security, except that (1) with respect to cer-
78 tificates of deposit, voting-trust certificates or collateral-
79 trust certificates, or with respect to certificates of interest
80 or shares in an unincorporated investment trust not hav-
81 ing a board of directors or persons performing similar
82 functions or of the fixed, restricted management, or unit
83 type, the term "issuer" means the person or persons per-
84 forming the acts and assuming the duties of depositor or
85 manager pursuant to the provisions of the trust or other
86 agreement or instrument under which the security is
87 issued; and (2) with respect to certificates of interest or
88 participation in oil, gas or mining titles or leases or in
89 payments out of production under such titles or leases,
90 there is not considered to be any "issuer."

91 (h) "Nonissuer" means not directly or indirectly for
92 the benefit of the issuer.

93 (i) "Person" means an individual, a corporation, a
94 partnership, an association, a joint-stock company, a trust
95 where the interests of the beneficiaries are evidenced by
96 a security, an unincorporated organization, a government
97 or a political subdivision of a government.

98 (j) (1) "Sale" or "sell" includes every contract of sale
99 of, contract to sell, or disposition of, a security or interest
100 in a security for value.

101 (2) "Offer" or "offer to sell" includes every attempt
102 or offer to dispose of, or solicitation of an offer to buy,
103 a security or interest in a security for value.

104 (3) Any security given or delivered with, or as a

105 bonus on account of, any purchase of securities or any
106 other thing is considered to constitute part of the subject
107 of the purchase and to have been offered and sold for
108 value.

109 (4) A purported gift of assessable stock is considered
110 to involve an offer and sale.

111 (5) Every sale or offer of a warrant or right to pur-
112 chase or subscribe to another security of the same or
113 another issuer, as well as every sale or offer of a security
114 which gives the holder a present or future right or
115 privilege to convert into another security of the same or
116 another issuer, is considered to include an offer of the
117 other security.

118 (6) The terms defined in this subdivision do not in-
119 clude (A) any bona fide pledge or loan; (B) any stock
120 dividend, whether the corporation distributing the divi-
121 dend is the issuer of the stock or not, if nothing of value
122 is given by stockholders for the dividend other than the
123 surrender of a right to a cash or property dividend when
124 each stockholder may elect to take the dividend in cash
125 or property or in stock; (C) any act incident to a class
126 vote by stockholders, pursuant to the certificate of in-
127 corporation or the applicable corporation statute, on a
128 merger, consolidation, reclassification of securities or sale
129 of corporate assets in consideration of the issuance of
130 securities of another corporation; or (D) any act incident
131 to a judicially approved reorganization in which a se-
132 curity is issued in exchange for one or more outstanding
133 securities, claims or property interests, or partly in such
134 exchange and partly for cash.

135 (k) "Securities Act of 1933," "Securities Exchange
136 Act of 1934," "Public Utility Holding Company Act of
137 1935," and "Investment Company Act of 1940" mean the
138 federal statutes of those names as amended before the
139 effective date of this chapter.

140 (l) "Security" means any note; stock; treasury stock;
141 bond; debenture; evidence of indebtedness; certificate of
142 interest or participation in any profit-sharing agreement;
143 collateral-trust certificate; preorganization certificate or

144 subscription; transferable share; investment contract;
145 voting-trust certificate; certificate of deposit for a se-
146 curity; certificate of interest or participation in an oil,
147 gas, or mining title or lease or in payments out of pro-
148 duction under such a title or lease; or, in general, any
149 interest or instrument commonly known as a "security,"
150 or any certificate of interest or participation in, temporary
151 or interim certificate for, receipt for, guarantee of, or
152 warrant or right to subscribe to or purchase, any of the
153 foregoing. "Security" does not include any insurance or
154 endowment policy or annuity contract under which an
155 insurance company promises to pay money either in a
156 lump sum or periodically for life or some other specified
157 period.

158 (m) "State" means any state, territory or possession
159 of the United States, the District of Columbia and Puerto
160 Rico.

§32-4-402. Exemptions.

1 (a) The following securities are exempted from sec-
2 tions 301 and 403:

3 (1) Any security (including a revenue obligation) is-
4 sued or guaranteed by the United States, any state, any
5 political subdivision of a state, or any agency or corporate
6 or other instrumentality of one or more of the foregoing;
7 or any certificate of deposit for any of the foregoing;

8 (2) any security issued or guaranteed by Canada, any
9 Canadian province, any political subdivision of any such
10 province, any agency or corporate or other instrumentality
11 of one or more of the foregoing, or any other foreign
12 government with which the United States currently main-
13 tains diplomatic relations, if the security is recognized as
14 a valid obligation by the issuer or guarantor;

15 (3) any security issued by and representing an interest
16 in or a debt of, or guaranteed by, any bank organized un-
17 der the laws of the United States, or any bank, savings
18 institution or trust company organized and supervised
19 under the laws of any state;

20 (4) any security issued by and representing an interest
21 in or a debt of, or guaranteed by, any federal savings and
22 loan association, or any building and loan or similar
23 association organized under the laws of any state and
24 authorized to do business in this state;

25 (5) any security issued by and representing an interest
26 in or a debt of, or guaranteed by, any insurance company
27 organized under the laws of any state and authorized to do
28 business in this state;

29 (6) any security issued or guaranteed by any federal
30 credit union or any credit union, industrial loan associa-
31 tion or similar association organized and supervised under
32 the laws of this state;

33 (7) any security issued or guaranteed by any railroad,
34 other common carrier, public utility or holding company
35 which is (A) subject to the jurisdiction of the interstate
36 commerce commission; (B) a registered holding company
37 under the Public Utility Holding Company Act of 1935 or
38 a subsidiary of such a company within the meaning of
39 that act; (C) regulated in respect of its rates and charges
40 by a governmental authority of the United States or any
41 state; or (D) regulated in respect of the issuance or guar-
42 antee of the security by a governmental authority of the
43 United States, any state, Canada, or any Canadian prov-
44 ince;

45 (8) any security listed or approved for listing upon
46 notice of issuance on the New York Stock Exchange, the
47 American Stock Exchange, or the Midwest Stock Ex-
48 change, or listed on any regional stock exchange; any
49 other security of the same issuer which is of senior
50 or substantially equal rank; any security called for by
51 subscription rights or warrants so listed or approved;
52 or any warrant or right to purchase or subscribe to
53 any of the foregoing;

54 (9) any security issued by any person organized
55 and operated not for private profit but exclusively for
56 religious, educational, benevolent, charitable, fraternal,
57 social, athletic or reformatory purposes, or as a chamber
58 of commerce or trade or professional association, and no

59 part of the net earnings of which inures to the benefit of
60 any person, private stockholder or individual;

61 (10) any commercial paper which arises out of a cur-
62 rent transaction or the proceeds of which have been or
63 are to be used for current transactions, and which evi-
64 dences an obligation to pay cash within twelve months of
65 the date of issuance, exclusive of days of grace, or any
66 renewal of such paper which is likewise limited, or any
67 guarantee of such paper or of any such renewal;

68 (11) any investment contract issued in connection with
69 an employees' stock purchase, savings, pension, profit-
70 sharing or similar benefit plan if the commissioner is
71 notified in writing thirty days before the inception of
72 the plan or, with respect to plans which are in effect on
73 the effective date of this chapter, within sixty days
74 thereafter (or within thirty days before they are reopened
75 if they are closed on the effective date of this chapter);
76 and

77 (12) any security issued by an agricultural cooperative
78 association operating in this state and organized under
79 article four, chapter nineteen of this code, or by a foreign
80 cooperative association organized under the laws of anoth-
81 er state and duly qualified to transact business in this
82 state.

83 (b) The following transactions are exempted from
84 sections 301 and 403:

85 (1) Any isolated nonissuer transaction, whether effec-
86 ted through a broker-dealer or not;

87 (2) any nonissuer distribution of an outstanding securi-
88 ty if (A) a recognized securities manual contains the
89 names of the issuer's officers and directors, a balance sheet
90 of the issuer as of a date within eighteen months, and
91 a profit and loss statement for either the fiscal year pre-
92 ceding that date or the most recent year of operations,
93 or (B) the security has a fixed maturity or a fixed interest
94 or dividend provision and there has been no default during
95 the current fiscal year or within the three preceding fiscal
96 years, or during the existence of the issuer and any pre-

97 decessors if less than three years, in the payment of prin-
98 cipal, interest or dividends on the security;

99 (3) any nonissuer transaction effected by or through a
100 registered broker-dealer pursuant to an unsolicited order
101 or offer to buy; but the commissioner may by rule require
102 that the customer acknowledge upon a specified form that
103 the sale was unsolicited, and that a signed copy of each
104 such form be preserved by the broker-dealer for a speci-
105 fied period;

106 (4) any transaction between the issuer or other person
107 on whose behalf the offering is made and an underwriter,
108 or among underwriters;

109 (5) any transaction in a bond or other evidence of
110 indebtedness secured by a real or chattel mortgage or deed
111 of trust, or by an agreement for the sale of real estate or
112 chattels, if the entire mortgage, deed of trust, or agree-
113 ment, together with all the bonds or other evidences of
114 indebtedness secured thereby, is offered and sold as a unit;

115 (6) any transaction by an executor, administrator,
116 sheriff, marshal, constable, receiver, trustee in bankrupt-
117 cy, guardian or conservator, and any transaction consti-
118 tuting a judicial sale;

119 (7) any transaction executed by a bona fide pledgee
120 without any purpose of evading this chapter;

121 (8) any offer or sale to a bank, savings institution,
122 trust company, insurance company, investment company
123 as defined in the Investment Company Act of 1940, pension
124 or profit-sharing trust, or other financial institution or
125 institutional buyer, or to a broker-dealer, whether the
126 purchaser is acting for itself or in some fiduciary capac-
127 ity;

128 (9) any transaction pursuant to an offer directed by
129 the offeror to not more than ten persons (other than those
130 designated in subdivision (8)) in this state during any
131 period of twelve consecutive months, whether or not the
132 offeror or any of the offerees is then present in this state,
133 if (A) the seller reasonably believes that all the buyers in
134 this state (other than those designated in subdivision (8))

135 are purchasing for investment, and (B) no commission or
136 other remuneration is paid or given directly or indirectly
137 for soliciting any prospective buyer in this state (other
138 than those designated in subdivision (8)); but the commis-
139 sioner may by rule or order, as to any security or trans-
140 action or any type of security or transaction, withdraw or
141 further condition this exemption, or increase or decrease
142 the number of offerees permitted, or waive the conditions
143 in clauses (A) and (B) with or without the substitution
144 of a limitation on remuneration;

145 (10) any offer or sale of a preorganization certificate
146 or subscription if (A) no commission or other remunera-
147 tion is paid or given directly or indirectly for soliciting
148 any prospective subscriber, (B) the number of subscrib-
149 ers does not exceed ten, and (C) no payment is made by
150 any subscriber;

151 (11) any transaction pursuant to an offer to existing
152 security holders of the issuer, including persons who at
153 the time of the transaction are holders of convertible
154 securities, nontransferable warrants or transferable war-
155 rants exercisable within not more than ninety days of
156 their issuance, if (A) no commission or other remunera-
157 tion (other than a standby commission) is paid or given
158 directly or indirectly for soliciting any security holder in
159 this state, or (B) the issuer first files a notice specifying
160 the terms of the offer and the commissioner does not by
161 order disallow the exemption within the next five full
162 business days;

163 (12) any offer (but not a sale) of a security for which
164 registration statements have been filed under both this
165 chapter and the Securities Act of 1933 if no stop order or
166 refusal order is in effect and no public proceeding or
167 examination looking toward such an order is pending un-
168 der either chapter.

169 (c) The commissioner may by order deny or revoke
170 any exemption specified in subdivision (9) or (11) of
171 subsection (a) or in subsection (b) with respect to a
172 specific security or transaction. No such order may be
173 entered without appropriate prior notice to all interested
174 parties, opportunity for hearing, and written findings of

175 fact and conclusions of law, except that the commissioner
176 may by order summarily deny or revoke any of the speci-
177 fied exemptions pending final determination of any pro-
178 ceeding under this subsection. Upon the entry of a sum-
179 mary order, the commissioner shall promptly notify all
180 interested parties that it has been entered and of the rea-
181 sons therefor and that within fifteen days of the receipt
182 of a written request the matter will be set down for hear-
183 ing. If no hearing is requested and none is ordered by the
184 commissioner, the order will remain in effect until it is
185 modified or vacated by the commissioner. If a hearing is
186 requested or ordered, the commissioner, after notice of and
187 opportunity for hearing to all interested persons, may
188 modify or vacate the order or extend it until final deter-
189 mination. No order under this subsection may operate
190 retroactively. No person may be considered to have vio-
191 lated section 301 or 403 by reasons of any offer or sale
192 effected after the entry of an order under this subsection
193 if he sustains the burden of proof that he did not know,
194 and in the exercise of reasonable care could not have
195 known, of the order.

196 (d) In any proceeding under this chapter, the burden
197 of proving an exemption or an exception from a definition
198 is upon the person claiming it.

§32-4-403. Filing of sales and advertising literature.

1 Any prospectus, pamphlet, circular, form letter, adver-
2 tisement or any other sales literature or advertising com-
3 munication addressed or intended for distribution to pros-
4 pective investors, including clients or prospective clients
5 of an investment adviser, shall be filed with the commis-
6 sioner before it is used, disseminated or distributed un-
7 less the security or transaction is exempted by section 402.

§32-4-404. Misleading filings.

1 It is unlawful for any person to make or cause to be
2 made, in any document filed with the commissioner or in
3 any proceeding under this chapter, any statement which
4 is, at the time and in the light of the circumstances under
5 which it is made, false or misleading in any material
6 respect.

§32-4-405. Unlawful representations concerning registration or exemption.

1 (a) Neither (1) the fact that an application for regis-
2 tration under article two of this chapter or a registration
3 statement under article three of this chapter has been
4 filed nor (2) the fact that a person or security is effectively
5 registered constitutes a finding by the commissioner that
6 any document filed under this chapter is true, complete
7 and not misleading. Neither any such fact nor the fact
8 that an exemption or exception is available for a security
9 or a transaction means that the commissioner has passed
10 in any way upon the merits or qualifications of, or recom-
11 mended or given approval to, any person, security or
12 transaction.

13 (b) It is unlawful to make, or cause to be made, to
14 any prospective purchaser, customer or client any repre-
15 sentation inconsistent with subsection (a).

§32-4-406. Administration of chapter.

1 (a) This chapter shall be administered by the auditor
2 of this state, and he is hereby designated, and shall be,
3 the commissioner of securities of this state. He shall
4 have power and authority to appoint or employ such
5 assistants as are necessary for the administration of this
6 chapter.

7 (b) All fees herein provided for shall be collected by
8 the commissioner and shall be deposited in the state
9 treasury and credited to the general revenue fund, and
10 the commissioner shall keep a record of the receipts and
11 expenditures incurred in carrying out the provisions of
12 this chapter.

13 (c) It is unlawful for the commissioner or any of his
14 officers or employees to use for personal benefit any in-
15 formation which is filed with or obtained by the com-
16 missioner and which is not made public. No provision
17 of this chapter authorizes the commissioner or any of
18 his officers or employees to disclose any such information
19 except among themselves or when necessary or appro-
20 priate in a proceeding or investigation under this chap-

21 ter. No provision of the chapter either creates or derogates
22 from any privilege which exists at common law or other-
23 wise when documentary or other evidence is sought
24 under a subpoena directed to the commissioner or any
25 of his officers or employees.

§32-4-407. Investigations and subpoenas.

1 (a) The commissioner in his discretion (1) may make
2 such public or private investigations within or outside
3 of this state as he deems necessary to determine whether
4 any person has violated or is about to violate any pro-
5 vision of this chapter or any rule or order hereunder,
6 or to aid in the enforcement of this chapter or in the
7 prescribing of rules and forms hereunder, (2) may re-
8 quire or permit any person to file a statement in writing,
9 under oath or otherwise as the commissioner determines,
10 as to all the facts and circumstances concerning the mat-
11 ter to be investigated, and (3) may publish information
12 concerning any violation of this chapter or any rule or
13 order hereunder.

14 (b) For the purpose of any investigation or proceeding
15 under this chapter, the commissioner or any officer,
16 agent or employee designated by him may administer
17 oaths and affirmations, subpoena witnesses, compel their
18 attendance, take evidence and require the production of
19 any books, papers, correspondence, memoranda, agree-
20 ments or other documents or records which the com-
21 missioner deems relevant or material to the inquiry.

22 (c) In case of contumacy by, or refusal to obey a
23 subpoena issued to, any person, the circuit court of
24 Kanawha county, upon application by the commissioner,
25 may issue to the person an order requiring him to appear
26 before the commissioner, or the officer designated by
27 him, there to produce documentary evidence if so ordered
28 or to give evidence touching the matter under investiga-
29 tion or in question. Failure to obey the order of the court
30 may be punished by the court as a contempt of court.

31 (d) No person is excused from attending and testi-
32 fying or from producing any document or record before

33 the commissioner, or in obedience to the subpoena of the
34 commissioner or any officer designated by him, or in any
35 proceeding instituted by the commissioner, on the ground
36 that the testimony or evidence (documentary or other-
37 wise) required of him may tend to incriminate him or
38 subject him to a penalty of forfeiture; but no individual
39 may be prosecuted or subjected to any penalty or for-
40 feiture for or on account of any transaction, matter or
41 thing concerning which he is compelled, after claiming
42 his privilege against self-incrimination to testify or pro-
43 duce evidence (documentary or otherwise), except that
44 the individual testifying is not exempt from prosecution
45 and punishment for perjury or contempt committed in
46 testifying.

§32-4-408. Injunctions.

1 Whenever it appears to the commissioner that any per-
2 son has engaged or is about to engage in any act or prac-
3 tice constituting a violation of any provision of this chap-
4 ter or any rule or order hereunder, he may in his discre-
5 tion bring an action in the circuit court of Kanawha
6 county or a court of competent jurisdiction in the county
7 where one or more of the defendants reside or have a
8 place of business to enjoin the acts or practices and to en-
9 force compliance with this chapter or any rule or order
10 hereunder. Upon a proper showing, a permanent or
11 temporary injunction, restraining order or writ of manda-
12 mus shall be granted and a receiver or conservator may
13 be appointed for the defendant or the defendant's assets.
14 The court may not require the commissioner to post a
15 bond.

§32-4-409. Criminal penalties.

1 (a) Any person who willfully violates any provision
2 of this chapter, except section 404, or who willfully vio-
3 lates any rule or order under this chapter, or who will-
4 fully violates section 404 knowing the statement made to
5 be false or misleading in any material respect, shall be
6 guilty of a felony, and, upon conviction thereof, shall be
7 fined not more than five thousand dollars, or imprisoned in
8 the penitentiary not less than one nor more than three

9 years, or both fined and imprisoned; but no person may be
10 imprisoned for the violation of any rule or order if he
11 proves that he had no knowledge of the rule or order. No
12 indictment may be returned under this chapter more than
13 five years after the alleged violation.

14 (b) The commissioner may refer such evidence as is
15 available concerning violations of this chapter or of any
16 rule or order hereunder to the proper prosecuting at-
17 torney, who may, with or without such a reference, insti-
18 tute the appropriate criminal proceedings under this
19 chapter.

20 (c) Nothing in this chapter limits the power of the
21 state to punish any person for any conduct which consti-
22 tutes a crime by statute or at common law.

§32-4-410. Civil liabilities.

1 (a) Any person who

2 (1) offers or sells a security in violation of section
3 201 (a), 301, 403 or 405 (b), or of any condition imposed
4 under section 304 (d), 305 (g) or 305 (h), or

5 (2) offers or sells a security by means of any untrue
6 statement of a material fact or any omission to state a
7 material fact necessary in order to make the statements
8 made, in the light of the circumstances under which they
9 are made, not misleading (the buyer not knowing of the
10 untruth or omission), and who does not sustain the burden
11 of proof that he did not know, and in the exercise of rea-
12 sonable care could not have known, of the untruth or
13 omission, is liable to the person buying the security from
14 him, who may assert a claim in a civil action to recover
15 the consideration paid for the security, together with in-
16 terest at nine percent per year from the date of payment,
17 costs and reasonable attorneys' fees, less the amount of
18 any income received on the security, upon the tender of
19 the security, or for damages if he no longer owns the se-
20 curity. Damages are the amount that would be recover-
21 able upon a tender less the value of the security when the
22 buyer disposed of it and interest at nine percent per year
23 from the date of disposition.

24 (b) Every person who directly or indirectly controls a
25 seller liable under subsection (a), every partner, officer
26 or director of such a seller, every person occupying a
27 similar status or performing similar functions, every em-
28 ployee of such a seller who materially aids in the sale, and
29 every broker-dealer or agent who materially aids in the
30 sale are also liable jointly and severally with and to the
31 same extent as the seller, unless the nonseller who is so
32 liable sustains the burden of proof that he did not know,
33 and in exercise of reasonable care could not have known,
34 of the existence of the facts by reason of which the liabil-
35 ity is alleged to exist. There is contribution as in cases
36 of contract among the several persons so liable.

37 (c) Any tender specified in this section may be made
38 at any time before entry of judgment.

39 (d) Every cause of action under this statute survives
40 the death of any person who might have been a plaintiff
41 or defendant.

42 (e) No person may sue under this section more than
43 three years after the sale.

44 (f) No person who has made or engaged in the per-
45 formance of any contract in violation of any provision of
46 this chapter or any rule or order hereunder, or who has
47 acquired any purported right under any such contract
48 with knowledge of the facts by reason of which its making
49 or performance was in violation, may base any suit on
50 the contract.

51 (g) Any condition, stipulation or provision binding
52 any person acquiring any security to waive compliance
53 with any provision of this chapter or any rule or order
54 hereunder is void.

55 (h) The rights and remedies provided by this chapter
56 are in addition to any other rights or remedies that may
57 exist at law or in equity, but this chapter does not create
58 any cause of action not specified in this section or section
59 202(e).

§32-4-411. Judicial review of orders.

1 (a) Any person aggrieved by a final order of the

2 commissioner may obtain a review of the order in the
3 circuit court of Kanawha county by filing in court, within
4 sixty days after the entry of the order, a written petition
5 praying that the order be modified or set aside in whole or
6 in part. A copy of the petition shall be forthwith served
7 upon the commissioner and thereupon the commissioner
8 shall certify and file in court a copy of the filing and evi-
9 dence upon which the order was entered. When these have
10 been filed, the court has exclusive jurisdiction to affirm,
11 modify, enforce or set aside the order, in whole or in part.
12 The findings of the commissioner as to the facts, if sup-
13 ported by competent, material and substantial evidence,
14 are conclusive. If either party applies to the court for
15 leave to adduce additional material evidence, and shows to
16 the satisfaction of the court that there were reasonable
17 grounds for failure to adduce the evidence in the hearing
18 before the commissioner, the court may order the addi-
19 tional evidence to be taken before the commissioner and to
20 be adduced upon the hearing in such manner and upon
21 such conditions as the court considers proper. The commis-
22 sioner may modify his findings and order by reason of the
23 additional evidence and shall file in court the additional
24 evidence together with any modified or new findings or
25 order. The judgment of the court shall be final, subject to
26 review by the supreme court of appeals.

27 (b) The commencement of proceedings under subsec-
28 tion (a) does not, unless specifically ordered by the court,
29 operate as a stay of the commissioner's order.

§32-4-412. Rules, forms, orders and hearings.

1 (a) The commissioner may from time to time make,
2 amend and rescind such rules, forms and orders as are
3 necessary to carry out the provisions of this chapter, in-
4 cluding rules and forms governing registration statements,
5 applications and reports, and defining any terms, whether
6 or not used in this chapter, insofar as the definitions are
7 not inconsistent with the provisions of this chapter. For
8 the purpose of rules and forms, the commissioner may
9 classify securities, persons and matters within his juris-
10 diction, and prescribe different requirements for different
11 classes.

12 (b) No rule, form, or order may be made, amended or
13 rescinded unless the commissioner finds that the action is
14 necessary or appropriate in the public interest or for the
15 protection of investors and consistent with the purposes
16 fairly intended by the policy and provisions of this chap-
17 ter. In prescribing rules and forms the commissioner may
18 cooperate with the securities administrators of the other
19 states and the securities and exchange commission with
20 a view to effectuating the policy of this statute to achieve
21 maximum uniformity in the form and content of registra-
22 tion statements, applications and reports wherever practi-
23 cable.

24 (c) The commissioner may by rule or order prescribe
25 (1) the form and content of financial statements required
26 under this chapter, (2) the circumstances under which
27 consolidated financial statements shall be filed, and (3)
28 whether any required financial statements shall be certi-
29 fied by independent or certified public accountants. All
30 financial statements shall be prepared in accordance with
31 generally accepted accounting practices.

32 (d) All rules and forms of the commissioner shall be
33 published.

34 (e) No provision of this chapter imposing any liability
35 applies to any act done or omitted in good faith in con-
36 formity with any rule, form or order of the commissioner,
37 notwithstanding that the rule, form or order may later be
38 amended or rescinded or be determined by judicial or
39 other authority to be invalid for any reason.

40 (f) Every hearing in an administrative proceeding shall
41 be public.

§32-4-413. Administrative files and opinions.

1 (a) A document is filed when it is received by the
2 commissioner.

3 (b) The commissioner shall keep a register of all appli-
4 cations for registration and registration statements which
5 are or have ever been effective under this chapter and
6 all denial, suspension or revocation orders which have
7 been entered under this chapter. The register shall be
8 open for public inspection.

9 (c) The information contained in or filed with any
10 registration statement, application or report may be made
11 available to the public under such rules as the commis-
12 sioner prescribes.

13 (d) Upon request and at such reasonable charges as he
14 prescribes, the commissioner shall furnish to any person
15 photostatic or other copies (certified under his seal of
16 office if requested) of any entry in the register or any
17 document which is a matter of public record. In any
18 proceeding or prosecution under this chapter, any copy so
19 certified is prima facie evidence of the contents of the
20 entry or document certified.

21 (e) The commissioner in his discretion may honor
22 requests from interested persons for interpretative opin-
23 ions; copies of which opinions shall be filed in a special
24 file maintained for that purpose and shall be public rec-
25 ords available for public inspection and at such reasonable
26 charges as he prescribes.

§32-4-414. Scope of the chapter and service of process.

1 (a) Sections 101, 201(a), 301, 405 and 410 apply to
2 persons who sell or offer to sell when (1) an offer to sell
3 is made in this state, or (2) an offer to buy is made and
4 accepted in this state.

5 (b) Sections 101, 201(a) and 405 apply to persons who
6 buy or offer to buy when (1) an offer to buy is made in
7 this state, or (2) an offer to sell is made and accepted in
8 this state.

9 (c) For the purpose of this section, an offer to sell
10 or to buy is made in this state, whether or not either
11 party is then present in this state, when the offer (1)
12 originates from this state or (2) is directed by the offeror
13 to this state and received at the place to which it is di-
14 rected (or at any post office in this state in the case of a
15 mailed offer).

16 (d) For the purpose of this section, an offer to buy
17 or to sell is accepted in this state when acceptance (1) is
18 communicated to the offeror in this state and (2) has not
19 previously been communicated to the offeror, orally or in

20 writing, outside this state; and acceptance is communi-
21 cated to the offeror in this state, whether or not either
22 party is then present in this state, when the offeree
23 directs it to the offeror in this state reasonably believing
24 the offeror to be in this state and it is received at the
25 place to which it is directed (or at any post office in this
26 state in the case of a mailed acceptance).

27 (e) An offer to sell or to buy is not made in this
28 state when (1) the publisher circulates or there is cir-
29 culated on his behalf in this state any bona fide news-
30 paper or other publication of general, regular and paid
31 circulation which is not published in this state, or which
32 is published in this state but has had more than two
33 thirds of its circulation outside this state during the past
34 twelve months, or (2) a radio or television program
35 originating outside this state is received in this state.

36 (f) Sections 102 and 210(c), as well as section 405 so
37 far as investment advisors are concerned, apply when
38 any act instrumental in effecting prohibited conduct is
39 done in this state, whether or not either party is then
40 present in this state.

41 (g) Every applicant for registration under this chap-
42 ter and every issuer which proposes to offer a security
43 in this state through any person acting on an agency
44 basis in the common-law sense shall file with the com-
45 missioner, in such form as he by rule prescribes, an
46 irrevocable consent appointing the commissioner or his
47 successor in office to be his attorney to receive service of
48 any lawful process in any noncriminal suit, action or
49 proceeding against him or his successor executor or ad-
50 ministrator which arises under this chapter or any rule
51 or order hereunder after the consent has been filed, with
52 the same force and validity as if served personally on
53 the person filing the consent. A person who has filed such
54 a consent in connection with a previous registration need
55 not file another. Service may be made by leaving a copy
56 of the process in the office of the commissioner, but it
57 is not effective unless (1) the plaintiff, who may be the
58 commissioner in a suit, action or proceeding instituted
59 by him, forthwith sends notice of the service and a copy

60 of the process by registered mail to the defendant or
61 respondent at his last address on file with the commis-
62 sioner, and (2) the plaintiff's affidavit of compliance with
63 this subsection is filed in the case on or before the return
64 day of the process, if any, or within such further time
65 as the court allows.

66 (h) When any person, including any nonresident of
67 this state, engages in conduct prohibited or made action-
68 able by this chapter or any rule or order hereunder, and
69 he has not filed a consent to service of process under sub-
70 section (g) and personal jurisdiction over him cannot
71 otherwise be obtained in this state, that conduct shall be
72 considered equivalent to his appointment of the commis-
73 sioner or his successor in office to be his attorney to
74 receive service of any lawful process in any noncriminal
75 suit, action or proceeding against him or his successor
76 executor or administrator which grows out of that con-
77 duct and which is brought under this chapter or any rule
78 or order hereunder, with the same force and validity
79 as if served on him personally. Service may be made by
80 leaving a copy of the process in the office of the commis-
81 sioner, and it is not effective unless (1) the plaintiff,
82 who may be the commissioner in a suit, action or pro-
83 ceeding instituted by him, forthwith sends notice of the
84 service and a copy of the process by registered mail to
85 the defendant or respondent at his last known address
86 or takes other steps which are reasonably calculated to
87 give actual notice, and (2) the plaintiff's affidavit of com-
88 pliance with this subsection is filed in the case on or
89 before the return day of the process, if any, or within
90 such further time as the court allows.

91 (i) When process is served under this section, the
92 court, or the commissioner in a proceeding before him,
93 shall order such continuance as may be necessary to
94 afford the defendant or respondent reasonable oppor-
95 tunity to defend.

§32-4-415. Statutory policy.

1 This chapter shall be so construed as to effectuate the
2 general purpose to make uniform the law of those states

- 3 which enact the uniform securities act and to coordinate
- 4 the interpretation and administration of this chapter with
- 5 the related federal regulation.

§32-4-416. Short title.

- 1 This chapter may be cited as the "Uniform Securities
- 2 Act."

§32-4-417. Severability of provisions.

- 1 If any provision of this chapter or the application
- 2 thereof to any person or circumstance is held invalid,
- 3 the invalidity shall not affect other provisions or appli-
- 4 cations of the chapter which can be given effect without
- 5 the invalid provision or application, and to this end the
- 6 provisions of this chapter are severable.

§32-4-418. Saving provisions.

- 1 (a) Prior law exclusively governs all suits, actions,
- 2 prosecutions or proceedings which are pending or may be
- 3 initiated on the basis of facts or circumstances occurring
- 4 before the effective date of this chapter, except that no
- 5 civil suit or action may be maintained to enforce any
- 6 liability under prior law unless brought within any period
- 7 of limitation which applied when the cause of action
- 8 accrued and in any event within three years after the
- 9 effective date of this chapter.
- 10 (b) All effective registrations under prior law, all ad-
- 11 ministrative orders relating to such registrations, and all
- 12 conditions imposed upon such registrations remain in
- 13 effect so long as they would have remained in effect if this
- 14 chapter had not been enacted. They are considered to
- 15 have been filed, entered or imposed under this chapter, but
- 16 are governed by prior law.
- 17 (c) Prior law applies in respect of any offer or sale
- 18 made within one year after the effective date of this chap-
- 19 ter pursuant to an offering begun in good faith before its
- 20 effective date on the basis of an exemption available under
- 21 prior law.
- 22 (d) Judicial review of all administrative orders as to

23 which review proceedings have not been instituted by the
 24 effective date of this chapter are governed by section 411,
 25 except that no review proceeding may be instituted unless
 26 the petition is filed within any period of limitation which
 27 applied to a review proceeding when the order was en-
 28 tered and in any event within sixty days after the effec-
 29 tive date of this chapter.

**CHAPTER 32A. LAND SALES; FALSE ADVERTISING;
 ISSUANCE AND SALE OF CHECKS, DRAFTS,
 MONEY ORDERS, ETC.**

Article

1. Land Sales; False Advertising.
2. Issuance and Sale of Checks, Drafts, Money Orders, Etc.

ARTICLE 1. LAND SALES; FALSE ADVERTISING.

§32A-1-1. Filing and registration with respect to lands prerequisite to sale, etc., within state.

§32A-1-2. False advertising prohibited; penalty.

§32A-1-3. Indictment need not negative exceptions.

§32A-1-1. Filing and registration with respect to lands prerequisite to sale, etc., within state.

1 No person, partnership or corporation shall sell or offer
 2 for sale, in this state, any lands, situate outside this state,
 3 which are to be planted in trees or vines or divided into
 4 town or suburban lots, or any unimproved or undeveloped
 5 lands, or any lands, including cemetery lots, cemetery
 6 privileges, burial rights or privileges, the value of which
 7 materially depends on the future performance of any
 8 stipulation or promise to furnish irrigation, transporta-
 9 tion facilities, streets, sidewalks, sewers, gas, electricity or
 10 other value enhancing utility or improvement of any un-
 11 divided part or share, whether an aliquot part or a part
 12 designated on any other basis, or any mine, mineral claim,
 13 or other estate in any mine, or in the lands containing the
 14 same, regardless of where located or situated, the value of
 15 which materially depends on the future discovery or de-
 16 velopment and production of the minerals, without first
 17 having filed with the commissioner of securities (which
 18 office is established in chapter thirty-two of this code) a
 19 detailed description of the property which, or any interest

20 or part or share of which, is proposed to be sold, and such
21 information with respect to the value thereof, and the title
22 to such property or properties as the commissioner of se-
23 curities shall require, and without causing such property
24 to be registered by the commissioner of securities in the
25 manner provided for the registration of securities by
26 qualification under section three hundred four, article
27 three, chapter thirty-two of this code; and no person shall
28 sell or offer any such property for sale until he has been
29 registered as a salesman by the commissioner of securities
30 under the provisions for registering agents contained in
31 article two, chapter thirty-two of this code. All of the pro-
32 visions contained in chapter thirty-two of this code gov-
33 erning the registration of securities by qualification and
34 the registration of agents and the penalties provided
35 therein shall apply to the registration of properties and
36 salesmen under this article: *Provided*, That nothing con-
37 tained in this article shall prevent any bona fide owner of
38 any such land, mine, mining lease, mineral claim or other
39 property, or interest therein, from selling the same on his
40 own account and not as a part, or in furtherance, of any
41 promotion or development to the public.

§32A-1-2. False advertising prohibited; penalty.

1 Any person or corporation who, with intent to sell or in
2 anywise dispose of merchandise, securities, service or
3 anything offered by such person or corporation, directly
4 or indirectly, to the public for sale or distribution, or with
5 intent to increase the consumption thereof, or to induce
6 the public in any manner to enter into any obligation re-
7 lating thereto, or to acquire title thereto, or any interest
8 therein, makes, publishes, disseminates, circulates or places
9 before the public, or causes, directly or indirectly, to be
10 made, published, disseminated, circulated or placed before
11 the public in this state, in a newspaper or other publica-
12 tion, or in the form of a book, notice, handbill, poster,
13 blueprint, map, bill, tag, label, circular, pamphlet, or let-
14 ter, or by way of radio or television, or in any other way,
15 an advertisement of any sort regarding merchandise, se-
16 curities, service, land, lot or anything so offered to the
17 public, which advertisement contains any promise, as-

18 sertation, representation or statement of fact which is un-
19 true, deceptive or misleading, with knowledge that the
20 same was untrue, deceptive or misleading, shall be guilty
21 of a misdemeanor, and, upon conviction thereof, shall be
22 fined not more than two thousand dollars, or imprisoned
23 in the county jail not more than six months, or both fined
24 and imprisoned.

§32A-1-3. Indictment need not negative exceptions.

1 In any indictment for violation of any provision of this
2 article, it shall not be necessary to negative any exception
3 contained in any proviso or elsewhere in this article.

ARTICLE 2. ISSUANCE AND SALE OF CHECKS, DRAFTS, MONEY ORDERS, ETC.

§32A-2-1. Definitions.

§32A-2-2. Legislative findings and declaration of public policy.

§32A-2-3. Financial responsibility must be established and security given; fee required.

§32A-2-4. Persons who establish financial responsibility and give security may engage in business; agents need not comply with section three.

§32A-2-5. Exemptions.

§32A-2-6. Judicial review.

§32A-2-7. Injunctive relief.

§32A-2-8. Penalties.

§32A-2-9. Severability.

§32A-2-1. Definitions.

1 As used in this article:

2 (1) "Person" means any individual, partnership, associa-
3 tion, joint stock association, trust or corporation, but does
4 not include the United States of America, any department,
5 agency, commission or officer thereof, the state of West
6 Virginia, any department, agency, commission or officer
7 thereof, or any political subdivision of or any municipali-
8 ty in this state;

9 (2) "Commissioner" means the commissioner of bank-
10 ing of this state;

11 (3) "Check" means any check, draft, money order,
12 personal money order or other instrument for the trans-
13 mission or payment of money;

14 (4) "Personal money order" means any instrument for
15 the transmission or payment of money in relation to
16 which the purchaser or remitter appoints or purports to
17 appoint the seller thereof as his agent for the receipt,
18 transmission or handling of money, whether such instru-
19 ment be signed by the seller or by the purchaser or re-
20 mitter or some other person;

21 (5) "Securities" means all bonds, debentures or other
22 evidences of indebtedness (a) issued by the United States
23 of America or any agency thereof, or guaranteed by the
24 United States of America, or for which the credit of the
25 United States of America or any agency thereof is pledged
26 for the payment of the principal and interest thereof; and/
27 or (b) which are direct general obligations of this state,
28 or any other state if unconditionally guaranteed as to the
29 principal and interest by such other state and if such other
30 state has the power to levy taxes for the payment of the
31 principal and interest thereof and is not in default in the
32 payment of any part of the principal or interest owing by
33 it upon any part of its funded indebtedness; and/or (c)
34 which are general obligations of any county, school dis-
35 trict or municipality in this state issued pursuant to law
36 and payable from ad valorem taxes levied on all of the
37 taxable property located therein, if such county, school
38 district or municipality is not in default in the payment of
39 any part of the principal or interest on any debt evidenced
40 by its bonds, debentures or other evidences of indebted-
41 ness.

§32A-2-2. Legislative findings and declaration of public policy.

1 The Legislature hereby determines and finds that many
2 innocent persons in various states have suffered severe
3 financial losses as a result of financially irresponsible per-
4 sons engaging in the business of issuing and selling
5 checks; that many of these states have, following the dis-
6 covery of such losses, promptly enacted legislation to as-
7 sure that persons engaged in the business of issuing and
8 selling checks are financially responsible; and that it is
9 imperative that legislation be enacted to assure that
10 persons engaged in the business of issuing and selling
11 checks in this state are financially responsible. It is, there-

12 fore, declared to be the public policy of this state that the
13 business of issuing and selling checks affects the general
14 welfare of this state and its individual citizens; and that
15 financial losses as aforesaid may best be prevented in this
16 state and the interests of the citizens of this state best
17 served by requiring persons now engaged or to be en-
18 gaged in the business of issuing and selling checks to
19 meet the requirements set forth in this article.

§32A-2-3. Financial responsibility must be established and security given; fee required.

1 On and after the effective date of this article, no per-
2 son shall engage in the business of issuing and selling
3 checks as a service or for a fee or other compensation,
4 unless (a) the net worth of such person is at all times at
5 least fifty thousand dollars, computed according to gen-
6 erally accepted accounting principles and shown by fi-
7 nancial statements filed with and satisfactory to the
8 commissioner, and (b) such person either (1) keeps on
9 deposit at all times with the commissioner, or a bank in
10 this state designated by such person and approved for
11 such purpose by the commissioner, one hundred thousand
12 dollars in cash or securities satisfactory to the commis-
13 sioner, or (2) posts and maintains with the commissioner
14 at all times a surety bond in the penal sum of one hun-
15 dred thousand dollars, in form and with conditions satis-
16 factory to the commissioner and with corporate surety
17 thereon authorized to do business in this state and ac-
18 ceptable to the commissioner. When securities are de-
19 posited as aforesaid, the value of such securities must at
20 all times be one hundred thousand dollars, computed on
21 the basis of the principal amount or the market value
22 thereof, whichever is lower.

23 The deposit or bond, as the case may be, shall be for
24 the benefit and protection of the purchasers or holders
25 of checks sold in this state by the person making the
26 deposit or posting the bond as principal, and the commis-
27 sioner or any aggrieved person may by appropriate civil
28 actions enforce claims on any such check or checks against
29 such deposit or bond. The aggregate liability of the

30 surety in no event shall exceed the principal sum of the
31 bond. The surety on such bond shall have a right to
32 cancel such bond upon giving thirty days' notice to the
33 commissioner and thereafter shall be relieved of liability
34 for any breach of condition occurring after the effective
35 date of said cancellation. So long as the person making
36 a deposit is not in violation of any of the provisions of
37 this article, such person shall be permitted to receive all
38 interest and dividends on said deposit, and shall have
39 the right, with the approval of the commissioner, to
40 substitute other securities. If the deposit is made at a
41 bank, any custodial fees therefor shall be paid by the
42 person making such deposit. At the time any such deposit
43 is made or any such bond is posted, and annually there-
44 after, the person making such deposit or posting such
45 bond shall pay to the commissioner a fee of one hundred
46 dollars. All such fees shall be deposited in the state
47 treasury to the credit of the general revenue fund.

§32A-2-4. Persons who establish financial responsibility and give security may engage in business; agents need not comply with section three.

1 Any person who complies with the provisions of sec-
2 tion three of this article may engage in the business of
3 issuing and selling checks at one or more locations in this
4 state and through or by means of such agent or agents
5 as such person may designate and appoint from time to
6 time, and no such agent shall be required to comply
7 with the provisions of said section three.

§32A-2-5. Exemptions.

1 The provisions of section three of this article shall not
2 apply to banks, trust companies, building and loan associ-
3 ations, savings and loan associations, industrial loan com-
4 panies and small loan companies organized under the
5 laws of this state or authorized to do business in this
6 state, or to the receipt of money by an incorporated
7 telegraph company at any office or agency thereof for
8 transmission by telegraph.

§32A-2-6. Judicial review.

1 Any person aggrieved by any action of the commissioner

2 under the provisions of this article may appeal such
3 action by filing a petition, at the election of such person,
4 in either the circuit court of Kanawha County, West Vir-
5 ginia, or with the judge thereof in vacation, or in the
6 circuit court of the county in which such person resides
7 or does business, or with the judge thereof in vacation,
8 within ninety days after such action.

9 The judgment of the circuit court shall be final unless
10 reversed, vacated or modified on appeal to the supreme
11 court of appeals. Any such appeal shall be sought in the
12 manner and within the time provided by law for appeals
13 from circuit courts in other civil cases.

§32A-2-7. Injunctive relief.

1 Whenever it appears to the commissioner that any
2 person has been or is violating or is about to violate any
3 provision of this article, the commissioner may apply
4 in the name of the state, to the circuit court of the
5 county in which the violation or violations or any part
6 thereof has occurred, is occurring or is about to occur,
7 or the judge thereof in vacation, for an injunction against
8 such person and any other persons who have been, are
9 or are about to be involved in any practices, acts or
10 omissions, so in violation, enjoining such person or per-
11 sons from any such violation or violations. Such applica-
12 tion may be made and prosecuted to conclusion whether
13 or not any such violation or violations have resulted or
14 shall result in prosecution or conviction under the pro-
15 visions of section eight of this article.

16 Upon application by the commissioner, the circuit courts
17 of this state may by mandatory or prohibitory injunction
18 compel compliance with the provisions of this article.
19 The court may issue a temporary injunction in any case
20 pending a decision on the merits of any application filed.

21 The judgment of the circuit court upon any application
22 permitted by the provisions of this section shall be final
23 unless reversed, vacated or modified on appeal to the
24 supreme court of appeals. Any such appeal shall be sought
25 in the manner and within the time provided by law for
26 appeals from circuit courts in other civil cases.

§32A-2-8. Penalties.

1 Any person who directly or through another violates or
2 attempts to violate any provision of this article shall be
3 guilty of a misdemeanor, and, upon conviction thereof,
4 shall be punished by a fine of not less than one hundred
5 dollars nor more than one thousand dollars. Each transac-
6 tion in violation of this article and each day that a viola-
7 tion continues shall be a separate offense.

§32A-2-9. Severability.

1 If any provision of this article or the application there-
2 of to any person or circumstance is held invalid, such in-
3 validity shall not affect the remainder of the article or the
4 application of such provision to other persons or circum-
5 stances, and to this end the provisions of this article are
6 declared to be severable.

CHAPTER 129

(S. B. 79—By Mr. McGraw)

[Passed March 3, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article eight, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to permitting the state agency for surplus property to acquire and distribute surplus property to fire departments, volunteer fire departments and rescue squads.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. STATE AGENCY FOR SURPLUS PROPERTY.**§5A-8-3. Authority and duties of state agency for surplus property.**

1 (a) The state agency for surplus property is hereby
2 authorized and empowered (1) to acquire from the

3 United States of America such property, including equip-
4 ment, materials, books or other supplies under the con-
5 trol of any department or agency of the United States
6 of America as may be usable and necessary for edu-
7 cational, fire protection and prevention, rescue, or public
8 health purposes, including research; (2) to warehouse
9 property acquired; and (3) to distribute the property to
10 tax-supported medical institutions, hospitals, clinics, fire
11 departments, rescue squads, health centers, school sys-
12 tems, schools, colleges and universities within the state,
13 and to other nonprofit medical institutions, hospitals,
14 clinics, volunteer fire departments, volunteer rescue
15 squads, health centers, schools, colleges and universities
16 within the state which have been held exempt from tax-
17 ation under section 101 (6) of the United States Internal
18 Revenue Code.

19 (b) For the purpose of executing its authority under
20 this article, the state agency for surplus property is au-
21 thorized and empowered to adopt, amend or rescind rules
22 and regulations as may be deemed necessary, and take
23 other action necessary and suitable in the administration
24 of this article, including the enactment and promulgation
25 of rules and regulations necessary to bring this article and
26 its administration into conformity with any federal stat-
27 utes or rules and regulations promulgated under federal
28 statutes for the acquisition and disposition of surplus
29 property.

30 (c) The state agency for surplus property is autho-
31 rized and empowered to appoint advisory boards or com-
32 mittees necessary to the end that this article and the rules
33 and regulations promulgated hereunder conform with
34 federal statutes and rules and regulations promulgated
35 under federal statutes for the acquisition and disposition
36 of surplus property.

37 (d) The state agency for surplus property is autho-
38 rized and empowered to take action, make expenditures
39 and enter into contracts, agreements and undertakings
40 for and in the name of the state, require reports, and
41 make investigations as may be required by law or regu-
42 lation of the United States of America in connection with

43 the receipt, warehousing and distribution of property re-
44 ceived by the state agency for surplus property from the
45 United States of America.

46 (e) The state agency for surplus property is authorized
47 and empowered to act as a clearinghouse of information
48 for the public and private nonprofit institutions and agen-
49 cies referred to in subsection (a) of this section, to locate
50 property available for acquisition from the United States
51 of America, to ascertain the terms and conditions under
52 which the property may be obtained, to receive requests
53 from the above-mentioned institutions and agencies and
54 to transmit to them all available information in reference
55 to the property, and to aid and assist the institutions and
56 agencies in every way possible in the consummation or
57 acquistiion of transactions hereunder.

58 (f) The state agency for surplus property, in the ad-
59 ministration of this article, shall cooperate to the fullest
60 extent consistent with the provisions of this article, with
61 the departments or agencies of the United States of
62 America and shall make reports in the form and con-
63 taining the information the United States of America or
64 any of its departments or agencies may from time to time
65 require, and it shall comply with the laws of the United
66 States of America and the rules and regulations of any
67 of the departments or agencies of the United States of
68 America governing the allocation, transfer, use or ac-
69 counting for property donable or donated to the state.

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CHAPTER 130

(S. B. 423—By Mr. Ward)

[Passed March 9, 1974; in effect July 1, 1974. Approved by the Governor.]

AN ACT to repeal section ten-a, article three, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section ten of said article, relating to forfeiture for the failure to

list property for taxation; procedure for collection of forfeiture.

Be it enacted by the Legislature of West Virginia:

That section ten-a, article three, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that section ten of said article be amended and reenacted to read as follows:

ARTICLE 3. ASSESSMENTS GENERALLY.

§11-3-10. Failure to list property, etc.; collection of penalties and forfeitures.

1 If any person, firm or corporation, including public
2 service corporations whose duty it is by law to list any
3 real estate or personal property for taxation, shall refuse
4 to furnish a proper list thereof or refuse to list within
5 the time required by law, or to make such oath as required
6 by this chapter; or if any person, firm or corporation,
7 including public service corporations, shall refuse to
8 answer or shall answer falsely any question asked by the
9 assessor or by the tax commissioner, or shall fail or refuse
10 to deliver any statement required by law, he or it shall
11 forfeit not less than twenty-five nor more than one hun-
12 dred dollars, and shall be denied all remedy provided by
13 law for the correction of any assessment made by the as-
14 sessor or by the board of public works. If any person, firm
15 or corporation, including public service corporations, re-
16 quired by law to make return of property for taxation,
17 whether such return is to be made to the assessor, the
18 board of public works, or any other assessing officer or
19 body, fails to return a true list of all property which
20 should be assessed in this state, including notes, bonds,
21 bills and accounts receivable, stocks and any other intan-
22 gible personal property, such person, firm or corporation,
23 in addition to all other penalties provided by law, shall
24 forfeit one percent of the value of the property not yet
25 returned and not otherwise taxed in this state. A forfei-
26 ture as to all property aforesaid may be enforced for any
27 such default occurring in any year not exceeding five
28 years immediately prior to the time the same is discovered,
29 but no liability to penalty or forfeiture as to notes, bonds,

30 bills and accounts receivable, stocks and other intangible
31 personal property arising prior to the first day of January,
32 one thousand nine hundred thirty-three, shall be enforce-
33 able on behalf of the state or of any of its subdivisions.
34 Each failure to make a true return as herein required shall
35 constitute a separate offense, and a forfeiture shall apply
36 to each of them, but all such forfeitures, to which the same
37 person, firm or corporation is liable, shall be enforced in
38 one proceeding against such person, firm or corporation, or
39 against the estate of any deceased person and shall not
40 exceed five percent of the value of the property not
41 returned. Such forfeitures shall be collected as is here-
42 inafter provided under the provision of article two,
43 chapter eleven-a of this code, the same as any tax lia-
44 bility, against the defaulting taxpayer, or in case of a
45 decedent, against his personal representative. The sheriff
46 shall apportion such fund among the state, county, dis-
47 trict, school district and municipalities which would have
48 been entitled to the taxes upon such property if it had
49 been assessed, in proportion to the rates of taxation for
50 each such levying unit for the year in which the judgment
51 was obtained bears to the sum of rates for all. When the
52 list of property returned by the appraisers of the estate of
53 any deceased person shows an amount greater than the
54 last assessment list of such deceased person next preceding
55 the appraisal of his estate, it shall be prima facie evidence
56 that such deceased person returned an imperfect list of his
57 property: *Provided*, That any person liable for the tax or
58 his personal representative, may always be permitted to
59 prove by competent evidence that the discrepancy be-
60 tween such assessment list and the appraisal of the estate
61 is caused by a difference of valuation returned by the
62 assessor and that made by the appraisers of the same prop-
63 erty or by property acquired after assessment, or that any
64 property enumerated in the appraisers' list had been other-
65 wise listed for taxation, or that it was not liable for tax-
66 ation. Any judgment recovered under this section shall be
67 a lien, from the time of the service of the notice, upon all
68 real estate and personal property of such defaulting tax-
69 payer, owned at the time or subsequently acquired, in
70 preference to any other lien.

CHAPTER 131

(S. B. 159—By Mr. Brotherton, Mr. President, and Mr. Hubbard)

[Passed March 7, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-one, relating to granting exemption from ad valorem tax of the first five thousand dollars of assessed valuation of real property to owners, over age sixty-five, occupying such real property for residential purposes and as their primary residence; ascertainment of eligibility for exemption; and providing for the supplying of all necessary instructions and forms and the promulgation of all necessary regulations by the tax commissioner.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. ASSESSMENT OF REAL PROPERTY.

§11-4-21. Five thousand dollar assessed value exemption for persons over sixty-five and otherwise qualified; ascertainment of eligibility; supplying of instructions and forms and promulgation of regulations.

1 Beginning with the first day of July, one thousand nine
2 hundred seventy-four, and every July first thereafter
3 the assessor shall ascertain each person in his county who
4 owns real property, wholly or partially, including, but not
5 limited to a person who owns a life estate or a consum-
6 mate dower interest therein, and who occupies such real
7 property as his primary residence and who is sixty-five
8 years of age or older. An exemption from ad valorem tax
9 of the first five thousand dollars of assessed valuation of
10 all such property is hereby granted when owned and oc-
11 cupied by any such qualified person.

12 The exemption of the first five thousand dollars shall

13 be shown on the land book against the total assessed
14 value, and taxes shall be extended against the net amount
15 of assessed value for the calendar tax year one thousand
16 nine hundred seventy-five and every calendar tax year
17 thereafter in which the owner and the property remains
18 qualified under this section. Only one exemption shall be
19 granted for each owner-occupied residence regardless of
20 the number of qualified persons, sixty-five or older, re-
21 siding therein.

22 When the five thousand dollar exemption is greater
23 than the total assessed value of the residence, no taxes
24 will be levied; and the sheriff shall issue a statement to
25 the landowner showing that no taxes are due.

26 Only those homeowners sixty-five years of age or older
27 on the July first assessment date will be eligible for the
28 exemption provided by this section for the following cal-
29 endar tax year. The exemption shall attach to the real
30 estate occupied by the qualified homeowner on the July
31 first assessment date. An exemption shall not be trans-
32 ferred to another parcel of real estate until the following
33 July first. If the property of a homeowner qualified
34 under this section is transferred by deed, will or other-
35 wise to an owner who will not be at least sixty-five
36 years of age on the next July first assessment date, the
37 five thousand dollar exemption will be removed from the
38 property when next assessed.

39 In addition to the listing made by the assessor, every
40 homeowner who is qualified shall have the right to
41 appear before the assessor and register his right to
42 the exemption provided by this section. Any person who
43 does not appear before the assessor, by himself or his
44 personal representative, or who does not in any way
45 contact the assessor's office to register his right to an
46 exemption on or before the first day of October following
47 a July first assessment day, shall not be entitled to any
48 exemption for the following calendar tax year.

49 The tax commissioner shall prescribe and supply all
50 necessary instructions and forms and shall promulgate all
51 necessary regulations to effectuate the purpose of this sec-
52 tion.

CHAPTER 132

(H. B. 1343—By Mrs. Given)

[Passed March 8, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article twelve, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing amount of gross income for exemption from business franchise registration tax.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. BUSINESS FRANCHISE REGISTRATION CERTIFICATE TAX.

§11-12-2. Definitions.

1 For the purposes of this article:

2 (a) "Business" shall mean any business, whether a person
3 engaged expressly or impliedly holds himself out as engaged
4 in business or supplying his products or a commodity or service
5 to the public as a class or a limited portion of the public or sells
6 any goods, wares, merchandise of any kind or provides a ser-
7 vice of any kind: *Provided, however,* That "business" shall not
8 include sales of products of the farm, garden, or dairy by the
9 producer or grower thereof; occasional sales by societies acting
10 for charitable, religious or benevolent purposes; judicial sales
11 directed by law or court order; or any business the gross income
12 of which is less than four thousand dollars per license year.
13 "Gross Income" shall mean the gross receipts of the business
14 received as compensation for personal services and from trade,
15 commerce, or sales and the value accruing from the sale of
16 tangible property (real or personal), or service, or both, with-
17 out any deduction on account of the cost of property sold,
18 materials used, labor costs, taxes or any other expense what-
19 soever.

20 (b) "Business franchise registration certificate" shall mean
21 a franchise or certificate authorizing a person to conduct

22 business within the state of West Virginia and when re-
23 ferred to in this article as certificate of registration shall
24 mean business franchise registration certificate.

25 (c) "Person" or "company" shall mean and include any
26 individual, firm, copartnership, joint venture, association,
27 corporation, trust and any other group or combination acting
28 as a unit in the plural as well as the singular and when used
29 in connection with the penalties imposed by section nine of
30 this article, shall mean and include the officers, directors,
31 trustees, or members of any firm, copartnership, joint venture,
32 association, corporation, trust or any other groups acting as
33 a unit.

34 (d) "Tax commissioner" shall mean the tax commissioner
35 or his agent.

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CHAPTER 133

(H. B. 1364—Originating in the House Committee on Finance)

[Passed March 8, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two-b, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the business and occupation tax, providing for the classification of business activities as manufacturing, compounding or preparing products; processing of food excepted.

Be it enacted by the Legislature of West Virginia:

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

§11-13-2b. Manufacturing, compounding or preparing products; processing of food excepted.

1 Upon every person engaging or continuing within this state

2 in the business of manufacturing, compounding or preparing for
3 sale, profit, or commercial use, either directly or through the
4 activity of others in whole or part, any article or articles, sub-
5 stance or substances, commodity or commodities, or electric
6 power produced by public utilities or others and not taxed
7 under other provisions of this article, or newspaper pub-
8 lishing (including all gross income or proceeds of sale from
9 circulation and advertising), the amount of the tax to be
10 equal to the value of the article, substance, commodity or
11 electric power or newspaper, manufactured, compounded
12 or prepared for sale, as shown by the gross proceeds derived
13 from the sale thereof by the manufacturer or person com-
14 pounding or preparing the same, except as otherwise provided,
15 multiplied by a rate of eighty-eight one hundredths of one
16 percent. The measure of this tax is the value of the entire
17 product manufactured, compounded or prepared in this state
18 for sale, profit or commercial use, regardless of the place of
19 sale or the fact that deliveries may be made to points outside
20 the state. However, the dressing and processing of food
21 by a person, firm or corporation, which food is to be sold on
22 a wholesale basis by such person, firm or corporation shall
23 not be considered as manufacturing or compounding, but the
24 sale of these products on a wholesale basis shall be subject
25 to the same tax as is imposed on the business of selling at
26 wholesale as provided in section two-c.

27 It is further provided, however, that in those instances in
28 which the same person partially manufactures, compounds
29 or prepares products within this state and partially manu-
30 factures, compounds or prepares such products outside of
31 this state the measure of his tax under this section shall be that
32 proportion of the sale price of the product that the payroll cost
33 of manufacturing within this state bears to the entire payroll
34 cost of manufacturing the product; or, at the option of the
35 taxpayer, the measure of his tax under this section shall be
36 the proportion of the sales value of the articles that the cost
37 of operations in West Virginia bears to the full cost of manu-
38 facture of the articles.

CHAPTER 134

(H. B. 1229—By Mr. Queen and Mr. Jones, of Kanawha)

[Passed March 9, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to exempting gross income from radio and television broadcasting time from business and occupation tax; expiration of date on subsection (g).

Be it enacted by the Legislature of West Virginia:

That section three, article thirteen, 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 13. BUSINESS AND OCCUPATION TAX.

§11-13-3. Exemptions.

1 There shall be an exemption in every case of fifty dollars
2 in amount of tax computed under the provisions of this
3 article. A person exercising a privilege taxable hereunder for
4 a fractional part of a tax year shall be entitled to an exemption
5 of the sum bearing the proportion to fifty dollars that the
6 period of time the privilege is exercised bears to a whole year.
7 Only one exemption shall be allowed to any one person,
8 whether he exercises one or more privileges taxable hereunder.

9 The provisions of the article shall not apply to: (a)
10 Insurance companies which pay the state of West Virginia a
11 tax upon premiums: *Provided*, That said exemption shall not
12 extend to that part of the gross income of insurance com-
13 panies which is received for the use of real property, other
14 than property in which any such company maintains its
15 office or offices, in this state, whether such income be in
16 the form of rentals or royalties; (b) nonprofit cemetery
17 companies organized and operated for the exclusive benefit
18 of their members; (c) fraternal societies, organizations and
19 associations organized and operated for the exclusive benefit
20 of their members and not for profit: *Provided, however*, That
21 said exemption shall not extend to that part of the gross

22 income arising from the sale of alcoholic liquor, food and
 23 related services, of such fraternal societies, organizations and
 24 associations which are licensed as private clubs under the
 25 provisions of article seven, chapter sixty of this code; (d)
 26 corporations, associations and societies organized and operated
 27 exclusively for religious or charitable purposes; (e) production
 28 credit association, organized under the provisions of the federal
 29 "Farm Credit Act of 1933"; (f) any credit union organized
 30 under the provisions of chapter thirty-one, or any other
 31 chapter of this code: *Provided further*, That the exemptions of
 32 this section shall not apply to corporations or cooperative
 33 associations organized under the provisions of article four,
 34 chapter nineteen of this code; (g) gross income arising from
 35 the sale of radio and television broadcasting time: *And pro-*
 36 *vided further*, That subsection (g) shall be effective only
 37 until the date of March thirty-first, one thousand nine hundred
 38 seventy-five.

CHAPTER 135

(S. B. 39—By Mr. Hubbard)

[Passed March 2, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventeen, article fourteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the gasoline and special fuel excise tax; assessment.

Be it enacted by the Legislature of West Virginia:

That section seventeen, article fourteen, 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 14. GASOLINE AND SPECIAL FUEL EXCISE TAX.

§11-14-17. Assessment of tax when insufficiently returned.

1 If the commissioner believes that the tax imposed by
 2 this article is insufficiently returned by a taxpayer, either

3 because the taxpayer has failed to properly remit the tax
4 or has failed to make a return, or has made a return which
5 is incomplete, deficient or otherwise erroneous or a person
6 has filed and has been paid upon an erroneous claim, pe-
7 tition, or application for a refund of taxes, he may pro-
8 ceed to investigate and determine or estimate the tax
9 liability of the taxpayer and make an assessment therefor.

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CHAPTER 136

(H. B. 986—By Mr. Queen)

[Passed March 8, 1974; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to exemption of sales of radio and television advertising, newspaper advertising and outdoor advertising; sales and services performed by day care centers; casual and occasional sales of property or services by corporations or organizations qualified under section 501 (c) (3) of the Internal Revenue Code of 1954, as amended, or under section 501 (c) (4) of the Internal Revenue Code of 1954, as amended, and bank safety deposit boxes from the consumers sales and service tax.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. CONSUMERS SALES TAX.

§11-15-9. Exemptions.

- 1 The following sales and services shall be exempt:
- 2 (1) Sales of gasoline, taxable under article fourteen,
- 3 chapter eleven of the code, one thousand nine hundred thirty-
- 4 one;
- 5 (2) Sales of gas, steam and water delivered to consumers
- 6 through main or pipes, and sales of electricity;

7 (3) Sales of textbooks required to be used in any of
8 the schools of this state;

9 (4) Sales of property or services to the state, its institu-
10 tions or subdivisions, and to the United States, including
11 agencies of federal, state or local governments for distribution
12 in public welfare or relief work;

13 (5) Sales of motor vehicles which are titled by the
14 department of motor vehicles which are subject to the tax
15 imposed by section four, article three, chapter seventeen-a
16 of the code;

17 (6) Sales of property or services to churches and bona
18 fide charitable organizations who make no charge whatever
19 for the services they render or sales of property or services to
20 corporations or organizations qualified under section 501 (c)
21 (3) of the Internal Revenue Code of 1954, as amended,
22 or under section 501 (c) (4) of the Internal Revenue Code
23 of 1954, as amended, who make casual and occasional sales
24 not conducted in a repeated manner or in the ordinary course
25 of repetitive and successive transactions of like character, or
26 sales of property or services to persons engaged in this state
27 in the business of contracting, manufacturing, transportation,
28 transmission, communication, or in the production of natural
29 resources: *Provided, however,* That the exemption herein
30 granted shall apply only to services, machinery, supplies and
31 materials directly used or consumed in the businesses or or-
32 ganizations named above;

33 (7) An isolated transaction in which any tangible personal
34 property is sold, transferred, offered for sale, or delivered
35 by the owner thereof or by his representative for the owner's
36 account, such sale, transfer, offer for sale or delivery not being
37 made in the ordinary course of repeated and successive
38 transactions of like character by such owner or on his account
39 by such representative;

40 (8) Sales of tangible personal property and services ren-
41 dered for use or consumption in connection with the conduct
42 of the business of selling tangible personal property to con-
43 sumers or dispensing a service subject to tax under this
44 article and sales of tangible personal property and services
45 rendered for use or consumption in connection with the com-

46 merical production of an agricultural product the ultimate
47 sale of which will be subject to the tax imposed by this
48 article: *Provided*, That sales of tangible personal property
49 and services to be used or consumed in the construction of
50 or permanent improvement of real property shall not be
51 exempt;

52 (9) Sales of tangible personal property for the purpose
53 of resale in the form of tangible personal property;

54 (10) Sales of property or services to nationally chartered
55 fraternal or social organizations for the sole purpose of free
56 distribution in public welfare or relief work;

57 (11) Sales and services, fire fighting, or station house
58 equipment, including construction and automotive, made to
59 any volunteer fire department organized and incorporated
60 under the laws of the state of West Virginia;

61 (12) Sales of newspapers when delivered to consumers by
62 route carriers;

63 (13) Sales of drugs dispensed upon prescription;

64 (14) Sales of radio and television broadcasting time, news-
65 paper and outdoor advertising space for the advertisement of
66 goods or services;

67 (15) Sales and services performed by day care centers;

68 (16) Casual and occasional sales of property or services
69 not conducted in a repeated manner or in the ordinary course
70 of repetitive and successive transactions of like character by
71 corporations or organizations qualified under section 501 (c)
72 (3) of the Internal Revenue Code of 1954, as amended, or
73 under section 501 (c) (4) of the Internal Revenue Code of
74 1954, as amended;

75 (17) Bank safety deposit boxes.

CHAPTER 137

(H. B. 706—By Mr. Seibert)

[Passed February 20, 1974; In effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections twelve, seventeen, nineteen and twenty, article seventeen, chapter eleven of the code of

West Virginia, one thousand nine hundred thirty-one, as amended, relating to cigarette taxes; giving the tax commissioner the right to inspect stocks of cigarettes; requiring peace officers to assist the commissioner to enforce the articles changing the interest rate on unpaid taxes; allowing a meter impression to be affixed to individual packages; declaring cigarettes upon which the tax has not been paid to be contraband and forfeited to the state; adding airways to list of ways of transporting unstamped cigarettes under certain conditions; making illegal transportation of cigarettes a misdemeanor and providing penalties.

Be it enacted by the Legislature of West Virginia:

That sections twelve, seventeen, nineteen and twenty, article seventeen, 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 17. CIGARETTE TAX ACT.

- §11-17-12. Reports required; due date; records to be kept; inspection of records and stocks; examination of witnesses, summons, etc.
- §11-17-17. Forms, rules and regulations; enforcement powers.
- §11-17-19. Interest; additions to tax; penalties; crimes.
- §11-17-20. Transportation of unstamped cigarettes; unstamped cigarettes in vending machines; forfeitures and sales of cigarettes and equipment; criminal sanctions.

§11-17-12. Reports required; due date; records to be kept; inspection of records and stocks; examination of witnesses, summons, etc.

1 On or before the fifteenth day of each month common car-
 2 riers, wholesalers, subjobbers, retail dealers, and agents, or
 3 vending machine operators shall, when required by this article,
 4 or the tax commissioner, file a report covering the business
 5 transacted in the previous month covering such information as
 6 the commissioner may deem necessary for the ascertainment or
 7 assessment of the tax imposed by this article; and shall be
 8 signed under penalty of perjury on such forms as the tax com-
 9 missioner may prescribe and shall at this time remit any taxes
 10 owed or due, if any.

11 The reports imposed by this section shall be deemed as
 12 having been timely filed for the purpose of avoiding penalties
 13 only if the postmark date thereon is clearly within the said due

14 date of the calendar month, or is received within such period.
15 If the due date falls on a Saturday or Sunday, or a day which
16 is a legal holiday in the state of West Virginia, filing will be
17 considered timely if it is done on the next succeeding secular
18 day which is not a legal holiday.

19 The reports prescribed herein are required although a tax
20 might not be due, or no business transacted, for the period
21 covered by the report.

22 Each person required to file a report under this article shall
23 make and keep such records as shall be prescribed by the tax
24 commissioner that are necessary to substantiate the returns
25 required by this article, including, but not limited to, inventor-
26 ies, receipts, disbursements and sales, for a period of time not
27 less than five years.

28 Unless otherwise permitted, in writing, by authority of the
29 tax commissioner, each delivery ticket or invoice for each pur-
30 chase or sale of cigarettes must be recorded upon a serially
31 numbered invoice showing the name and address of the seller
32 and the purchasers, point of delivery, the date, quantity, price
33 of product, and the tax must be set out separate or the in-
34 voice must indicate whether or not the West Virginia cigarette
35 excise tax is included in the total price and such other reason-
36 able information as the tax commissioner may require. How-
37 ever, these invoicing requirements do not apply to cash sales,
38 and a person making such sales must maintain such records as
39 may be reasonably necessary to substantiate his return.

40 The tax commissioner or his deputy or agent authorized by
41 him shall have authority to inspect or examine the stock of
42 cigarettes kept in and upon the premises of any person where
43 cigarettes are placed, stored or sold and shall inspect or exam-
44 ine the records, books, papers and any equipment or records
45 of manufacturers, cigarette stamping agents, wholesalers, sub-
46 jobbers, retail dealers, common carriers, or any other person
47 for the purpose of determining the quantity of cigarettes ac-
48 quired or distributed to verify the truth and accuracy of any
49 statement or report or to ascertain that the tax imposed by
50 this article has been properly paid.

51 As a further means of obtaining the records, books and
52 papers of a manufacturer, common carrier, wholesaler, sub-

53 jobber, or retailer or any other person and ascertaining the
 54 amount of taxes and reports due under this article, the commis-
 55 sioner and his duly appointed agent shall have the power to
 56 examine witnesses under oath; and if the witness shall fail or re-
 57 fuse at the request of the tax commissioner or his duly ap-
 58 pointed agent to grant access to the books, records, or papers,
 59 the tax commissioner or such agent shall certify the facts and
 60 names to the circuit court of the county having jurisdiction of
 61 the party and such court shall thereupon issue summons to such
 62 party to appear before the tax commissioner or his agent, at a
 63 place designated within the jurisdiction of such court, on a day
 64 fixed, to be continued as the occasion may require for good
 65 cause shown and give such evidence and lay open for inspec-
 66 tion such books and papers as may be required for the purpose
 67 of ascertaining the amount of tax and reports due, if any.

§11-17-17. Forms, rules and regulations; enforcement powers.

1 The tax commissioner is hereby invested with full power and
 2 authority and it is hereby made his duty to prescribe the neces-
 3 sary forms and to promulgate necessary and needful rules and
 4 regulations to ascertain, assess and collect the taxes imposed
 5 by this article and to enforce the provisions thereof.

6 Any employee or agent of the tax commissioner, so desig-
 7 nated by the tax commissioner, shall have all the lawful powers
 8 delegated to members of the department of public safety to
 9 enforce the provisions of this article, in any county, or munic-
 10 ipality in this state.

11 Such employee shall execute a bond with security in the
 12 sum of thirty-five hundred dollars, payable to the state of West
 13 Virginia conditioned for the faithful performance of his duties,
 14 as such, and such bond shall be approved as to form by the
 15 attorney general, and the same shall be filed with the secretary
 16 of state and preserved in his office.

17 The state department of public safety or any county sheriff
 18 or his deputies is, upon request of the commissioner, here-
 19 by authorized and required to assist in the enforcement of the
 20 provisions of this article.

§11-17-19. Interest; additions to tax; penalties; crimes.

1 (1) If any person:

2 (a) Fails to pay the taxes imposed by this article when due,
3 said taxes shall bear interest at the rate of six percent per
4 annum prorated for each month or fraction thereof from the
5 due date of the tax, each assessment made by the tax commis-
6 sioner shall bear interest for failure to timely pay the taxes
7 imposed by this article, or

8 (b) Fails to make or file a return whenever the full amount
9 of the tax on any portion or deficiency thereof has not been
10 paid in the time required by this article, unless it be shown
11 that such failure was due to reasonable cause and not due to
12 willful neglect, there may be added to the tax a penalty of five
13 percent per month, with an additional five percent for each
14 additional month or fraction thereof during which failure shall
15 continue, not to exceed twenty-five percent in the aggregate.
16 If no tax is due, the penalty will be twenty-five dollars per
17 month or fraction thereof for failure to file a tax return:
18 *Provided*, That in all cases of delinquency in the payment of
19 taxes due, interest shall be assessed.

20 (2) If any person:

21 Files a false or fraudulent return with intent to evade the
22 tax imposed by this article, or in the case of a willful failure
23 to file a return with intent to evade the tax, or file a false
24 claim for credit or refund there shall be added to the tax due
25 an amount equal to one hundred percent of the tax due. The
26 burden of proving fraud, willfulness, or intent to evade tax
27 shall be upon the commissioner.

28 (3) If any person:

29 (a) Makes any false entry upon an invoice, package or con-
30 tainer of cigarettes required to be made under the provisions
31 of this article, or with intent to evade the tax imposed by this
32 article, presents any such false entry for the inspection of the
33 commissioner, or

34 (b) Prevents or hinders the commissioner or his deputy
35 from making a full inspection of any place where cigarettes
36 subject to the tax imposed by this state are sold or stored, or
37 prevents or hinders the full inspection of invoices, books, re-
38 cords, or papers required to be kept under the provisions of
39 this article, or

40 (c) Sells cigarettes in this state without there having been
41 first affixed to each individual package thereof the stamp or
42 meter impression required to be affixed thereto by this article,
43 or

44 (d) Being a retail dealer or subjobber in this state, has in his
45 possession packages of cigarettes not bearing the stamps or
46 meter impression herein required to be affixed thereto or,
47 whoever fails to produce on demand by the commissioner in-
48 voices of all cigarettes purchased or received by him within two
49 years prior to such demand, unless upon satisfactory proof it
50 is shown that such nonproduction is due to providential or
51 other causes beyond his control, or

52 (e) If any wholesale dealer shall sell cigarettes to any per-
53 son in this state other than to another wholesaler, subjobber,
54 or retail dealer and no person in this state other than a whole-
55 saler, or subjobber, shall sell cigarettes to a retail dealer. It
56 shall be unlawful and a violation of this article for any retail
57 cigarette dealer to purchase or acquire cigarettes from any per-
58 son other than a wholesaler or subjobber. The original whole-
59 saler who purchases unstamped cigarettes from the manufac-
60 turer is liable for the excise tax and the affixing of the re-
61 quired stamps or meter impression, or

62 (f) If any person, firm or corporation, who is not a whole-
63 saler of tobacco products, as provided by this article, shall have
64 in his possession within the state more than twenty packages of
65 cigarettes not bearing cigarette tax paid indicia of this state,
66 stamps or meter impressions, such possession shall be pre-
67 sumed to be for the purpose of evading the payment of the
68 taxes imposed or due thereon, or

69 (g) Whoever violates any of the provisions of subsection
70 (2) through subsection (3) (f) of this section or any law-
71 ful rule or regulation promulgated by the commissioner under
72 authority of this article shall be guilty of a misdemeanor, and,
73 upon conviction thereof, shall be fined not less than three
74 hundred dollars nor more than five thousand dollars, or
75 imprisoned in the county jail for not more than one year, or
76 both, in the discretion of the court.

77 (4) Whoever falsely or fraudulently makes, forges, alters or
78 counterfeits any stamp or meter impression prescribed, or de-

79 fined, by the provisions of this article, or its related rules and
80 regulations, and any person who knowingly and willfully
81 makes, causes to be made, purchases, receives or has in his pos-
82 session, any device for forging or counterfeiting any stamp or
83 meter impression, or has in his possession, any stamps not
84 properly issued by the commissioner or his agent or deputy or
85 tampers with or alters any stamping device authorized by the
86 commissioner or uses more than once any stamp or meter im-
87 pression provided for and required by this article for the pur-
88 pose of evading the tax hereby imposed, shall be guilty of a
89 felony, and, upon conviction thereof, shall be sentenced to pay
90 a fine of not less than five thousand dollars nor more than ten
91 thousand dollars and imprisoned in the penitentiary for a term
92 of not less than one year nor more than five years.

93 (5) Whenever the commissioner or any of his deputies or
94 employees authorized by him or any peace officer of this state
95 for the purpose shall discover any cigarettes subject to tax as
96 provided by this article and upon which the tax has not been
97 paid as herein required, such cigarettes shall thereupon be
98 deemed to be contraband, and the commissioner, or such de-
99 puty or employee or any peace officer of this state is hereby
100 authorized and empowered forthwith to seize and take posses-
101 sion of such cigarettes, without a warrant, and such cigarettes
102 shall be forfeited to the state, and the commissioner shall with-
103 in a reasonable time thereafter sell such forfeited cigarettes:
104 *Provided*, That such seizure and sale shall not be deemed to
105 relieve any person from fine or imprisonment as provided here-
106 in for violation of any provisions of this article. Such sale may
107 be made in any county the tax commissioner deems most con-
108 venient and economical. Notice of such sale shall be published
109 as Class I legal advertisement in compliance with the provisions
110 of article three, chapter fifty-nine of this code, and the publi-
111 cation area for such publication shall be the county wherein
112 such seizure was made and the county wherein the sale is to
113 take place. Notice shall be published at least five days prior
114 to the sale. All taxes and penalties collected under the pro-
115 visions of this section shall be paid into the state treasury and
116 treated as other taxes collected under this article.

117 (6) Justices of the peace shall have concurrent jurisdiction

118 with any other courts having jurisdiction for the trial of all
119 misdemeanors arising under this article.

**§11-17-20. Transportation of unstamped cigarettes; unstamped
cigarettes in vending machines; forfeitures and sales
of cigarettes and equipment; criminal sanctions.**

1 Every person who shall transport cigarettes not stamped
2 as required by this article upon the public highways, water-
3 ways, airways, roads or streets of this state shall have in
4 his actual possession invoices or delivery tickets for such
5 cigarettes which shall show the true name and the complete
6 and exact address of the consignor or seller, the true name
7 and complete and exact address of the consignee, or purchaser,
8 the quantity and brands of the cigarettes transported and the
9 true name and complete and exact address of the person
10 who has or shall assume payment of the West Virginia state
11 tax, or the tax, if any, of the state or foreign country at
12 the point of ultimate destination: *Provided*, That any com-
13 mon carrier which has issued a bill of lading for a shipment
14 of cigarettes and is without notice to itself or to any of its
15 agents or employees that said cigarettes are not stamped
16 as required by this article shall be deemed to have complied
17 with this article and the vehicle or vessel in which said
18 cigarettes are being transported shall not be subject to
19 confiscation hereunder. In the absence of such invoices,
20 delivery tickets or bills of lading, as the case may be, the
21 cigarettes so transported, the vehicle or vessel in which the
22 cigarettes are being transported and any paraphernalia or
23 devices used in connection with the unstamped cigarettes,
24 are declared to be contraband goods and may be seized by
25 the commissioner, his agents or employees or by any peace
26 officer of the state without a warrant.

27 If any person transports unstamped cigarettes in violation
28 of this section he shall be guilty of a misdemeanor, and,
29 upon conviction thereof, shall be fined not less than three
30 hundred dollars nor more than five thousand dollars, or
31 imprisoned in the county jail not more than one year, or
32 both fined and imprisoned.

33 If unstamped cigarettes are found in any vending machine,
34 both the cigarettes and the vending machine shall be contra-

35 band goods and may be seized by the commissioner, at the
36 discretion of the commissioner, his agents or employees or
37 any peace officer of this state, without a warrant.

38 Cigarettes and vending machines seized under this section
39 shall be forthwith sold in the manner provided hereinafter
40 in this section and such sale shall not relieve the owner of
41 the sold personal property of any action by the commissioner
42 for violations of any other sections of this article.

43 The commissioners shall immediately, after any seizure made
44 pursuant to this section, institute a proceeding for the con-
45 fiscation thereof in the circuit court of the county in which
46 the seizure is made. The court may proceed in a summary
47 manner and may direct confiscation to the commissioner:
48 *Provided*, That any person claiming to be the holder of
49 security interest in any vehicle or vessel, or vending machine,
50 the disposition of which is provided for above may present
51 his petition so alleging and be heard, and in the event it
52 appears to the court that the property was unlawfully used
53 by a person other than such claimant, and if the said
54 claimant acquired his security interest in good faith and
55 without knowledge that the vehicle or vessel or vending
56 machine, was going to be so used, the court shall either
57 waive forfeiture in favor of such claimant and order the
58 vehicle or vessel or vending machine returned or delivered
59 to such claimant or if it is found that the value thereof
60 exceeds the amount of the claim, the court shall order pay-
61 ment of the amount of the claim out of the proceeds of the
62 sale.

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CHAPTER 138

(S. B. 19—By Mr. Brotherton, Mr. President)

[Passed February 16, 1974; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to updating meaning of terms in personal income tax.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-9. Meaning of terms.

1 Any term used in this article shall have the same mean-
2 ing as when used in a comparable context in the laws of
3 the United States relating to income taxes, unless a differ-
4 ent meaning is clearly required. Any reference in this ar-
5 ticle to the laws of the United States shall mean the pro-
6 visions of the Internal Revenue Code of 1954, as amended,
7 and such other provisions of the laws of the United States
8 as relate to the determination of income for federal in-
9 come tax purposes. All amendments made to the laws of
10 the United States prior to the first day of January, one
11 thousand nine hundred seventy-four shall be given effect
12 in determining the taxes imposed by this article for the
13 tax period beginning the first day of January, one thou-
14 sand nine hundred seventy-four, and thereafter, but no
15 amendment to the laws of the United States made on or
16 after the first day of January, one thousand nine hundred
17 seventy-four, shall be given effect.

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CHAPTER 139

(Com. Sub. for H. B. 1073—By Mr. Tonkovich and Mr. Scott)

[Passed March 5, 1974; in effect July 1, 1974. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to West Virginia adjusted gross income of resident individual; relating to definition of federal adjusted gross income, providing for modifications increasing federal adjusted gross income; providing a modification reducing federal adjusted gross income for persons

receiving annuities, benefits and other amounts 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; providing a modification reducing federal adjusted gross income for persons above the age of sixty-five; providing for modification for West Virginia fiduciary adjustment; providing modification for partners and for husband and wife filing separately.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-12. West Virginia adjusted gross income of resident individual.

1 (a) *General.*—The West Virginia adjusted gross income of
2 a resident individual means his federal adjusted gross income
3 as defined in the laws of the United States for the taxable
4 year with the modifications specified in this section.

5 (b) *Modifications increasing federal adjusted gross in-*
6 *come.*—There shall be added to federal adjusted gross income:

7 (1) Interest income on obligations of any state other than
8 this state, or of a political subdivision of any such other
9 state unless created by compact or agreement to which this
10 state is a party;

11 (2) Interest or dividend income on obligations or securities
12 of any authority, commission or instrumentality of the United
13 States, which the laws of the United States exempt from
14 federal income tax but not from state income taxes;

15 (3) Income taxes imposed by this state or any other
16 taxing jurisdiction, to the extent deductible in determining
17 federal adjusted gross income and not credited against federal
18 income tax; and

19 (4) Interest on indebtedness incurred or continued to
20 purchase or carry obligations or securities the income from

21 which is exempt from tax under this article, to the extent
22 deductible in determining federal adjusted gross income.

23 (c) *Modifications reducing federal adjusted gross income.*

24 --There shall be subtracted from federal adjusted gross
25 income:

26 (1) Interest income on obligations of the United States
27 and its possessions to the extent includible in gross income
28 for federal income tax purposes;

29 (2) Interest or dividend income on obligations or securities
30 of any authority, commission or instrumentality of the United
31 States to the extent includible in gross income for federal
32 income tax purposes but exempt from state income taxes
33 under the laws of the United States;

34 (3) Any gain from the sale or other disposition of prop-
35 erty having a higher fair market value on the first day of
36 January, one thousand nine hundred sixty-one, than the
37 adjusted basis at said date for federal income tax purposes:
38 *Provided*, That the amount of this adjustment is limited to
39 that portion of any such gain which does not exceed the
40 difference between such fair market value and such adjusted
41 basis: *Provided, however*, That if such gain is considered a
42 long-term capital gain for federal income tax purposes, the
43 modification shall be limited to fifty per centum of such
44 portion of the gain;

45 (4) The amount of any refund or credit for overpayment
46 of income taxes imposed by this state, or any other taxing
47 jurisdiction, to the extent properly included in gross income
48 for federal income tax purposes;

49 (5) Annuities, retirement allowances, returns of contri-
50 butions and any other benefit received under the public em-
51 ployees retirement system, the department of public safety
52 death, disability and retirement fund, the state teachers retire-
53 ment system, and all forms of military retirement, includ-
54 ing regular armed forces, reserves and national guard, to the
55 extent includible in gross income for federal income tax
56 purposes;

57 (6) Retirement income received in the form of pensions
58 and annuities after the thirty-first day of December, one

59 thousand nine hundred seventy-two, by any person who has
60 attained the age of sixty-five from any source other than
61 those enumerated in paragraph five of this subsection to the
62 extent includible in gross income for federal tax purposes.
63 *Provided*, That the total modification for all retirement in-
64 come received from such sources other than those enumerated
65 in paragraph five of this subsection shall be limited to an
66 amount in the aggregate not to exceed four thousand dollars
67 per person; and

68 (7) Any pay or allowances received after the thirty-first
69 day of December, one thousand nine hundred seventy-five by
70 West Virginia residents as compensation for active service in
71 the armed forces of the United States: *Provided*, That such
72 deduction shall be limited to an amount not to exceed four
73 thousand dollars.

74 (d) *Modification for West Virginia fiduciary adjustment.*
75 —There shall be added to or subtracted from federal adjusted
76 gross income, as the case may be, the taxpayer's share, as
77 beneficiary of an estate or trust, of the West Virginia fiduciary
78 adjustment determined under section nineteen.

79 (e) *Partners.*—The amounts of modifications required to
80 be made under this section by a partner, which relate to
81 items of income, gain, loss or deduction of a partnership,
82 shall be determined under section seventeen.

83 (f) *Husband and wife.*—If husband and wife determine
84 their federal income tax on a joint return but determine their
85 West Virginia income taxes separately, they shall determine
86 their West Virginia adjusted gross incomes separately as if
87 their federal adjusted gross incomes had been determined
88 separately.

CHAPTER 140

(H. B. 1283—By Mr. Pauley)

[Passed March 5, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article twenty-four,
chapter eleven of the code of West Virginia, one thousand nine

hundred thirty-one, as amended, relating to updating meaning of terms in corporation net income tax.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 24. CORPORATION NET INCOME TAX.

**PART I—DEFINITIONS, IMPOSITION OF TAX AND
RATE, AND EXEMPTIONS.**

§11-24-3. Meaning of terms.

1 (a) *General.*—Any term used in this article shall have
2 the same meaning as when used in a comparable context in the
3 laws of the United States relating to federal income taxes,
4 unless a different meaning is clearly required by the context
5 or by definition in this article. Any reference in this article
6 to the laws of the United States or to the Internal Revenue
7 Code or to the federal income tax law shall mean the pro-
8 visions of the laws of the United States as relate to the deter-
9 mination of income for federal income tax purposes. All
10 amendments made to the laws of the United States prior
11 to the first day of January, one thousand nine hundred seventy-
12 four, shall be given effect in determining the taxes imposed
13 by this article for the tax period beginning the first day of
14 July, one thousand nine hundred seventy-four, and thereafter,
15 but no amendment to laws of the United States made on or
16 after the first day of January, one thousand nine hundred
17 seventy-four, shall be given effect.

18 (b) *Certain terms defined.*—For purposes of this article:

19 (1) The term “tax commissioner” means the tax
20 commissioner of the state of West Virginia or his dele-
21 gate.

22 (2) The term “corporation” means and includes a joint-
23 stock company or any association which is taxable as a
24 corporation under the federal income tax law.

25 (3) The term “domestic corporation” means any corpora-
26 tion organized under the laws of West Virginia.

27 (4) The term “foreign corporation” means any corporation
28 other than a domestic corporation.

29 (5) The term “state” means any state of the United States,
30 the District of Columbia, the Commonwealth of Puerto Rico,
31 any territory or possession of the United States, and any
32 foreign country or political subdivision thereof.

33 (6) The term “taxable year” means the taxable year for
34 which the taxable income of the taxpayer is computed under
35 the federal income tax law.

36 (7) The term “taxpayer” means a corporation subject to
37 the tax imposed by this article.

38 (8) The term “tax” includes, within its meaning, interest
39 and penalties unless the intention to give it a more limited
40 meaning is disclosed by the context.

41 (9) The term “commercial domicile” means the principal
42 place from which the trade or business of the taxpayer is
43 directed or managed.

44 (10) The term “compensation” means wages, salaries,
45 commissions and any form of remuneration paid to employees
46 for personal services.

47 (11) The term “West Virginia taxable income” means the
48 taxable income of a corporation as defined by the laws of the
49 United States for federal income tax purposes, adjusted as
50 provided in section six: *Provided*, That in the case of a
51 corporation having income from business activity which is
52 taxable without this state, its “West Virginia taxable income”
53 shall be such portion of its taxable income as so defined and
54 adjusted as is allocated or apportioned to this state under the
55 provisions of section seven.

56 (12) The term “business income” means income arising
57 from transactions and activity in the regular course of the
58 taxpayer’s trade or business and includes income from tangible
59 and intangible property if the acquisition and disposition of
60 the property constitute integral parts of the taxpayer’s regular
61 trade or business operations.

62 (13) “Nonbusiness income” means all income other than
63 business income.

64 (14) The term "public utility" means any business activity
65 to which the jurisdiction of the public service commission of
66 West Virginia extends under section one, article two, chapter
67 twenty-four of the code of West Virginia.

68 (15) The term "this code" means the code of West Vir-
69 ginia, one thousand nine hundred thirty-one, as amended.

70 (16) The term "this state" means the state of West Vir-
71 ginia.

∞

CHAPTER 141

(Com. Sub. for S. B. 257—By Mr. Hubbard)

[Passed March 8, 1974; in effect July 1, 1974. Approved by the Governor.]

AN ACT to amend and reenact section five, article two; section five, article four; and sections ten and eleven, article six, all of chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the compensation and expenses of the commissioner of employment security and of the members of the board of review of the department of employment security; relating to unemployment compensation; relating to the benefit rate for total unemployment; relating to the annual computation and publication of rates; increasing benefits payable for total unemployment; and relating to computation of benefits payable for partial unemployment.

Be it enacted by the Legislature of West Virginia:

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

Article

2. **The Commissioner of Employment Security.**
4. **Board of Review.**
6. **Employee Eligibility; Benefits.**

ARTICLE 2. THE COMMISSIONER OF EMPLOYMENT SECURITY.**§21A-2-5. Compensation; traveling expenses.**

1 Notwithstanding the provisions of section two-a, article
2 seven, chapter six of this code, the commissioner of em-
3 ployment security shall receive a yearly salary of twenty-
4 three thousand five hundred dollars and the necessary
5 traveling expenses incident to the performance of his
6 duties. Requisition for traveling expenses shall be ac-
7 companied by a sworn itemized statement which shall be
8 filed with the auditor and preserved as a public record.

ARTICLE 4. BOARD OF REVIEW.**§21A-4-5. Compensation and travel expenses.**

1 Notwithstanding the provisions of section two-a, article
2 seven, chapter six of this code, each member of the board
3 shall receive an annual salary of twelve thousand six hun-
4 dred dollars and the necessary traveling expenses in-
5 curred in the performance of his duties.

6 Requisition for traveling expenses shall be accompanied
7 by a sworn and itemized statement which shall be filed
8 with the auditor and preserved as a public record.

9 The salaries and expenses of the members shall be paid
10 from the administration fund.

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

§21A-6-10. Benefit rate—Total unemployment; annual computation and publication of rates.

§21A-6-11. Same—Partial unemployment.

§21A-6-10. Benefit rate—Total unemployment; annual computation and publication of rates.

1 Each eligible individual who is totally unemployed in
2 any week shall be paid benefits with respect to that week
3 at the weekly rate appearing in Column (C) in Table A
4 in this paragraph, on the line on which in Column (A)
5 there is indicated the employee's wage class, except as
6 otherwise provided under the term "total and partial un-
7 employment" in section three, article one of this chapter.
8 The employee's wage class shall be determined by his
9 base period wages as shown in Column (B) in Table A.

10 The right of an employee to receive benefits shall not be
 11 prejudiced nor the amount thereof be diminished by rea-
 12 son of failure by an employer to pay either the wages
 13 earned by the employee or the contribution due on such
 14 wages. An individual who is totally unemployed but earns
 15 in excess of twenty-five dollars as a result of odd-job or
 16 subsidiary work in any benefit week shall be paid benefits
 17 for such week in accordance with the provisions of this
 18 chapter pertaining to benefits for partial unemployment.

19

TABLE A

| Wage Class | Wages in Base Period | Weekly Benefit Rate | Maximum Benefit in Benefit Year for Total and/or Partial Unemployment |
|------------|----------------------|---------------------|-----------------------------------------------------------------------|
| (Column A) | (Column B) | (Column C) | (Column D) |
| 20 | Under \$ 700.00 | Ineligible | ----- |
| 21 1 | 700.00— 799.99 | \$ 12.00 | \$312.00 |
| 22 2 | 800.00— 899.99 | 13.00 | 338.00 |
| 23 3 | 900.00— 999.99 | 14.00 | 364.00 |
| 24 4 | 1000.00— 1149.99 | 15.00 | 390.00 |
| 25 5 | 1150.00— 1299.99 | 16.00 | 416.00 |
| 26 6 | 1300.00— 1449.99 | 17.00 | 442.00 |
| 27 7 | 1450.00— 1599.99 | 18.00 | 468.00 |
| 28 8 | 1600.00— 1749.99 | 19.00 | 494.00 |
| 29 9 | 1750.00— 1899.99 | 20.00 | 520.00 |
| 30 10 | 1900.00— 2049.99 | 21.00 | 546.00 |
| 31 11 | 2050.00— 2199.99 | 22.00 | 572.00 |
| 32 12 | 2200.00— 2349.99 | 23.00 | 598.00 |
| 33 13 | 2350.00— 2499.99 | 24.00 | 624.00 |
| 34 14 | 2500.00— 2599.99 | 25.00 | 650.00 |
| 35 15 | 2600.00— 2699.99 | 26.00 | 676.00 |
| 36 16 | 2700.00— 2799.99 | 27.00 | 702.00 |
| 37 17 | 2800.00— 2899.99 | 28.00 | 728.00 |
| 38 18 | 2900.00— 2999.99 | 29.00 | 754.00 |
| 39 19 | 3000.00— 3099.99 | 30.00 | 780.00 |
| 40 20 | 3100.00— 3199.99 | 31.00 | 806.00 |
| 41 21 | 3200.00— 3349.99 | 32.00 | 832.00 |
| 42 22 | 3350.00— 3499.99 | 33.00 | 858.00 |
| 43 23 | 3500.00— 3649.99 | 34.00 | 884.00 |
| 44 24 | 3650.00— 3799.99 | 35.00 | 910.00 |

45 Notwithstanding any of the foregoing provisions of this
46 section, on and after July one, one thousand nine hundred
47 sixty-seven, the maximum weekly benefit rate shall be
48 forty percent of the average weekly wage in West Vir-
49 ginia.

50 Notwithstanding any of the foregoing provisions of this
51 section, on and after July one, one thousand nine hundred
52 seventy, the maximum weekly benefit rate shall be forty-
53 five percent of the average weekly wage in West Virginia.

54 Notwithstanding any of the foregoing provisions of this
55 section, on and after July one, one thousand nine hun-
56 dred seventy-one, the maximum weekly benefit rate shall
57 be fifty percent of the average weekly wage in West
58 Virginia.

59 Notwithstanding any of the foregoing provisions of
60 this section, on and after July one, one thousand nine
61 hundred seventy-three, the maximum weekly benefit
62 rate shall be fifty-five percent of the average weekly
63 wage in West Virginia.

64 The commissioner, after he has determined the maxi-
65 mum weekly benefit rate upon the basis of the above
66 formula, shall establish as many additional wage classes
67 as are required, increasing the amount of base period
68 wages required for each class by one hundred fifty dol-
69 lars, the weekly benefit rate for each class by one dollar,
70 and the maximum benefit by twenty-six dollars. The
71 maximum weekly benefit rate, when computed by the
72 commissioner, in accordance with the foregoing provisions,
73 shall be rounded to the next higher dollar amount, if the
74 computation exceeds forty-nine percent of a dollar
75 amount. Such rounding off to the next higher dollar
76 amount shall result in one additional wage class, with
77 commensurate base period wage requirement of one
78 hundred fifty dollars over the preceding wage class, and
79 with a maximum benefit increase over the preceding wage
80 class of twenty-six dollars. Such an additional wage
81 class shall be published by the commissioner with the
82 table required to be published by the foregoing provi-
83 sions of this section.

84 Notwithstanding any of the foregoing provisions of this
85 section, including Table A, on and after July one, one
86 thousand nine hundred seventy-four:

87 (1) The maximum weekly benefit rate shall be
88 sixty-six and two-thirds percent of the average weekly
89 wage in West Virginia.

90 (2) The weekly benefit rate [Column (C) of said
91 Table A] in each and every wage class, one through
92 twenty-four, both inclusive [Column (A) of said Table
93 A], shall be increased two dollars, and the maximum
94 benefit in benefit year for total and/or partial unem-
95 ployment [Column (D) of said Table A] in each and
96 every wage class [Column (A) of said Table A], shall
97 be increased fifty-two dollars.

98 (3) The commissioner, after he has determined the
99 maximum weekly benefit rate upon the basis of the
100 formula set forth in subdivision (1) above, shall estab-
101 lish as many additional wage classes as are required,
102 increasing the amount of the base period wages re-
103 quired for each wage class by one hundred fifty dol-
104 lars, establishing the weekly benefit rate for each wage
105 class by rounded dollar amount to be fifty percent of
106 one fifty-second of the median dollar amount of wages
107 in base period for such wage class, and establishing the
108 maximum benefit for each wage class as an amount
109 equal to twenty-six times the weekly benefit rate. The
110 maximum weekly benefit rate, when computed by the
111 commissioner, in accordance with the foregoing pro-
112 visions, shall be rounded to the next higher dollar
113 amount, if the computation exceeds forty-nine percent
114 of a dollar amount. Such rounding off to the next higher
115 dollar amount shall result in one additional wage class,
116 with commensurate base period wage requirement of
117 one hundred fifty dollars over the preceding wage class,
118 and with a maximum benefit increase over the pre-
119 ceding wage class of twenty-six dollars. Such an addi-
120 tional wage class shall be published by the commis-
121 sioner with the table required to be published by the
122 foregoing provisions of this section.

123 After he has established such additional wage classes,
124 the commissioner shall prepare and publish a table set-
125 ting forth such information.

126 Average weekly wage shall be computed by dividing
127 the number of employees in West Virginia earning wages
128 in covered employment into the total wages paid to em-
129 ployees in West Virginia in covered employment, and
130 by further dividing said result by fifty-two, and shall be
131 determined from employer wage and contribution re-
132 ports for the previous calendar year which are furnished
133 to the department on or before June one following such
134 calendar year. The average weekly wage, as determined
135 by the commissioner, shall be rounded to the next high-
136 er dollar.

137 The computation and determination of rates as aforesaid
138 shall be completed annually before July one, and any such
139 new wage class, with its corresponding wages in base
140 period, weekly benefit rate, and maximum benefit in a
141 benefit year established by the commissioner in the fore-
142 going manner effective on a July one, shall apply only
143 to a new claim established by a claimant on and after said
144 July one, and shall not apply to continued claims of a
145 claimant based on his new claim established before said
146 July one.

§21A-6-11. Same—Partial unemployment.

1 An eligible individual who is partially unemployed in
2 any week shall, upon claim therefor filed within such
3 time and in such manner as the commissioner may by
4 regulation prescribe, be paid benefits for such partial un-
5 employment in an amount equal to his weekly benefit
6 rate, as determined in accordance with section ten of
7 this article, less that part of wages from any source pay-
8 able to him with respect to such week which is in excess
9 of twenty-five dollars (notwithstanding the reference to
10 fifteen dollars in the definition of partial unemployment
11 contained in section three, article one of this chapter):
12 *Provided*, That such amount of benefits if not a multiple
13 of one dollar shall be computed to the next higher mul-
14 tiple of one dollar. Such partial benefits shall be paid to

15 such individual for the week for which he is claiming
16 benefits without regard to the provisions of subdivisions
17 one and four of section one of this article.

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CHAPTER 142

(S. B. 139—By Mr. Hamilton)

[Passed March 5, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-three, relating to unemployment compensation; training of veteran medical personnel as medical assistants; and formulation of an advisory committee.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. THE COMMISSIONER OF EMPLOYMENT SECURITY.

§21A-2-23. Veteran's training program.

1 (1) The department of employment security, by its
2 commissioner, is hereby authorized and empowered to es-
3 tablish a training program for qualified veteran medical
4 personnel and former military medical corpsmen under
5 the "medex" training program for the training of medical
6 assistants or any similar program.

7 (2) The commissioner, on behalf of the department,
8 may do any and all acts necessary to establish and op-
9 erate such training program within the state of West
10 Virginia.

11 (3) The commissioner is hereby empowered and autho-
12 rized to receive funds to finance such program from
13 agencies of the United States government, including the

14 department of labor, the veterans administration and the
15 department of health, education and welfare, and from
16 other appropriate fund sources.

17 (4) In order to assist in the administration of this
18 program, the commissioner shall appoint an advisory com-
19 mittee consisting of not more than nine members which
20 members shall be qualified medical professionals and
21 shall consist of representatives of state medical depart-
22 ments and the state medical association. This committee
23 shall be advisory to the commissioner and shall determine
24 general guidelines for the development and promotion of
25 the program.

26 (5) The trainee under this program shall work under
27 the supervision of a licensed physician for a period of one
28 year and shall receive an appropriate training allowance.

CHAPTER 143

(S. B. 60—By Mr. Moreland and Mr. Poffenbarger)

[Passed March 9, 1974; in effect July 1, 1975. Approved by the Governor.]

AN ACT to amend and reenact sections one hundred five and two hundred one, article one; section one hundred seven, article two; section one hundred sixteen, article five; sections one hundred two, one hundred three, one hundred four, one hundred five, one hundred six, two hundred three, two hundred four, two hundred five, three hundred one, three hundred two, three hundred four, three hundred five, three hundred six, three hundred seven, three hundred eight, three hundred twelve, three hundred thirteen, three hundred eighteen, four hundred one, four hundred two, four hundred three, four hundred four, four hundred five, four hundred six, four hundred seven, five hundred one, five hundred two, five hundred four and five hundred five, article nine, all of chapter forty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend article nine of

said chapter forty-six by adding thereto two new sections, designated sections one hundred fourteen and four hundred eight; and to further amend chapter forty-six of said code by adding thereto a new article, designated article eleven, all relating to the uniform commercial code; adopting amendments to the uniform commercial code relating generally to secured transactions; relating to general provisions; parties' power to choose applicable law; definitions; sales; goods to be severed from realty; letters of credit; transfer and assignment; secured transactions; sales of accounts and chattel paper; policy and subject matter of said article nine; perfection of security interests in multiple state transactions; transactions excluded from said article nine; index of definitions; consignment; attachment and enforceability of security interest; proceeds; formal requisites; after-acquired property; future advances; use or disposition of collateral without accounting permissible; persons who take priority over unperfected security interests; rights of "lien creditor"; when filing is required to perfect security interest; security interests to which filing provisions do not apply; perfection of security interest in instruments, documents and goods covered by documents; perfection by permissive filing; temporary perfection without filing or transfer of possession; when possession by secured party perfects security interest without filing; "proceeds"; secured party's rights on disposition of collateral; protection of buyers of goods; purchase of chattel paper and instruments; priorities among conflicting security interests in the same collateral; priority of security interests in fixtures; accessions; defenses against assignee; modification of contract after notification of assignment; term prohibiting assignment ineffective; identification and proof of assignment; place of filing; erroneous filing; removal of collateral; formal requisites of financing statement; amendments; mortgage as financing statement; what constitutes filing; duration of filing; effect of lapsed filing; duties of filing officer; termination statement; assignment of security interest; release of collateral; duties of filing officer; fees; information from filing officer; financing statements covering consigned or leased goods; default; procedure when security

agreement covers both real and personal property; collection rights of secured party; secured party's right to dispose of collateral after default; effect of disposition; compulsory disposition of collateral; acceptance of collateral as discharge of obligation; effective date; preservation of old transition provision; transition to new uniform commercial code—general rule; transition provision on change of requirement of filing; transition provision on change of place of filing; required refilings; transition provisions as to priorities; presumption that rule of law continues unchanged.

Be it enacted by the Legislature of West Virginia:

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

Article

1. **General Provisions.**
2. **Sales.**
5. **Letters of Credit.**
9. **Secured Transactions; Sales of Accounts and Chattel Paper.**
11. **Effective Date and Transition Provisions.**

ARTICLE 1. GENERAL PROVISIONS.

§46-1-105. Territorial application of this chapter; parties' power to choose applicable law.

§46-1-201. General definitions.

§46-1-105. Territorial application of this chapter; parties' power to choose applicable law.

1 (1) Except as provided hereafter in this section, when
2 a transaction bears a reasonable relation to this state and
3 also to another state or nation the parties may agree that
4 the law either of this state or of such other state or
5 nation shall govern their rights and duties. Failing such
6 agreement this chapter applies to transactions bearing an
7 appropriate relation to this state.

8 (2) Where one of the following provisions of this
9 chapter specifies the applicable law, that provision gov-
10 erns and a contrary agreement is effective only to the
11 the extent permitted by law (including the conflict of
12 laws rules) so specified:

13 Rights of creditors against sold goods. Section 2-402.

14 Applicability of the article on bank deposits and col-
15 lections. Section 4-102.

16 Bulk transfers subject to the article on bulk transfers.
17 Section 6-102.

18 Applicability of the article on investment securities.
19 Section 8-106.

20 Perfection provisions of the article on secured trans-
21 actions. Section 9-103.

§46-1-201. General definitions.

1 Subject to additional definitions contained in the
2 subsequent articles of this chapter which are applicable to
3 specific articles or parts thereof, and unless the context
4 otherwise requires, in this chapter:

5 (1) "Action" in the sense of a judicial proceeding
6 includes recoupment, counterclaim, setoff, suit in equity
7 and any other proceedings in which rights are determined.

8 (2) "Aggrieved party" means a party entitled to resort
9 to a remedy.

10 (3) "Agreement" means the bargain of the parties in
11 fact as found in their language or by implication from oth-
12 er circumstances including course of dealing or usage of
13 trade or course of performance as provided in this chapter
14 (sections 1-205 and 2-208). Whether an agreement has le-
15 gal consequences is determined by the provisions of this
16 chapter, if applicable; otherwise by the law of contracts
17 (section 1-103). (Compare "Contract.")

18 (4) "Bank" means any person engaged in the business
19 of banking.

20 (5) "Bearer" means the person in possession of an
21 instrument, document of title, or security payable to bear-
22 er or indorsed in blank.

23 (6) "Bill of lading" means a document evidencing the
24 receipt of goods for shipment issued by a person engaged
25 in the business of transporting or forwarding goods, and
26 includes an airbill. "Airbill" means a document serving
27 for air transportation as a bill of lading for marine or rail
28 transportation, and includes an air consignment note or air
29 waybill.

30 (7) "Branch" includes a separately incorporated foreign
31 branch of a bank.

32 (8) "Burden of establishing" a fact means the burden of
33 persuading the triers of fact that the existence of the fact
34 is more probable than its nonexistence.

35 (9) "Buyer in ordinary course of business" means a
36 person who in good faith and without knowledge that the
37 sale to him is in violation of the ownership rights or secur-
38 ity interest of a third party in the goods buys in ordinary
39 course from a person in the business of selling goods of
40 that kind but does not include a pawnbroker. All persons
41 who sell minerals or the like (including oil and gas) at
42 wellhead or minehead shall be deemed to be persons in the
43 business of selling goods of that kind. "Buying" may be for
44 cash or by exchange of other property or on secured or
45 unsecured credit and includes receiving goods or docu-
46 ments of title under a preexisting contract for sale but
47 does not include a transfer in bulk or as security for or in
48 total or partial satisfaction of a money debt.

49 (10) "Conspicuous": A term or clause is conspicuous
50 when it is so written that a reasonable person against
51 whom it is to operate ought to have noticed it. A printed
52 heading in capitals (as: NONNEGOTIABLE BILL OF
53 LADING) is conspicuous. Language in the body of a form
54 is "conspicuous" if it is in larger or other contrasting
55 type or color. But in a telegram any stated term is "con-
56 spicuous." Whether a term or clause is "conspicuous" or
57 not is for decision by the court.

58 (11) "Contract" means the total legal obligation which
59 results from the parties' agreement as affected by this
60 chapter and any other applicable rules of law. (Compare
61 "Agreement.")

62 (12) "Creditor" includes a general creditor, a secured
63 creditor, a lien creditor and any representative of credi-
64 tors, including an assignee for the benefit of creditors, a
65 trustee in bankruptcy, a receiver in equity and an execu-
66 tor or administrator of an insolvent debtor's or assignor's
67 estate.

68 (13) "Defendant" includes a person in the position of
69 defendant in a cross action or counterclaim.

70 (14) "Delivery" with respect to instruments, documents
71 of title, chattel paper or securities means voluntary trans-
72 fer of possession.

73 (15) "Document of title" includes bill of lading, dock
74 warrant, dock receipt, warehouse receipt or order for the
75 delivery of goods, and also any other document which in
76 the regular course of business or financing is treated as
77 adequately evidencing that the person in possession of it is
78 entitled to receive, hold and dispose of the document and
79 the goods it covers. To be a document of title a document
80 must purport to be issued by or addressed to a bailee and
81 purport to cover goods in the bailee's possession which are
82 either identified or are fungible portions of an identified
83 mass.

84 (16) "Fault" means wrongful act, omission or breach.

85 (17) "Fungible" with respect to goods or securities
86 means goods or securities of which any unit is, by nature

87 or usage of trade, the equivalent of any other like unit.
88 Goods which are not fungible shall be deemed fungible for
89 the purposes of this chapter to the extent that under a
90 particular agreement or document unlike units are treat-
91 ed as equivalents.

92 (18) "Genuine" means free of forgery or counterfeit-
93 ing.

94 (19) "Good faith" means honesty in fact in the conduct
95 or transaction concerned.

96 (20) "Holder" means a person who is in possession of a
97 document of title or an instrument or an investment se-
98 curity drawn, issued or endorsed to him or to his order or
99 to bearer or in blank.

100 (21) To "honor" is to pay or to accept and pay, or
101 where a credit so engages to purchase or discount a draft
102 complying with the terms of the credit.

103 (22) "Insolvency proceedings" includes any assignment
104 for the benefit of creditors or other proceedings intended
105 to liquidate or rehabilitate the estate of the person in-
106 volved.

107 (23) A person is "insolvent" who either has ceased to
108 pay his debts in the ordinary course of business or cannot
109 pay his debts as they become due or is insolvent within
110 the meaning of the Federal Bankruptcy Law.

111 (24) "Money" means a medium of exchange authorized
112 or adopted by a domestic or foreign government as a part
113 of its currency.

114 (25) A person has "notice" of a fact when

115 (a) he has actual knowledge of it; or

116 (b) he has received a notice or notification of it; or

117 (c) from all the facts and circumstances known to him
118 at the time in question he has reason to know that it
119 exists.

120 A person "knows" or has "knowledge" of a fact when he
121 has actual knowledge of it. "Discover" or "learn" or a word
122 or phrase of similar import refers to knowledge rather

123 than to reason to know. The time and circumstances under
124 which a notice or notification may cease to be effective
125 are not determined by this chapter.

126 (26) A person "notifies" or "gives" a notice or notifi-
127 cation to another by taking such steps as may be reason-
128 ably required to inform the other in ordinary course whe-
129 ther or not such other actually comes to know of it. A
130 person "receives" a notice or notification when

131 (a) it comes to his attention; or

132 (b) it is duly delivered at the place of business through
133 which the contract was made or at any other place
134 held out by him as the place for receipt of such communi-
135 cations.

136 (27) Notice, knowledge or a notice or notification re-
137 ceived by an organization is effective for a particular
138 transaction from the time when it is brought to the at-
139 tention of the individual conducting that transaction, and
140 in any event from the time when it would have been
141 brought to his attention if the organization had exercised
142 due diligence. An organization exercises due diligence if it
143 maintains reasonable routines for communicating signifi-
144 cant information to the person conducting the transaction
145 and there is reasonable compliance with the routines. Due
146 diligence does not require an individual acting for the
147 organization to communicate information unless such
148 communication is part of his regular duties or unless he
149 has reason to know of the transaction and that the trans-
150 action would be materially affected by the information.

151 (28) "Organization" includes a corporation, govern-
152 ment or governmental subdivision or agency, business
153 trust, estate, trust, partnership or association, two or more
154 persons having a joint or common interest, or any other
155 legal or commercial entity.

156 (29) "Party," as distinct from "third party," means a
157 person who has engaged in a transaction or made an
158 agreement within this chapter.

159 (30) "Person" includes an individual or an organization
160 (see section 1-102).

161 (31) "Presumption" or "presumed" means that the trier
162 of fact must find the existence of the fact presumed unless
163 and until evidence is introduced which would support a
164 finding of its nonexistence.

165 (32) "Purchase" includes taking by sale, discount, ne-
166 gotiation, mortgage, pledge, lien, issue or reissue, gift
167 or any other voluntary transaction creating an interest in
168 property.

169 (33) "Purchaser" means a person who takes by pur-
170 chase.

171 (34) "Remedy" means any remedial right to which an
172 aggrieved party is entitled with or without resort to a
173 tribunal.

174 (35) "Representative" includes an agent, an officer of
175 a corporation or association, and a trustee, executor or
176 administrator of an estate, or any other person empowered
177 to act for another.

178 (36) "Rights" includes remedies.

179 (37) "Security interest" means an interest in personal
180 property or fixtures which secures payment or perfor-
181 mance of an obligation. The retention or reservation of
182 title by a seller of goods notwithstanding shipment or de-
183 livery to the buyer (section 2-401) is limited in effect to a
184 reservation of a "security interest." The term also includes
185 any interest of a buyer of accounts or chattel paper, which
186 is subject to article 9. The special property interest of a
187 buyer of goods on identification of such goods to a contract
188 for sale under section 2-401 is not a "security interest,"
189 but a buyer may also acquire a "security interest" by
190 complying with article 9. Unless a lease or consignment is
191 intended as security, reservation of title thereunder is not
192 a "security interest" but a consignment is in any event
193 subject to the provisions on consignment sales (section
194 2-326). Whether a lease is intended as security is to be
195 determined by the facts of each case; however, (a) the
196 inclusion of an option to purchase does not of itself make
197 the lease one intended for security, and (b) an agreement
198 that upon compliance with the terms of the lease the lessee
199 shall become or has the option to become the owner of the

200 property for no additional consideration or for a nominal
201 consideration does make the lease one intended for secur-
202 ity.

203 (38) "Send" in connection with any writing or notice
204 means to deposit in the mail or deliver for transmission by
205 any other usual means of communication with postage or
206 cost of transmission provided for and properly addressed
207 and in the case of an instrument to an address specified
208 thereon or otherwise agreed, or if there be none to any
209 address reasonable under the circumstances. The receipt
210 of any writing or notice within the time at which it would
211 have arrived if properly sent has the effect of a proper
212 sending.

213 (39) "Signed" includes any symbol executed or adopt-
214 ed by a party with present intention to authenticate a
215 writing.

216 (40) "Surety" includes guarantor.

217 (41) "Telegram" includes a message transmitted by
218 radio, teletype, cable, any mechanical method of trans-
219 mission, or the like.

220 (42) "Term" means that portion of an agreement which
221 relates to a particular matter.

222 (43) "Unauthorized" signature or endorsement means
223 one made without actual, implied or apparent authority
224 and includes a forgery.

225 (44) "Value": Except as otherwise provided with
226 respect to negotiable instruments and bank collections
227 (sections 3-303, 4-208 and 4-209) a person gives "value"
228 for rights if he acquires them

229 (a) in return for a binding commitment to extend
230 credit or for the extension of immediately available
231 credit whether or not drawn upon and whether or not a
232 chargeback is provided for in the event of difficulties in
233 collection; or

234 (b) as security for or in total or partial satisfaction
235 of a preexisting claim; or

236 (c) by accepting delivery pursuant to a preexisting
237 contract for purchase; or

238 (d) generally, in return for any consideration sufficient
239 to support a simple contract.

240 (45) "Warehouse receipt" means a receipt issued by a
241 person engaged in the business of storing goods for hire.

242 (46) "Written" or "writing" includes printing, type-
243 writing or any other intentional reduction to tangible
244 form.

ARTICLE 2. SALES.

§46-2-107. Goods to be severed from realty; recording.

1 (1) A contract for the sale of minerals or the like in-
2 cluding oil and gas or a structure or its materials to be
3 removed from realty is a contract for the sale of goods
4 within this article if they are to be severed by the seller
5 but until severance a purported present sale thereof
6 which is not effective as a transfer of an interest in land
7 is effective only as a contract to sell.

8 (2) A contract for the sale apart from the land of
9 growing crops or other things attached to realty and
10 capable of severance without material harm thereto but
11 not described in subsection (1) or of timber to be cut
12 is a contract for the sale of goods within this article
13 whether the subject matter is to be severed by the buyer
14 or by the seller even though it forms part of the realty
15 at the time of contracting, and the parties can by identi-
16 fication effect a present sale before severance.

17 (3) The provisions of this section are subject to any
18 third party rights provided by the law relating to realty
19 records, and the contract for sale may be executed and
20 recorded as a document transferring an interest in land
21 and shall then constitute notice to third parties of the
22 buyer's rights under the contract for sale.

ARTICLE 5. LETTERS OF CREDIT.

§46-5-116. Transfer and assignment.

1 (1) The right to draw under a credit can be trans-
2 ferred or assigned only when the credit is expressly
3 designated as transferable or assignable.

4 (2) Even though the credit specifically states that it
 5 is nontransferable or nonassignable the beneficiary may
 6 before performance of the conditions of the credit assign
 7 his right to proceeds. Such an assignment is an assign-
 8 ment of an account under article 9 on secured trans-
 9 actions and is governed by that article except that

10 (a) the assignment is ineffective until the letter of
 11 credit or advice of credit is delivered to the assignee
 12 which delivery constitutes perfection of the security
 13 interest under article 9; and

14 (b) the issuer may honor drafts or demands for pay-
 15 ment drawn under the credit until it receives a notifica-
 16 tion of the assignment signed by the beneficiary which
 17 reasonably identifies the credit involved in the assign-
 18 ment and contains a request to pay the assignee; and

19 (c) after what reasonably appears to be such a noti-
 20 fication has been received the issuer may without dis-
 21 honor refuse to accept or pay even to a person otherwise
 22 entitled to honor until the letter of credit or advice of
 23 credit is exhibited to the issuer.

24 (3) Except where the beneficiary has effectively as-
 25 signed his right to draw or his right to proceeds, nothing
 26 in this section limits his right to transfer or negotiate
 27 drafts or demands drawn under the credit.

**ARTICLE 9. SECURED TRANSACTIONS; SALES OF ACCOUNTS AND
 CHATTEL PAPER.**

- §46-9-102. Policy and subject matter of article.
- §46-9-103. Perfection of security interests in multiple state transactions.
- §46-9-104. Transactions excluded from article.
- §46-9-105. Definitions and index of definitions.
- §46-9-106. Definitions: "Account"; "general intangibles".
- §46-9-114. Consignment.
- §46-9-203. Attachment and enforceability of security interest; proceeds, formal requisites.
- §46-9-204. After-acquired property; future advances.
- §46-9-205. Use or disposition of collateral without accounting permissible.
- §46-9-301. Persons who take priority over unperfected security interests; right of "lien creditor".
- §46-9-302. When filing is required to perfect security interest; security interests to which filing provisions of this article do not apply.
- §46-9-304. Perfection of security interest in instruments, documents, and goods covered by documents; perfection by permissive filing; temporary perfection without filing or transfer of possession.

- §46-9-305. When possession by secured party perfects security interest without filing.
- §46-9-306. "Proceeds"; secured party's rights on disposition of collateral.
- §46-9-307. Protection of buyers of goods.
- §46-9-308. Purchase of chattel paper and instruments.
- §46-9-312. Priorities among conflicting security interests in the same collateral.
- §46-9-313. Priority of security interests in fixtures.
- §46-9-318. Defenses against assignee; modification of contract after notification of assignment; term prohibiting assignment ineffective; identification and proof of assignment.
- §46-9-401. Place of filing; erroneous filing; removal of collateral.
- §46-9-402. Formal requisites of financing statement; amendments; mortgage as financing statement.
- §46-9-403. What constitutes filing; duration of filing; effect of lapsed filing; duties of filing officer.
- §46-9-404. Termination statement.
- §46-9-405. Assignment of security interest; duties of filing officer; fees.
- §46-9-406. Release of collateral; duties of filing officer; fees.
- §46-9-407. Information from filing officer.
- §46-9-408. Financing statements covering consigned or leased goods.
- §46-9-501. Default; procedure when security agreement covers both real and personal property.
- §46-9-502. Collection rights of secured party.
- §46-9-504. Secured party's right to dispose of collateral after default; effect of disposition.
- §46-9-505. Compulsory disposition of collateral; acceptance of the collateral as discharge of obligation.

§46-9-102. Policy and subject matter of article.

- 1 (1) Except as otherwise provided in section 9-103 on
- 2 multiple state transactions and in section 9-104 on ex-
- 3 cluded transactions, this article applies
- 4 (a) to any transaction (regardless of its form) which
- 5 is intended to create a security interest in personal prop-
- 6 erty or fixtures including goods, documents, instruments,
- 7 general intangibles, chattel paper or accounts; and also
- 8 (b) to any sale of accounts, or chattel paper.
- 9 (2) This article applies to security interests created
- 10 by contract including pledge, assignment, chattel mort-
- 11 gage, chattel trust, trust deed, factor's lien, equipment
- 12 trust, conditional sale, trust receipt, other lien or title
- 13 retention contract and lease or consignment intended as
- 14 security. This article does not apply to statutory liens
- 15 except as provided in section 9-310.
- 16 (3) The application of this article to a security inter-

17 est in a secured obligation is not affected by the fact
18 that the obligation is itself secured by a transaction or
19 interest to which this article does not apply.

§46-9-103. Perfection of security interests in multiple state transactions.

1 (1) Documents, instruments and ordinary goods.

2 (a) This subsection applies to documents and instru-
3 ments and to goods other than those covered by a cer-
4 tificate of title described in subsection (2), mobile goods
5 described in subsection (3), and minerals described in
6 subsection (5).

7 (b) Except as otherwise provided in this subsection,
8 perfection and the effect of perfection or nonperfection
9 of a security interest in collateral are governed by the
10 law of the jurisdiction where the collateral is when the
11 last event occurs on which is based the assertion that
12 the security interest is perfected or unperfected.

13 (c) If the parties to a transaction creating a purchase
14 money security interest in goods in one jurisdiction un-
15 derstand at the time that the security interest attaches
16 that the goods will be kept in another jurisdiction, then
17 the law of the other jurisdiction governs the perfection
18 and the effect of perfection or nonperfection of the
19 security interest from the time it attaches until thirty
20 days after the debtor receives possession of the goods and
21 thereafter if the goods are taken to the other jurisdiction
22 before the end of the thirty-day period.

23 (d) When collateral is brought into and kept in this
24 state while subject to a security interest perfected under
25 the law of the jurisdiction from which the collateral was
26 removed, the security interest remains perfected, but if
27 action is required by part 3 of this article to perfect the
28 security interest,

29 (i) if the action is not taken before the expiration of
30 the period of perfection in the other jurisdiction or the
31 end of four months after the collateral is brought into
32 this state, whichever period first expires, the security

33 interest becomes unperfected at the end of that period and
34 is thereafter deemed to have been unperfected as against
35 a person who became a purchaser after removal;

36 (ii) if the action is taken before the expiration of
37 the period specified in subparagraph (i), the security
38 interest continues perfected thereafter;

39 (iii) for the purpose of priority over a buyer of
40 consumer goods (subsection (2) of section 9-307), the
41 period of the effectiveness of a filing in the jurisdiction
42 from which the collateral is removed is governed by the
43 rules with respect to perfection in subparagraphs (i) and
44 (ii).

45 (2) Certificate of title.

46 (a) This subsection applies to goods covered by a
47 certificate of title issued under a statute of this state or
48 of another jurisdiction under the law of which indication
49 of a security interest on the certificate is required as a
50 condition of perfection.

51 (b) Except as otherwise provided in this subsection,
52 perfection and the effect of perfection or nonperfection of
53 the security interest are governed by the law (including
54 the conflict of laws rules) of the jurisdiction issuing the
55 certificate until four months after the goods are removed
56 from that jurisdiction and thereafter until the goods are
57 registered in another jurisdiction, but in any event not
58 beyond surrender of the certificate. After the expiration
59 of that period, the goods are not covered by the certificate
60 of title within the meaning of this section.

61 (c) Except with respect to the rights of a buyer de-
62 scribed in the next paragraph, a security interest, per-
63 fected in another jurisdiction otherwise than by notation
64 on a certificate of title, in goods brought into this state
65 and thereafter covered by a certificate of title issued by
66 this state is subject to the rules stated in paragraph (d)
67 of subsection (1).

68 (d) If goods are brought into this state while a se-
69 curity interest therein is perfected in any manner under

70 the law of the jurisdiction from which the goods are re-
71 moved and a certificate of title is issued by this state and
72 the certificate does not show that the goods are subject to
73 the security interest or that they may be subject to secur-
74 ity interests not shown on the certificate, the security
75 interest is subordinate to the rights of a buyer of the
76 goods who is not in the business of selling goods of that
77 kind to the extent that he gives value and receives de-
78 livery of the goods after issuance of the certificate and
79 without knowledge of the security interest.

80 (3) Accounts, general intangibles and mobile goods.

81 (a) This subsection applies to accounts (other than an
82 account described in subsection (5) on minerals) and gen-
83 eral intangibles and to goods which are mobile and which
84 are of a type normally used in more than one jurisdiction,
85 such as motor vehicles, trailers, rolling stock, airplanes,
86 shipping containers, road building and construction ma-
87 chinery and commercial harvesting machinery and the
88 like, if the goods are equipment or are inventory leased
89 or held for lease by the debtor to others, and are not
90 covered by a certificate of title described in subsection (2).

91 (b) The law (including the conflict of laws rules) of
92 the jurisdiction in which the debtor is located governs the
93 perfection and the effect of perfection or nonperfection
94 of the security interest.

95 (c) If, however, the debtor is located in a jurisdiction
96 which is not a part of the United States, and which
97 does not provide for perfection of the security interest
98 by filing or recording in that jurisdiction, the law of
99 the jurisdiction in the United States in which the
100 debtor has its major executive office in the United States
101 governs the perfection and the effect of perfection or non-
102 perfection of the security interest through filing. In the
103 alternative, if the debtor is located in a jurisdiction
104 which is not a part of the United States or Canada and
105 the collateral is accounts or general intangibles for money
106 due or to become due, the security interest may be per-
107 fected by notification to the account debtor. As used in

108 this paragraph, "United States" includes its territories
109 and possessions and the Commonwealth of Puerto Rico.

110 (d) A debtor shall be deemed located at his place of
111 business if he has one, at his chief executive office if he
112 has more than one place of business, otherwise at his
113 residence. If, however, the debtor is a foreign air carrier
114 under the Federal Aviation Act of 1958, as amended, it
115 shall be deemed located at the designated office of the
116 agent upon whom service of process may be made on
117 behalf of the foreign air carrier.

118 (e) A security interest perfected under the law of
119 the jurisdiction of the location of the debtor is perfected
120 until the expiration of four months after a change of the
121 debtor's location to another jurisdiction, or until per-
122 fection would have ceased by the law of the first juris-
123 diction, whichever period first expires. Unless perfected
124 in the new jurisdiction before the end of that period,
125 it becomes unperfected thereafter and is deemed to have
126 been unperfected as against a person who became a
127 purchaser after the change.

128 (4) Chattel paper.

129 The rules stated for goods in subsection (1) apply to a
130 possessory security interest in chattel paper. The rules
131 stated for accounts in subsection (3) apply to a non-
132 possessory security interest in chattel paper, but the
133 security interest may not be perfected by notification to
134 the account debtor.

135 (5) Minerals.

136 Perfection and the effect of perfection or nonperfection
137 of a security interest which is created by a debtor who
138 has an interest in minerals or the like (including oil and
139 gas) before extraction and which attaches thereto as
140 extracted, or which attaches to an account resulting from
141 the sale thereof at the wellhead or minehead are governed
142 by the law (including the conflict of laws rules) of the
143 jurisdiction wherein the wellhead or minehead is located.

§46-9-104. Transactions excluded from article.

1 This article does not apply

- 2 (a) to a security interest subject to any statute of
3 the United States such as the Ship Mortgage Act, 1920,
4 to the extent that such statute governs the rights of
5 parties to and third parties affected by transactions in
6 particular types of property; or
- 7 (b) to a landlord's lien; or
- 8 (c) to a lien given by statute or other rule of law for
9 services or materials except as provided in section 9-310
10 on priority of such liens; or
- 11 (d) to a transfer of a claim for wages, salary or other
12 compensation of an employee; or
- 13 (e) to a transfer by a government or governmental
14 subdivision or agency; or
- 15 (f) to a sale of accounts or chattel paper as part of a
16 sale of the business out of which they arose, or an assign-
17 ment of accounts or chattel paper which is for the purpose
18 of collection only, or a transfer of a right to payment
19 under a contract to an assignee who is also to do the
20 performance under the contract or a transfer of a single
21 account to an assignee in whole or partial satisfaction
22 of a preexisting indebtedness; or
- 23 (g) to a transfer of an interest in or claim in or under
24 any policy of insurance, except as provided with respect
25 to proceeds (section 9-306) and priorities in proceeds
26 (section 9-312); or
- 27 (h) to a right represented by a judgment (other than
28 a judgment taken on a right to payment which was
29 collateral); or
- 30 (i) to any right of setoff; or
- 31 (j) except to the extent that provision is made for
32 fixtures in section 9-313, to the creation or transfer of
33 an interest in or lien on real estate, including a lease or
34 rents thereunder; or
- 35 (k) to a transfer in whole or in part of any claim
36 arising out of tort; or

37 (l) to a transfer of an interest in any deposit account
38 (subsection (1) of section 9-105), except as provided
39 with respect to proceeds (section 9-306) and priorities in
40 proceeds (section 9-312).

§46-9-105. Definitions and index of definitions.

1 (1) In this article unless the context otherwise re-
2 quires:

3 (a) "Account debtor" means the person who is obli-
4 gated on an account, chattel paper, or general intangible;

5 (b) "Chattel paper" means a writing or writings which
6 evidence both a monetary obligation and a security in-
7 terest in or a lease of specific goods, but a charter or
8 other contract involving the use or hire of a vessel is
9 not chattel paper. When a transaction is evidenced both
10 by such a security agreement or a lease and by an instru-
11 ment or a series of instruments, the group of writings
12 taken together constitutes chattel paper;

13 (c) "Collateral" means the property subject to a se-
14 curity interest, and includes accounts, and chattel paper
15 which have been sold;

16 (d) "Debtor" means the person who owes payment
17 or other performance of the obligation secured, whether
18 or not he owns or has rights in the collateral, and includes
19 the seller of accounts, or chattel paper. Where the debtor
20 and the owner of the collateral are not the same person,
21 the term "debtor" means the owner of the collateral in
22 any provision of the article dealing with the collateral,
23 the obligor in any provision dealing with the obligation,
24 and may include both where the context so requires;

25 (e) "Deposit account" means a demand, time, savings,
26 passbook or like account maintained with a bank, savings
27 and loan association, credit union or like organization,
28 other than an account evidenced by a certificate of
29 deposit;

30 (f) "Document" means document of title as defined
31 in the general definitions of article 1 (section 1-201),
32 and a receipt of the kind described in subsection (2) of
33 section 7-201;

34 (g) "Encumbrance" includes real estate mortgages
35 and other liens on real estate and all other rights in real
36 estate that are not ownership interests;

37 (h) "Goods" includes all things which are moveable
38 at the time the security interest attaches or which are
39 fixtures (section 9-313), but does not include money,
40 documents, instruments, accounts, chattel paper, general
41 intangibles, or minerals or the like (including oil and gas)
42 before extraction. "Goods" also includes standing timber
43 which is to be cut and removed under a conveyance or
44 contract for sale, the unborn young of animals, and grow-
45 ing crops;

46 (i) "Instrument" means a negotiable instrument (de-
47 fined in section 3-104), or a security (defined in section
48 8-102) or any other writing which evidences a right to
49 the payment of money and is not itself a security agree-
50 ment or lease and is of a type which is in ordinary course
51 of business transferred by delivery with any necessary
52 endorsement or assignment;

53 (j) "Mortgage" means a consensual interest created
54 by a real estate mortgage, a trust deed on real estate, or
55 the like;

56 (k) An advance is made "pursuant to commitment"
57 if the secured party has bound himself to make it, whether
58 or not a subsequent event of default or other event not
59 within his control has relieved or may relieve him from
60 his obligation;

61 (l) "Security agreement" means an agreement which
62 creates or provides for a security interest;

63 (m) "Secured party" means a lender, seller or other
64 person in whose favor there is a security interest, includ-
65 ing a person to whom accounts or chattel paper have been
66 sold. When the holders of obligations issued under an
67 indenture of trust, equipment trust agreement or the like
68 are represented by a trustee or other person, the repre-
69 sentative is the secured party;

70 (n) "Transmitting utility" means any person primarily
71 engaged in the railroad, street railway or trolley bus

72 business, the electric or electronics communications trans-
73 mission business, the transmission of goods by pipeline,
74 or the transmission or the production and transmission
75 of electricity, steam, gas or water, or the provision of
76 sewer service.

77 (2) Other definitions applying to this article and the
78 sections in which they appear are:

79 "Account". Section 9-106.

80 "Attach". Section 9-203.

81 "Construction mortgage". Section 9-313(1).

82 "Consumer goods". Section 9-109(1).

83 "Equipment". Section 9-109(2).

84 "Farm products". Section 9-109(3).

85 "Fixture". Section 9-313.

86 "Fixture filing". Section 9-313.

87 "General intangibles". Section 9-106.

88 "Inventory". Section 9-109(4).

89 "Lien creditor". Section 9-301(3).

90 "Proceeds". Section 9-306(1).

91 "Purchase money security interest". Section 9-107.

92 "United States". Section 9-103.

93 (3) The following definitions in other articles apply
94 to this article:

95 "Check". Section 3-104.

96 "Contract for sale". Section 2-106.

97 "Holder in due course". Section 3-302.

98 "Note". Section 3-104.

99 "Sale". Section 2-106.

100 (4) In addition, article 1 contains general definitions
101 and principles of construction and interpretation appli-
102 cable throughout this article.

§46-9-106. Definitions: "Account"; "general intangibles".

1 "Account" means any right to payment for goods sold

2 or leased or for services rendered which is not evidenced
3 by an instrument or chattel paper, whether or not it has
4 been earned by performance. "General intangibles"
5 means any personal property (including things in action)
6 other than goods, accounts, chattel paper, documents,
7 instruments and money. All rights to payment earned or
8 unearned under a charter or other contract involving the
9 use or hire of a vessel and all rights incident to the char-
10 ter or contract are accounts.

§46-9-114. Consignment.

1 (1) A person who delivers goods under a consignment
2 which is not a security interest and who would be re-
3 quired to file under this article by paragraph (3) (c) of
4 section 2-326 has priority over a secured party who is or
5 becomes a creditor of the consignee and who would have
6 a perfected security interest in the goods if they were
7 the property of the consignee, and also has priority with
8 respect to identifiable cash proceeds received on or be-
9 fore delivery of the goods to a buyer, if

10 (a) the consignor complies with the filing provision
11 of the article on sales with respect to consignments (para-
12 graph (3) (c) of section 2-326) before the consignee re-
13 ceives possession of the goods; and

14 (b) the consignor gives notification in writing to the
15 holder of the security interest if the holder has filed a
16 financing statement covering the same types of goods be-
17 fore the date of the filing made by the consignor; and

18 (c) the holder of the security interest receives the
19 notification within five years before the consignee receives
20 possession of the goods; and

21 (d) the notification states that the consignor expects
22 to deliver goods on consignment to the consignee, describ-
23 ing the goods by item or type.

24 (2) In the case of a consignment which is not a security
25 interest and in which the requirements of the preceding
26 subsection have not been met, a person who delivers
27 goods to another is subordinate to a person who would

28 have a perfected security interest in the goods if they
29 were the property of the debtor.

**§46-9-203. Attachment and enforceability of security interest;
proceeds, formal requisites.**

1 (1) Subject to the provisions of section 4-208 on the
2 security interest of a collecting bank and section 9-113
3 on a security interest arising under the article on sales, a
4 security interest is not enforceable against the debtor or
5 third parties with respect to the collateral and does not
6 attach unless

7 (a) the collateral is in the possession of the secured
8 party, pursuant to agreement, or the debtor has signed a
9 security agreement which contains a description of the
10 collateral and in addition, when the security interest
11 covers crops growing or to be grown or timber to be cut,
12 a description of the land concerned; and

13 (b) value has been given; and

14 (c) the debtor has rights in the collateral.

15 (2) A security interest attaches when it becomes en-
16 forceable against the debtor with respect to the collateral.
17 Attachment occurs as soon as all of the events specified
18 in subsection (1) have taken place unless explicit agree-
19 ment postpones the time of attaching.

20 (3) Unless otherwise agreed a security agreement
21 gives the secured party the rights to proceeds provided
22 by section 9-306.

23 (4) A transaction may be subject to this article and
24 also to article 7A of chapter 47 relating to small loans and
25 in case of conflict between the provisions of this article
26 and said article 7A or any other such statute, the provi-
27 sions of said article 7A or such other statute control.
28 Failure to comply with any applicable statute has only
29 the effect which is specified therein.

§46-9-204. After-acquired property; future advances.

1 (1) Except as provided in subsection (2), a security
2 agreement may provide that any or all obligations cov-

3 ered by the security agreement are to be secured by after-
4 acquired collateral.

5 (2) No security interest attaches under an after-ac-
6 quired property clause to consumer goods other than ac-
7 cessions (section 9-314) when given as additional security
8 unless the debtor acquires rights in them within ten days
9 after the secured party gives value.

10 (3) Obligations covered by a security agreement may
11 include future advances or other value whether or not
12 the advances or value are given pursuant to commitment
13 (subsection (1) of section 9-105).

**§46-9-205. Use or disposition of collateral without accounting
permissible.**

1 A security interest is not invalid or fraudulent against
2 creditors by reason of liberty in the debtor to use, com-
3 mingle or dispose of all or part of the collateral (includ-
4 ing returned or repossessed goods) or to collect or com-
5 promise accounts, or chattel paper, or to accept the return
6 of goods or make repossessions, or to use, commingle or
7 dispose of proceeds, or by reason of the failure of the
8 secured party to require the debtor to account for pro-
9 ceeds or replace collateral. This section does not relax
10 the requirements of possession where perfection of a
11 security interest depends upon possession of the collateral
12 by the secured party or by a bailee.

**PART 3. RIGHTS OF THIRD PARTIES; PERFECTED
AND UNPERFECTED SECURITY INTERESTS;
RULES OF PRIORITY.**

**§46-9-301. Persons who take priority over unperfected secur-
ity interests; right of "lien creditor".**

1 (1) Except as otherwise provided in subsection (2), an
2 unperfected security interest is subordinate to the rights
3 of

4 (a) persons entitled to priority under section 9-312;

5 (b) a person who becomes a lien creditor before the
6 security interest is perfected;

7 (c) in the case of goods, instruments, documents, and
8 chattel paper, a person who is not a secured party and
9 who is a transferee in bulk or other buyer not in ordinary
10 course of business; or is a buyer of farm products in
11 ordinary course of business, to the extent that he gives
12 value and receives delivery of the collateral without
13 knowledge of the security interest and before it is per-
14 fected;

15 (d) in the case of accounts and general intangibles, a
16 person who is not a secured party and who is a transferee
17 to the extent that he gives value without knowledge of the
18 security interest and before it is perfected.

19 (2) If the secured party files with respect to a purchase
20 money security interest before or within ten days after
21 the debtor receives possession of the collateral, he takes
22 priority over the rights of a transferee in bulk or of
23 a lien creditor which arise between the time the security
24 interest attaches and the time of filing.

25 (3) A "lien creditor" means a creditor who has acquired
26 a lien on the property involved by attachment, levy or the
27 like and includes an assignee for benefit of creditors from
28 the time of assignment, and a trustee in bankruptcy from
29 the date of the filing of the petition or a receiver in equity
30 from the time of appointment.

31 (4) A person who becomes a lien creditor while a
32 security interest is perfected takes subject to the security
33 interest only to the extent that it secures advances made
34 before he becomes a lien creditor or within 45 days there-
35 after or made without knowledge of the lien or pursuant
36 to a commitment entered into without knowledge of the
37 lien.

**§46-9-302. When filing is required to perfect security interest;
security interests to which filing provisions of
this article do not apply.**

1 (1) A financing statement must be filed to perfect all
2 security interests except the following

3 (a) a security interest in collateral in possession of
4 the secured party under section 9-305;

5 (b) a security interest temporarily perfected in in-
6 struments or documents without delivery under section
7 9-304 or in proceeds for a 10-day period under section
8 9-306;

9 (c) a security interest created by an assignment of a
10 beneficial interest in a trust or a decedent's estate;

11 (d) a purchase money security interest in consumer
12 goods; but filing is required for a motor vehicle required
13 to be registered; and fixture filing is required for priority
14 over conflicting interests in fixtures to the extent provided
15 in section 9-313;

16 (e) an assignment of accounts which does not alone or
17 in conjunction with other assignments to the same assign-
18 ee transfer a significant part of the outstanding accounts
19 of the assignor;

20 (f) a security interest of a collecting bank (section
21 4-208) or arising under the article on sales (see section
22 9-113) or covered in subsection (3) of this section;

23 (g) an assignment for the benefit of all the creditors
24 of the transferor, and subsequent transfers by the assign-
25 ee thereunder.

26 (2) If a secured party assigns a perfected security
27 interest, no filing under this article is required in order
28 to continue the perfected status of the security interest
29 against creditors of and transferees from the original
30 debtor.

31 (3) The filing of a financing statement otherwise re-
32 quired by this article is not necessary or effective to per-
33 fect a security interest in property subject to

34 (a) a statute or treaty of the United States which pro-
35 vides for a national or international registration or a
36 national or international certificate of title or which
37 specifies a place of filing different from that specified in
38 this article for filing of the security interest; or

39 (b) the following statute of this state: Chapter seven-
40 teen-a of this code; but during any period in which
41 collateral is inventory held for sale by a person who is in

42 the business of selling goods of that kind, the filing pro-
43 visions of this article (part 4) apply to a security interest
44 in that collateral created by him as debtor; or

45 (c) a certificate of title statute of another jurisdiction
46 under the law of which indication of a security interest
47 on the certificate is required as a condition of perfection
48 (subsection (2) of section 9-103).

49 (4) Compliance with a statute or treaty described in
50 subsection (3) is equivalent to the filing of a financing
51 statement under this article, and a security interest in
52 property subject to the statute or treaty can be perfected
53 only by compliance therewith except as provided in sec-
54 tion 9-103 on multiple state transactions. Duration and
55 renewal of perfection of a security interest perfected by
56 compliance with the statute or treaty are governed by the
57 provisions of the statute or treaty; in other respects the
58 security interest is subject to this article.

**§46-9-304. Perfection of security interest in instruments, docu-
ments, and goods covered by documents; per-
fection by permissive filing; temporary perfec-
tion without filing or transfer of possession.**

1 (1) A security interest in chattel paper or negotiable
2 documents may be perfected by filing. A security interest
3 in money or instruments (other than instruments which
4 constitute part of chattel paper) can be perfected only
5 by the secured party's taking possession, except as pro-
6 vided in subsections (4) and (5) of this section and sub-
7 sections (2) and (3) of section 9-306 on proceeds.

8 (2) During the period that goods are in the possession
9 of the issuer of a negotiable document therefor, a se-
10 curity interest in the goods is perfected by perfecting
11 a security interest in the document, and any security
12 interest in the goods otherwise perfected during such
13 period is subject thereto.

14 (3) A security interest in goods in the possession of
15 a bailee other than one who has issued a negotiable
16 document therefor is perfected by issuance of a document
17 in the name of the secured party or by the bailee's receipt

18 of notification of the secured party's interest or by filing
19 as to the goods.

20 (4) A security interest in instruments or negotiable
21 documents is perfected without filing or the taking of
22 possession for a period of 21 days from the time it attaches
23 to the extent that it arises for new value given under a
24 written security agreement.

25 (5) A security interest remains perfected for a period
26 of 21 days without filing where a secured party having
27 a perfected security interest in an instrument, a nego-
28 tiable document or goods in possession of a bailee other
29 than one who has issued a negotiable document therefor

30 (a) makes available to the debtor the goods or docu-
31 ments representing the goods for the purpose of ultimate
32 sale or exchange or for the purpose of loading, unloading,
33 storing, shipping, transshipping, manufacturing, process-
34 ing or otherwise dealing with them in a manner pre-
35 liminary to their sale or exchange, but priority between
36 conflicting security interests in the goods is subject to
37 subsection (3) of section 9-312; or

38 (b) delivers the instrument to the debtor for the
39 purpose of ultimate sale or exchange or of presentation,
40 collection, renewal or registration of transfer.

41 (6) After the 21-day period in subsections (4) and (5)
42 perfection depends upon compliance with applicable pro-
43 visions of this article.

**§46-9-305. When possession by secured party perfects security
interest without filing.**

1 A security interest in letters of credit and advices of
2 credit (subsection (2) (a) of section 5-116), goods, instru-
3 ments, money, negotiable documents or chattel paper
4 may be perfected by the secured party's taking possession
5 of the collateral. If such collateral other than goods
6 covered by a negotiable document is held by a bailee,
7 the secured party is deemed to have possession from the
8 time the bailee receives notification of the secured party's
9 interest. A security interest is perfected by possession

10 from the time possession is taken without relation back
11 and continues only so long as possession is retained,
12 unless otherwise specified in this article. The security
13 interest may be otherwise perfected as provided in this
14 article before or after the period of possession by the
15 secured party.

§46-9-306. "Proceeds"; secured party's rights on disposition of collateral.

1 (1) "Proceeds" includes whatever is received upon the
2 sale, exchange, collection or other disposition of collateral
3 or proceeds. Insurance payable by reason of loss or dam-
4 age to the collateral is proceeds, except to the extent
5 that it is payable to a person other than a party to the
6 security agreement. Money, checks, deposit accounts,
7 and the like are "cash proceeds." All other proceeds are
8 "noncash proceeds."

9 (2) Except where this article otherwise provides, a
10 security interest continues in collateral notwithstanding
11 sale, exchange or other disposition thereof unless the
12 disposition was authorized by the secured party in the
13 security agreement or otherwise, and also continues in
14 any identifiable proceeds including collections received
15 by the debtor.

16 (3) The security interest in proceeds is a continuously
17 perfected security interest if the interest in the original
18 collateral was perfected but it ceases to be a perfected
19 security interest and becomes unperfected 10 days after
20 receipt of the proceeds by the debtor unless

21 (a) a filed financing statement covers the original
22 collateral and the proceeds are collateral in which a
23 security interest may be perfected by filing in the office
24 or offices where the financing statement has been filed
25 and, if the proceeds are acquired with cash proceeds, the
26 description of collateral in the financing statement indi-
27 cates the types of property constituting the proceeds; or

28 (b) a filed financing statement covers the original
29 collateral and the proceeds are identifiable cash pro-
30 ceeds; or

31 (c) the security interest in the proceeds is perfected
32 before the expiration of the ten-day period. Except as
33 provided in this section, a security interest in proceeds
34 can be perfected only by the methods or under the cir-
35 cumstances permitted in this article for original collateral
36 of the same type.

37 (4) In the event of insolvency proceedings instituted
38 by or against a debtor, a secured party with a perfected
39 security interest in proceeds has a perfected security
40 interest only in the following proceeds:

41 (a) in identifiable noncash proceeds and in separate
42 deposit accounts containing only proceeds;

43 (b) in identifiable cash proceeds in the form of money
44 which is neither commingled with other money nor de-
45 posited in a deposit account prior to the insolvency pro-
46 ceedings;

47 (c) in identifiable cash proceeds in the form of checks
48 and the like which are not deposited in a deposit account
49 prior to the insolvency proceedings; and

50 (d) in all cash and deposit accounts of the debtor in
51 which proceeds have been commingled with other funds,
52 but the perfected security interest under this paragraph
53 (d) is

54 (i) subject to any right of setoff; and

55 (ii) limited to an amount not greater than the amount
56 of any cash proceeds received by the debtor within 10
57 days before the institution of the insolvency proceedings
58 less the sum of (I) the payments to the secured party
59 on account of cash proceeds received by the debtor during
60 such period and (II) the cash proceeds received by the
61 debtor during such period to which the secured party is
62 entitled under paragraphs (a) through (c) of this sub-
63 section (4).

64 (5) If a sale of goods results in an account or chattel
65 paper which is transferred by the seller to a secured party,
66 and if the goods are returned to or are repossessed by the
67 seller or the secured party, the following rules deter-
68 mine priorities:

69 (a) If the goods were collateral at the time of sale
70 for an indebtedness of the seller which is still unpaid,
71 the original security interest attaches again to the goods
72 and continues as the perfected security interest if it was
73 perfected at the time when the goods were sold. If the
74 security interest was originally perfected by a filing
75 which is still effective, nothing further is required to
76 continue the perfected status; in any other case, the
77 secured party must take possession of the returned or
78 repossessed goods or must file.

79 (b) An unpaid transferee of the chattel paper has a
80 security interest in the goods against the transferor. Such
81 security interest is prior to a security interest asserted
82 under paragraph (a) to the extent that the transferee
83 of the chattel paper was entitled to priority under sec-
84 tion 9-308.

85 (c) An unpaid transferee of the account has a security
86 interest in the goods against the transferor. Such security
87 interest is subordinate to a security interest asserted
88 under paragraph (a).

89 (d) A security interest of an unpaid transferee as-
90 serted under paragraph (b) or (c) must be perfected for
91 protection against creditors of the transferor and pur-
92 chasers of the returned or repossessed goods.

§46-9-307. Protection of buyers of goods.

1 (1) A buyer in ordinary course of business (subsection
2 (9) of section 1-201) other than a person buying farm
3 products from a person engaged in farming operations
4 takes free of a security interest created by his seller even
5 though the security interest is perfected and even though
6 the buyer knows of its existence.

7 (2) In the case of consumer goods, a buyer takes free
8 of a security interest even though perfected if he buys
9 without knowledge of the security interest, for value and
10 for his own personal, family or household purposes unless
11 prior to the purchase the secured party has filed a financ-
12 ing statement covering such goods.

13 (3) A buyer other than a buyer in ordinary course of
14 business (subsection (1) of this section) takes free of a
15 security interest to the extent that it secures future
16 advances made after the secured party acquires knowledge
17 of the purchase, or more than forty-five days after the
18 purchase, whichever first occurs, unless made pursuant to
19 a commitment entered into without knowledge of the
20 purchase and before the expiration of the forty-five day
21 period.

§46-9-308. Purchase of chattel paper and instruments.

1 A purchaser of chattel paper or an instrument who
2 gives new value and takes possession of it in the ordinary
3 course of his business has priority over a security interest
4 in the chattel paper or instrument

5 (a) which is perfected under section 9-304 (permissive
6 filing and temporary perfection) or under section 9-306
7 (perfection as to proceeds) if he acts without knowledge
8 that the specific paper or instrument is subject to a
9 security interest; or

10 (b) which is claimed merely as proceeds of inventory
11 subject to a security interest (section 9-306) even though
12 he knows that the specific paper or instrument is subject
13 to the security interest.

§46-9-312. Priorities among conflicting security interests in the same collateral.

1 (1) The rules of priority stated in other sections of
2 this part and in the following sections shall govern when
3 applicable: Section 4-208 with respect to the security
4 interests of collecting banks in items being collected,
5 accompanying documents and proceeds; section 9-103 on
6 security interests related to other jurisdictions; section
7 9-114 on consignments.

8 (2) A perfected security interest in crops for new
9 value given to enable the debtor to produce the crops
10 during the production season and given not more than
11 three months before the crops become growing crops by
12 planting or otherwise takes priority over an earlier per-

13 perfected security interest to the extent that such earlier in-
14 terest secures obligations due more than six months before
15 the crops become growing crops by planting or otherwise,
16 even though the person giving new value had knowledge
17 of the earlier security interest.

18 (3) A perfected purchase money security interest in
19 inventory has priority over a conflicting security interest
20 in the same inventory and also has priority in identifiable
21 cash proceeds received on or before the delivery of the
22 inventory to a buyer if

23 (a) the purchase money security interest is perfected
24 at the time the debtor receives possession of the inven-
25 tory; and

26 (b) the purchase money secured party gives notifica-
27 tion in writing to the holder of the conflicting security
28 interest if the holder had filed a financing statement cover-
29 ing the same types of inventory (i) before the date of
30 the filing made by the purchase money secured party, or
31 (ii) before the beginning of the twenty-one day period
32 where the purchase money security interest is tem-
33 porarily perfected without filing or possession (subsection
34 (5) of section 9-304); and

35 (c) the holder of the conflicting security interest re-
36 ceives the notification within five years before the debtor
37 receives possession of the inventory; and

38 (d) the notification states that the person giving the
39 notice has or expects to acquire a purchase money secur-
40 ity interest in inventory of the debtor, describing such
41 inventory by item or type.

42 (4) A purchase money security interest in collateral
43 other than inventory has priority over a conflicting secur-
44 ity interest in the same collateral or its proceeds if the
45 purchase money security interest is perfected at the
46 time the debtor receives possession of the collateral or
47 within ten days thereafter.

48 (5) In all cases not governed by other rules stated in
49 this section (including cases of purchase money security
50 interests which do not qualify for the special priorities

51 set forth in subsections (3) and (4) of this section),
52 priority between conflicting security interests in the same
53 collateral shall be determined according to the following
54 rules:

55 (a) Conflicting security interests rank according to
56 priority in time of filing or perfection. Priority dates
57 from the time a filing is first made covering the collateral
58 or the time the security interest is first perfected, which-
59 ever is earlier, provided that there is no period there-
60 after when there is neither filing nor perfection.

61 (b) So long as conflicting security interests are un-
62 perfected, the first to attach has priority.

63 (6) For the purposes of subsection (5) a date of filing
64 or perfection as to collateral is also a date of filing or
65 perfection as to proceeds.

66 (7) If future advances are made while a security inter-
67 est is perfected by filing or the taking of possession, the
68 security interest has the same priority for the purposes
69 of subsection (5) with respect to the future advances as
70 it does with respect to the first advance. If a commitment
71 is made before or while the security interest is so per-
72 fected, the security interest has the same priority with
73 respect to advances made pursuant thereto. In other
74 cases a perfected security interest has priority from the
75 date the advance is made.

§46-9-313. Priority of security interests in fixtures.

1 (1) In this section and in the provisions of part 4 of
2 this article referring to fixture filing, unless the context
3 otherwise requires

4 (a) goods are "fixtures" when they become so re-
5 lated to particular real estate that an interest in them
6 arises under real estate law;

7 (b) a "fixture filing" is the filing in the office where
8 a mortgage on the real estate would be filed or recorded
9 of a financing statement covering goods which are or are
10 to become fixtures and conforming to the requirements of
11 subsection (5) of section 9-402;

12 (c) a mortgage is a "construction mortgage" to the
13 extent that it secures an obligation incurred for the con-
14 struction of an improvement on land including the ac-
15 quisition cost of the land, if the recorded writing so in-
16 dicates.

17 (2) A security interest under this article may be
18 created in goods which are fixtures or may continue in
19 goods which become fixtures, but no security interest
20 exists under this article in ordinary building materials
21 incorporated into an improvement on land.

22 (3) This article does not prevent creation of an en-
23 cumbrance upon fixtures pursuant to real estate law.

24 (4) A perfected security interest in fixtures has
25 priority over the conflicting interest of an encumbrancer
26 or owner of the real estate where

27 (a) the security interest is a purchase money security
28 interest, the interest of the encumbrancer or owner arises
29 before the goods become fixtures, the security interest is
30 perfected by a fixture filing before the goods become fix-
31 tures or within ten days thereafter, and the debtor has an
32 interest of record in the real estate or is in possession of
33 the real estate; or

34 (b) the security interest is perfected by a fixture filing
35 before the interest of the encumbrancer or owner is of
36 record, the security interest has priority over any conflict-
37 ing interest of a predecessor in title of the encumbrancer
38 or owner, and the debtor has an interest of record in the
39 real estate or is in possession of the real estate; or

40 (c) the fixtures are readily removable factory or office
41 machines or readily removable replacements of domestic
42 appliances which are consumer goods, and before the
43 goods becomes fixtures the security interest is perfected
44 by any method permitted by this article; or

45 (d) the conflicting interest is a lien on the real estate
46 obtained by legal or equitable proceedings after the se-
47 curity interest was perfected by any method permitted by
48 this article.

49 (5) A security interest in fixtures, whether or not
50 perfected, has priority over the conflicting interest of an
51 encumbrancer or owner of the real estate where

52 (a) the encumbrancer or owner has consented in writ-
53 ing to the security interest or has disclaimed an interest
54 in the goods as fixtures; or

55 (b) the debtor has a right to remove the goods as
56 against the encumbrancer or owner. If the debtor's right
57 terminates, the priority of the security interest continues
58 for a reasonable time.

59 (6) Notwithstanding paragraph (a) of subsection (4)
60 but otherwise subject to subsections (4) and (5), a se-
61 curity interest in fixtures is subordinate to a construction
62 mortgage recorded before the goods become fixtures if the
63 goods become fixtures before the completion of the con-
64 struction. To the extent that it is given to refinance a con-
65 struction mortgage, a mortgage has this priority to the
66 same extent as the construction mortgage.

67 (7) In cases not within the preceding subsections, a
68 security interest in fixtures is subordinate to the con-
69 flicting interest of an encumbrancer or owner of the re-
70 lated real estate who is not the debtor.

71 (8) When the secured party has priority over all own-
72 ers and encumbrancers of the real estate, he may, on de-
73 fault, subject to the provisions of part 5, remove his col-
74 lateral from the real estate but he must reimburse any
75 encumbrancer or owner of the real estate who is not the
76 debtor and who has not otherwise agreed for the cost of
77 repair of any physical injury, but not for any diminution
78 in value of the real estate caused by the absence of the
79 goods removed or by any necessity of replacing them. A
80 person entitled to reimbursement may refuse permission
81 to remove until the secured party gives adequate security
82 for the performance of this obligation.

**§46-9-318. Defenses against assignee; modification of contract
after notification of assignment; term prohibit-
ing assignment ineffective; identification and
proof of assignment.**

1 (1) Unless an account debtor has made an enforceable
2 agreement not to assert defenses or claims arising out of a

3 sale as provided in section 9-206 the rights of an assignee
4 are subject to

5 (a) all the terms of the contract between the account
6 debtor and assignor and any defense or claim arising
7 therefrom; and

8 (b) any other defense or claim of the account debtor
9 against the assignor which accrues before the account
10 debtor receives notification of the assignment.

11 (2) So far as the right to payment or a part thereof
12 under an assigned contract has not been fully earned by
13 performance, and notwithstanding notification of the as-
14 signment, any modification of or substitution for the con-
15 tract made in good faith and in accordance with reason-
16 able commercial standards is effective against an assignee
17 unless the account debtor has otherwise agreed but the
18 assignee acquires corresponding rights under the modified
19 or substituted contract. The assignment may provide that
20 such modification or substitution is a breach by the as-
21 signor.

22 (3) The account debtor is authorized to pay the as-
23 signor until the account debtor receives notification that
24 the amount due or to become due has been assigned and
25 that payment is to be made to the assignee. A notification
26 which does not reasonably identify the rights assigned is
27 ineffective. If requested by the account debtor, the as-
28 signee must seasonably furnish reasonable proof that the
29 assignment has been made and unless he does so the ac-
30 count debtor may pay the assignor.

31 (4) A term in any contract between an account debtor
32 and an assignor is ineffective if it prohibits assignment of
33 an account or prohibits creation of a security interest in
34 a general intangible for money due or to become due or
35 requires the account debtor's consent to such assignment
36 or security interest.

PART 4. FILING.

§46-9-401. Place of filing; erroneous filing; removal of colla- teral.

1 (1) The proper place to file in order to perfect a
2 security interest is as follows:

3 (a) When the collateral is equipment used in farming
4 operations, or farm products, or accounts, or general
5 intangibles arising from or relating to the sale of farm
6 products by a farmer, or consumer goods, then in the office
7 of the county clerk in the county of the debtor's residence
8 or if the debtor is not a resident of this state then in the
9 office of county clerk in the county where the goods are
10 kept, and in addition when the collateral is crops growing
11 or to be grown, in the office of the county clerk in the
12 county where the land is located;

13 (b) When the collateral is timber to be cut or is
14 minerals or the like (including oil and gas) or accounts
15 subject to subsection (5) of section 9-103, or when the
16 financing statement is filed as a fixture filing (section
17 9-313) and the collateral is goods which are or are to
18 become fixtures, then in the office where a mortgage on
19 the real estate would be filed or recorded;

20 (c) In all other cases, in the office of the secretary of
21 state and in addition, if the debtor has a place of business
22 in only one county of this state, also in the office of the
23 county clerk of such county, or, if the debtor has no place
24 of business in this state, but resides in the state, also in
25 the office of the county clerk of the county in which he
26 resides.

27 (2) A filing which is made in good faith in an im-
28 proper place or not in all of the places required by this
29 section is nevertheless effective with regard to any col-
30 lateral as to which the filing complied with the require-
31 ments of this article and is also effective with regard to
32 collateral covered by the financing statement against any
33 person who has knowledge of the contents of such financ-
34 ing statement.

35 (3) A filing which is made in the proper county con-
36 tinues effective for four months after a change to another
37 county of the debtor's residence or place of business or
38 the location of the collateral, whichever controlled the
39 original filing. It becomes ineffective thereafter unless a
40 copy of the financing statement signed by the secured
41 party is filed in the new county within said period. The
42 security interest may also be perfected in the new county

43 after the expiration of the four-month period; in such
44 case perfection dates from the time of perfection in the
45 new county. A change in the use of the collateral does
46 not impair the effectiveness of the original filing.

47 (4) The rules stated in section 9-103 determine whether
48 filing is necessary in this state.

49 (5) Notwithstanding the preceding subsections, and
50 subject to subsection (3) of section 9-302, the proper place
51 to file in order to perfect a security interest in collateral,
52 including fixtures, of a transmitting utility is the office of
53 the secretary of state. This filing constitutes a fixture
54 filing (section 9-313) as to the collateral described therein
55 which is or is to become fixtures.

56 (6) For the purposes of this section, the residence of
57 an organization is its place of business if it has one or
58 its chief executive office if it has more than one place of
59 business.

**§46-9-402. Formal requisites of financing statement; amend-
ments; mortgage as financing statement.**

1 (1) A financing statement is sufficient if it gives the
2 names of the debtor and the secured party, is signed by
3 the debtor, gives an address of the secured party from
4 which information concerning the security interest may be
5 obtained, gives a mailing address of the debtor and con-
6 tains a statement indicating the types, or describing the
7 items, of collateral. A financing statement may be filed
8 before a security agreement is made or a security interest
9 otherwise attaches. When the financing statement covers
10 crops growing or to be grown, the statement must also
11 contain a description of the real estate concerned. When
12 the financing statement covers timber to be cut or covers
13 minerals or the like (including oil and gas) or accounts
14 subject to subsection (5) of section 9-103, or when the
15 financing statement is filed as a fixture filing (section
16 9-313) and the collateral is goods which are or are to
17 become fixtures, the statement must also comply with
18 subsection (5). A copy of the security agreement is
19 sufficient as a financing statement if it contains the above
20 information and is signed by the debtor. A carbon, photo-

21 graphic or other reproduction of a security agreement
22 or a financing statement is sufficient as a financing state-
23 ment if the security agreement so provides or if the
24 original has been filed in this state.

25 (2) A financing statement which otherwise complies
26 with subsection (1) is sufficient when it is signed by the
27 secured party instead of the debtor if it is filed to perfect
28 a security interest in

29 (a) collateral already subject to a security interest
30 in another jurisdiction when it is brought into this state,
31 or when the debtor's location is changed to this state.
32 Such a financing statement must state that the collateral
33 was brought into this state or that the debtor's location
34 was changed to this state under such circumstances; or

35 (b) proceeds under section 9-306 if the security in-
36 terest in the original collateral was perfected. Such a
37 financing statement must describe the original collateral;
38 or

39 (c) collateral as to which the filing has lapsed; or

40 (d) collateral acquired after a change of name, iden-
41 tity or corporate structure of the debtor (subsection (7)).

42 (3) A form substantially as follows is sufficient to
43 comply with subsection (1):

44 Name of debtor
45 (or assignor) _____

46 Address _____

47 Name of secured party
48 (or assignee) _____

49 Address _____

50 1. This financing statement covers the following
51 types (or items) of property:

52 (Describe) _____

53 2. (If collateral is crops) The above described crops
54 are growing or are to be grown on:

55 (Describe Real Estate) _____

56 3. (If applicable) The above goods are to become
57 fixtures on (Describe Real Estate) and this financing
58 statement is to be filed for record in the real estate
59 records. (If the debtor does not have an interest
60 of record) The name of a record owner is
61 _____

62 4. (If products of collateral are claimed) products
63 of the collateral are also covered.

64 (Use _____
65 whichever Signature of Debtor (or Assignor)
66 is
67 applicable) Signature of Secured Party (or Assignee)

68 (4) A financing statement may be amended by filing a
69 writing signed by both the debtor and the secured party.
70 An amendment does not extend the period of effectiveness
71 of a financing statement. If any amendment adds collat-
72 eral, it is effective as to the added collateral only from the
73 filing date of the amendment. In this article, unless the
74 context otherwise requires, the term "financing state-
75 ment" means the original financing statement and any
76 amendments.

77 (5) A financing statement covering timber to be cut or
78 covering minerals or the like (including oil and gas) or
79 accounts subject to subsection (5) of section 9-103, or a
80 financing statement filed as a fixture filing (section 9-313)
81 where the debtor is not a transmitting utility, must
82 show that it covers this type of collateral, must recite
83 that it is to be filed for record in the real estate records,
84 and the financing statement must contain a description
85 of the real estate sufficient if it were contained in a mort-
86 gage of the real estate to give constructive notice of the
87 mortgage under the law of this state. If the debtor does
88 not have an interest of record in the real estate, the fi-
89 nancing statement must show the name of a record owner.

90 (6) A mortgage is effective as a financing statement
91 filed as a fixture filing from the date of its recording if
92 (a) the goods are described in the mortgage by item or
93 type, (b) the goods are or are to become fixtures related to
94 the real estate described in the mortgage, (c) the mortgage

95 complies with the requirements for a financing statement
96 in this section other than a recital that it is to be filed in
97 the real estate records, and (d) the mortgage is duly re-
98 corded. No fee with reference to the financing statement
99 is required other than the regular recording and satisfac-
100 tion fees with respect to the mortgage.

101 (7) A financing statement sufficiently shows the name
102 of the debtor if it gives the individual, partnership or
103 corporate name of the debtor, whether or not it adds other
104 trade names or the names of partners. Where the debtor
105 so changes his name or in the case of an organization its
106 name, identity or corporate structure that a filed financing
107 statement becomes seriously misleading, the filing is not
108 effective to perfect a security interest in collateral ac-
109 quired by the debtor more than four months after the
110 change, unless a new appropriate financing statement is
111 filed before the expiration of that time. A filed financing
112 statement remains effective with respect to collateral
113 transferred by the debtor even though the secured party
114 knows of or consents to the transfer.

115 (8) A financing statement substantially complying with
116 the requirements of this section is effective even though it
117 contains minor errors which are not seriously misleading.

**§46-9-403. What constitutes filing; duration of filing; effect of
lapsed filing; duties of filing officer.**

1 (1) Presentation for filing of a financing statement
2 and tender of the filing fee or acceptance of the statement
3 by the filing officer constitutes filing under this article.

4 (2) Except as provided in subsection (6) or in sub-
5 section (8), a filed financing statement is effective for
6 a period of five years from the date of filing. The effec-
7 tiveness of a filed financing statement lapses on the ex-
8 piration of the five-year period, unless a continuation
9 statement is filed prior to the lapse. If a security interest
10 perfected by filing exists at the time insolvency pro-
11 ceedings are commenced by or against the debtor, the
12 security interest remains perfected until termination of
13 the insolvency proceedings and thereafter for a period of
14 sixty days or until expiration of the five-year period,

15 whichever occurs later. Upon lapse the security interest
16 becomes unperfected, unless it is perfected without filing.
17 If the security interest becomes unperfected upon lapse, it
18 is deemed to have been unperfected as against a person
19 who became a purchaser or lien creditor before lapse.

20 (3) A continuation statement may be filed by the
21 secured party within six months prior to the expiration
22 of the five-year period specified in subsection (2). Any
23 such continuation statement must be signed by the se-
24 cured party, identify the original statement by file number
25 and state that the original statement is still effective. A
26 continuation statement signed by a person other than the
27 secured party of record must be accompanied by a sepa-
28 rate written statement of assignment signed by the se-
29 cured party of record and complying with subsection (2)
30 of section 9-405, including payment of the required fee.
31 Upon timely filing of the continuation statement, the effec-
32 tiveness of the original statement is continued for five
33 years after the last date to which the filing was effective
34 whereupon it lapses in the same manner as provided in
35 subsection (2) unless another continuation statement is
36 filed prior to such lapse. Succeeding continuation state-
37 ments may be filed in the same manner to continue the
38 effectiveness of the original statement. Unless a statute on
39 disposition of public records provides otherwise, the filing
40 officer may remove a lapsed statement from the files and
41 destroy it immediately if he has retained a microfilm or
42 other photographic record, or in other cases after one year
43 after the lapse. The filing officer shall so arrange matters
44 by physical annexation of financing statements to continu-
45 ation statements or other related filings, or by other
46 means, that if he physically destroys the financing state-
47 ments of a period more than five years past, those which
48 have been continued by a continuation statement or
49 which are still effective under subsection (6) shall be
50 retained.

51 (4) Except as provided in subsection (7), a filing
52 officer shall mark each statement with a file number and
53 with the date and hour of filing and shall hold the state-
54 ment or a microfilm or other photographic copy thereof

55 for public inspection. In addition the filing officer shall
56 index the statements according to the name of the debtor
57 and shall note in the index the file number and the ad-
58 dress of the debtor given in the statement.

59 (5) The uniform fee for filing and indexing and for
60 stamping a copy furnished by the secured party to show
61 the date and place of filing for an original financing state-
62 ment or for a continuation statement shall be \$1.00 if the
63 statement is in the standard form prescribed by the sec-
64 retary of state and otherwise shall be \$5.00, plus in each
65 case, if the financing statement is subject to subsection
66 (5) of section 9-402, \$1.00. The uniform fee for each name
67 more than one required to be indexed shall be \$1.00. The
68 secured party may at his option show a trade name for
69 any person and an extra uniform indexing fee of \$1.00
70 shall be paid with respect thereto.

71 (6) If the debtor is a transmitting utility (subsection
72 (5) of section 9-401) and a filed financing statement so
73 states, it is effective until a termination statement is
74 filed. A real estate mortgage which is effective as a
75 fixture filing under subsection (6) of section 9-402 remains
76 effective as a fixture filing until the mortgage is released
77 or satisfied of record or its effectiveness otherwise termi-
78 nates as to the real estate.

79 (7) When a financing statement covers timber to be
80 cut or covers minerals or the like (including oil and gas)
81 or accounts subject to subsection (5) of section 9-103, or
82 is filed as a fixture filing, it shall be filed for record and
83 the filing officer shall index it under the names of the
84 debtor and any owner of record shown on the financing
85 statement in the same fashion as if they were the mort-
86 gagers in a mortgage of the real estate described, and, to
87 the extent that the law of this state provides for indexing
88 of mortgages under the name of the mortgagee, under the
89 name of the secured party as if he were the mortgagee
90 thereunder, or where indexing is by description in the
91 same fashion as if the financing statement were a mort-
92 gage of the real estate described.

93 (8) Notwithstanding any provision of this code to the

94 contrary, a filed financing statement on public bond issues
95 of counties, municipalities or public service districts of
96 this state shall be effective for the life of such bond
97 issues without the need for filing continuation state-
98 ments.

§46-9-404. Termination statement.

1 (1) If a financing statement covering consumer goods
2 is filed on or after the first day of July, 1975, then within
3 one month or within ten days following written demand
4 by the debtor after there is no outstanding secured obliga-
5 tion and no commitment to make advances, incur obliga-
6 tions or otherwise give value, the secured party must file
7 with each filing officer with whom the financing statement
8 was filed, a termination statement to the effect that he no
9 longer claims a security interest under the financing state-
10 ment, which shall be identified by file number. In other
11 cases whenever there is no outstanding secured obligation
12 and no commitment to make advances, incur obligations
13 or otherwise give value, the secured party must on written
14 demand by the debtor send the debtor, for each filing
15 officer with whom the financing statement was filed, a
16 termination statement to the effect that he no longer
17 claims a security interest under the financing statement,
18 which shall be identified by file number. A termination
19 statement signed by a person other than the secured party
20 of record must be accompanied by a separate written state-
21 ment of assignment signed by the secured party of record
22 complying with subsection (2) of section 9-405, including
23 payment of the required fee. If the affected secured party
24 fails to file such a termination statement as required by
25 this subsection, or to send such a termination statement
26 within ten days after proper demand therefor he shall be
27 liable to the debtor for one hundred dollars, and in addi-
28 tion for any loss caused to the debtor by such failure.

29 (2) On presentation to the filing officer of such a termi-
30 nation statement he must note it in the index. If he has
31 received the termination statement in duplicate, he shall
32 return one copy of the termination statement to the se-
33 cured party stamped to show the time of receipt thereof.

34 If the filing officer has a microfilm or other photographic
35 record of the financing statement, and of any related con-
36 tinuation statement, statement of assignment and state-
37 ment of release, he may remove the originals from the files
38 at any time after receipt of the termination statement, or
39 if he has no such record, he may remove them from the
40 files at any time after one year after receipt of the termi-
41 nation statement.

42 (3) If the termination statement is in the standard
43 form prescribed by the secretary of state, the uniform fee
44 for filing and indexing the termination statement shall be
45 \$1.00, and otherwise shall be \$5.00, plus in each case an
46 additional fee of \$1.00 for each name more than one against
47 which the termination statement is required to be indexed.

§46-9-405. Assignment of security interest; duties of filing officer; fees.

1 (1) A financing statement may disclose an assignment
2 of a security interest in the collateral described in the
3 financing statement by indication in the financing state-
4 ment of the name and address of the assignee or by an
5 assignment itself or a copy thereof on the face or back of
6 the statement. On presentation to the filing officer of such
7 a financing statement the filing officer shall mark the
8 same as provided in section 9-403 (4). The uniform fee for
9 filing, indexing and furnishing filing data for a financing
10 statement so indicating an assignment shall be \$1.00 if the
11 statement is in the standard form prescribed by the secre-
12 tary of state and otherwise shall be \$5.00, plus in each case
13 an additional fee of \$1.00 for each name more than one
14 against which the financing statement is required to be
15 indexed.

16 (2) A secured party may assign of record all or a part
17 of his rights under a financing statement by the filing in
18 the place where the original financing statement was filed
19 of a separate written statement of assignment signed by
20 the secured party of record and setting forth the name of
21 the secured party of record and the debtor, the file number
22 and the date of filing of the financing statement and the
23 name and address of the assignee and containing a descrip-

24 tion of the collateral assigned. A copy of the assignment is
25 sufficient as a separate statement if it complies with the
26 preceding sentence. On presentation to the filing officer
27 of such a separate statement, the filing officer shall mark
28 such separate statement with the date and hour of the
29 filing. He shall note the assignment on the index of the
30 financing statement, or in the case of a fixture filing, or
31 a filing covering timber to be cut, or covering minerals or
32 the like (including oil and gas) or accounts subject to sub-
33 section (5) of section 9-103, he shall index the assignment
34 under the name of the assignor as grantor and, to the ex-
35 tent that the law of this state provides for indexing the
36 assignment of a mortgage under the name of the assignee,
37 he shall index the assignment of the financing statement
38 under the name of the assignee. The uniform fee for
39 filing, indexing and furnishing filing data about such a
40 separate statement of assignment shall be \$1.00 if the
41 statement is in the standard form prescribed by the secre-
42 tary of state and otherwise shall be \$5.00, plus in each case
43 an additional fee of \$1.00 for each name more than one
44 against which the statement of assignment is required to
45 be indexed. Notwithstanding the provisions of this sub-
46 section, an assignment of record of a security interest in a
47 fixture contained in a mortgage effective as a fixture filing
48 (subsection (6) of section 9-402) may be made only by an
49 assignment of the mortgage in the manner provided by
50 the law of this state other than this chapter.

51 (3) After the disclosure or filing of an assignment un-
52 der this section, the assignee is the secured party of record.

§46-9-406. Release of collateral; duties of filing officer; fees.

1 A secured party of record may by his signed statement
2 release all or a part of any collateral described in a filed
3 financing statement. The statement of release is sufficient
4 if it contains a description of the collateral being re-
5 leased, the name and address of the debtor, the name and
6 address of the secured party, and the file number of the
7 financing statement. A statement of release signed by a
8 person other than the secured party of record must be
9 accompanied by a separate written statement of assign-

10 ment signed by the secured party of record and com-
11 plying with subsection (2) of section 9-405, including
12 payment of the required fee. Upon presentation of such
13 a statement of release to the filing officer he shall mark
14 the statement with the hour and date of filing and shall
15 note the same upon the margin of the index of the filing
16 of the financing statement. The uniform fee for filing and
17 noting such a statement of release shall be \$1.00 if the
18 statement is in the standard form prescribed by the
19 secretary of state and otherwise shall be \$5.00, plus in
20 each case an additional fee of \$1.00 for each name more
21 than one against which the statement of release is re-
22 quired to be indexed.

§46-9-407. Information from filing officer.

1 (1) If the person filing any financing statement, termi-
2 nation statement, statement of assignment, or statement
3 of release, furnishes the filing officer a copy thereof, the
4 filing officer shall upon request note upon the copy the
5 file number and date and hour of the filing of the original
6 and deliver or send the copy to such person.

7 (2) Upon request of any person, the secretary of state
8 shall issue his certificate showing whether there is on
9 file in his office on the date and hour stated therein, any
10 presently effective financing statement naming a particu-
11 lar debtor and any statement of assignment thereof and
12 if there is, giving the date and hour of filing of each such
13 statement and the names and addresses of each secured
14 party therein. The uniform fee for such a certificate shall
15 be \$2.00 if the request for the certificate is in the standard
16 form prescribed by the secretary of state and otherwise
17 shall be \$5.00 plus fifty cents for each financing statement
18 and for each statement of assignment reported therein.
19 Upon request the filing officer shall furnish a copy of any
20 filed financing statement or statement of assignment for
21 a uniform fee of fifty cents per page.

§46-9-408. Financing statements covering consigned or leased goods.

1 A consignor or lessor of goods may file a financing
2 statement using the terms "consignor," "consignee,"

3 "lessor," "lessee" or the like instead of the terms specified
4 in section 9-402. The provisions of this part shall apply
5 as appropriate to such a financing statement but its filing
6 shall not of itself be a factor in determining whether or
7 not the consignment or lease is intended as security
8 (section 1-201(37)). However, if it is determined for
9 other reasons that the consignment or lease is so intended,
10 a security interest of the consignor or lessor which at-
11 taches to the consigned or leased goods is perfected by
12 such filing.

PART 5. DEFAULT.

§46-9-501. Default; procedure when security agreement covers both real and personal property.

1 (1) When a debtor is in default under a security
2 agreement, a secured party has the rights and remedies
3 provided in this part and except as limited by subsection
4 (3) those provided in the security agreement. He may
5 reduce his claim to judgment, foreclose or otherwise
6 enforce the security interest by any available judicial
7 procedure. If the collateral is documents the secured
8 party may proceed either as to the documents or as to
9 the goods covered thereby. A secured party in possession
10 has the rights, remedies and duties provided in section
11 9-207. The rights and remedies referred to in this sub-
12 section are cumulative.

13 (2) After default, the debtor has the rights and
14 remedies provided in this part, those provided in the
15 security agreement and those provided in section 9-207.

16 (3) To the extent that they give rights to the debtor
17 and impose duties on the secured party, the rules stated
18 in the subsections referred to below may not be waived
19 or varied except as provided with respect to compulsory
20 disposition of collateral (subsection (3) of section 9-504
21 and section 9-505) and with respect to redemption of
22 collateral (section 9-506) but the parties may by agree-
23 ment determine the standards by which the fulfillment
24 of these rights and duties is to be measured if such
25 standards are not manifestly unreasonable:

26 (a) Subsection (2) of section 9-502 and subsection (2)
27 of section 9-504 insofar as they require accounting for
28 surplus proceeds of collateral;

29 (b) subsection (3) of section 9-504 and subsection (1)
30 of section 9-505 which deal with disposition of collateral;

31 (c) subsection (2) of section 9-505 which deals with
32 acceptance of collateral as discharge of obligation;

33 (d) section 9-506 which deals with redemption of col-
34 lateral; and

35 (e) subsection (1) of section 9-507 which deals with
36 the secured party's liability for failure to comply with
37 this part.

38 (4) If the security agreement covers both real and
39 personal property, the secured party may proceed under
40 this part as to the personal property or he may proceed
41 as to both the real and the personal property in accord-
42 ance with his rights and remedies in respect of the real
43 property in which case the provisions of this part do not
44 apply.

45 (5) When a secured party has reduced his claim to
46 judgment the lien of any levy which may be made upon
47 his collateral by virtue of any execution based upon the
48 judgment shall relate back to the date of the perfection of
49 the security interest in such collateral. A judicial sale,
50 pursuant to such execution, is a foreclosure of the security
51 interest by judicial procedure within the meaning of this
52 section, and the secured party may purchase at the sale
53 and thereafter hold the collateral free of any other re-
54 quirements of this article.

§46-9-502. Collection rights of secured party.

1 (1) When so agreed and in any event on default the
2 secured party is entitled to notify an account debtor or
3 the obligor on an instrument to make payment to him
4 whether or not the assignor was theretofore making col-
5 lections on the collateral, and also to take control of any
6 proceeds to which he is entitled under section 9-306.

7 (2) A secured party who by agreement is entitled to

8 charge back uncollected collateral or otherwise to full or
9 limited recourse against the debtor and who undertakes to
10 collect from the account debtors or obligors must proceed
11 in a commercially reasonable manner and may deduct his
12 reasonable expenses of realization from the collections. If
13 the security agreement secures an indebtedness, the se-
14 cured party must account to the debtor for any surplus,
15 and unless otherwise agreed, the debtor is liable for any
16 deficiency. But, if the underlying transaction was a sale of
17 accounts or chattel paper, the debtor is entitled to any
18 surplus or is liable for any deficiency only if the security
19 agreement so provides.

**§46-9-504. Secured party's right to dispose of collateral after
default; effect of disposition.**

1 (1) A secured party after default may sell, lease or
2 otherwise dispose of any or all of the collateral in its
3 then condition or following any commercially reasonable
4 preparation or processing. Any sale of goods is subject to
5 the article on sales (article 2). The proceeds of disposi-
6 tion shall be applied in the order following to

7 (a) the reasonable expenses of retaking, holding, pre-
8 paring for sale or lease, selling, leasing and the like and,
9 to the extent provided for in the agreement and not
10 prohibited by law, the reasonable attorneys' fees and legal
11 expenses incurred by the secured party;

12 (b) the satisfaction of indebtedness secured by the
13 security interest under which the disposition is made;

14 (c) the satisfaction of indebtedness secured by any
15 subordinate security interest in the collateral if written
16 notification of demand therefor is received before distri-
17 bution of the proceeds is completed. If requested by the
18 secured party, the holder of a subordinate security in-
19 terest must seasonably furnish reasonable proof of his
20 interest, and unless he does so, the secured party need not
21 comply with his demand.

22 (2) If the security interest secures an indebtedness,
23 the secured party must account to the debtor for any
24 surplus, and, unless otherwise agreed, the debtor is liable

25 for any deficiency. But if the underlying transaction was a
26 sale of accounts or chattel paper, the debtor is entitled to
27 any surplus or is liable for any deficiency only if the
28 security agreement so provides.

29 (3) Disposition of the collateral may be by public or
30 private proceedings and may be made by way of one or
31 more contracts. Sale or other disposition may be as a unit
32 or in parcels and at any time and place and on any terms
33 but every aspect of the disposition including the method,
34 manner, time, place and terms must be commercially rea-
35 sonable. Unless collateral is perishable or threatens to
36 decline speedily in value or is of a type customarily sold
37 on a recognized market, reasonable notification of the time
38 and place of any public sale or reasonable notification of
39 the time after which any private sale or other intended
40 disposition is to be made shall be sent by the secured
41 party to the debtor, if he has not signed after default a
42 statement renouncing or modifying his right to notifica-
43 tion of sale. In the case of consumer goods no other noti-
44 fication need be sent. In other cases notification shall be
45 sent to any other secured party from whom the secured
46 party has received (before sending his notification to the
47 debtor or before the debtor's renunciation of his rights)
48 written notice of a claim of an interest in the collateral.
49 The secured party may buy at any public sale and if the
50 collateral is of a type customarily sold in a recognized
51 market or is of a type which is the subject of widely
52 distributed standard price quotations he may buy at pri-
53 vate sale.

54 (4) When collateral is disposed of by a secured party
55 after default the disposition transfers to a purchaser for
56 value all of the debtor's rights therein, discharges the
57 security interest under which it is made and any security
58 interest or lien subordinate thereto. The purchaser takes
59 free of all such rights and interests even though the se-
60 cured party fails to comply with the requirements of this
61 part or of any judicial proceedings

62 (a) in the case of a public sale, if the purchaser has
63 no knowledge of any defects in the sale and if he does not

64 buy in collusion with the secured party, other bidders or
65 the person conducting the sale; or

66 (b) in any other case, if the purchaser acts in good
67 faith.

68 (5) A person who is liable to a secured party under a
69 guaranty, endorsement, repurchase agreement or the like
70 and who receives a transfer of collateral from the secured
71 party or is subrogated to his rights has thereafter the
72 rights and duties of the secured party. Such a transfer of
73 collateral is not a sale or disposition of the collateral under
74 this article.

**§46-9-505. Compulsory disposition of collateral; acceptance
of the collateral as discharge of obligation.**

1 (1) If the debtor has paid sixty percent of the cash
2 price in the case of a purchase money security interest in
3 consumer goods or sixty percent of the loan in the case of
4 another security interest in consumer goods, and has not
5 signed after default a statement renouncing or modifying
6 his rights under this part a secured party who has taken
7 possession of collateral must dispose of it under section
8 9-504 and if he fails to do so within ninety days after he
9 takes possession the debtor at his option may recover in
10 conversion or under section 9-507 (1) on secured party's
11 liability.

12 (2) In any other case involving consumer goods or any
13 other collateral a secured party in possession may, after
14 default, propose to retain the collateral in satisfaction of
15 the obligation. Written notice of such proposal shall be
16 sent to the debtor if he has not signed after default a
17 statement renouncing or modifying his rights under this
18 subsection. In the case of consumer goods no other notice
19 need be given. In other cases notice shall be sent to any
20 other secured party from whom the secured party has re-
21 ceived (before sending his notice to the debtor or before
22 the debtor's renunciation of his rights) written notice of
23 a claim of an interest in the collateral. If the secured
24 party receives objection in writing from a person entitled
25 to receive notification within twenty-one days after the

26 notice was sent, the secured party must dispose of the
27 collateral under section 9-504. In the absence of such
28 written objection the secured party may retain the col-
29 lateral in satisfaction of the debtor's obligation.

ARTICLE 11. EFFECTIVE DATE AND TRANSITION PROVISIONS.

§46-11-101. Effective date.

§46-11-102. Preservation of old transition provision.

§46-11-103. Transition to new code—General rule.

§46-11-104. Transition provision on change of requirement of filing.

§46-11-105. Transition provision on change of place of filing.

§46-11-106. Required refilings.

§46-11-107. Transition provisions as to priorities.

§46-11-108. Presumption that rule of law continues unchanged.

§46-11-101. Effective date.

1 This act shall become effective at 12:01 A. M. on the
2 first day of July, one thousand nine hundred seventy-five.

§46-11-102. Preservation of old transition provision.

1 The provisions of section 102, article 10 of this chapter
2 shall continue to apply to the new Uniform Commercial
3 Code and for this purpose the old Uniform Commercial
4 Code and new Uniform Commercial Code shall be con-
5 sidered one continuous statute.

§46-11-103. Transition to new code—General rule.

1 Transactions validly entered into after the first day
2 of July, one thousand nine hundred sixty-four, and be-
3 fore the first day of July, one thousand nine hundred
4 seventy-five, and which were subject to the provisions of
5 the old Uniform Commercial Code and which would be
6 subject to this chapter as amended if they had been en-
7 tered into after the effective date of the new Uniform
8 Commercial Code and the rights, duties and interests
9 flowing from such transactions remain valid after the
10 latter date and may be terminated, completed, consum-
11 mated or enforced as required or permitted by the new
12 Uniform Commercial Code. Security interests arising
13 out of such transactions which are perfected when the
14 new Uniform Commercial Code becomes effective shall
15 remain perfected until they lapse as provided in the new
16 Uniform Commercial Code, and may be continued as

17 permitted by the new Uniform Commercial Code, except
18 as stated in section 11-105. In any instance in which a
19 person who under the new Uniform Commercial Code
20 would be a transmitting utility has perfected a security
21 interest under the provisions of subsection (5) of the
22 former provisions of section 9-302 of this chapter, such
23 security interest shall remain perfected with the same
24 priority rights as if the new Uniform Commercial Code
25 had been in effect at the time such security interest was
26 perfected and such person had at such time filed a financ-
27 ing statement thereunder as a transmitting utility.

§46-11-104. Transition provision on change of requirement of filing.

1 A security interest for the perfection of which filing
2 or the taking of possession was required under the old
3 Uniform Commercial Code and which attached prior to
4 the effective date of the new Uniform Commercial Code
5 but was not perfected shall be deemed perfected on the ef-
6 fective date of the new Uniform Commercial Code if the
7 new Uniform Commercial Code permits perfection with-
8 out filing or authorizes filing in the office or offices where
9 a prior ineffective filing was made.

§46-11-105. Transition provision on change of place of filing.

1 (1) A financing statement or continuation statement
2 filed prior to the first day of July, one thousand nine hun-
3 dred seventy-five, which shall not have lapsed prior to the
4 first day of July, one thousand nine hundred seventy-five,
5 shall remain effective for the period provided in the old
6 Code, but not less than five years after the filing.

7 (2) With respect to any collateral acquired by the
8 debtor subsequent to the effective date of the new Uni-
9 form Commercial Code, any effective financing statement
10 or continuation statement described in this section shall
11 apply only if the filing or filings are in the office or offices
12 that would be appropriate to perfect the security interests
13 in the new collateral under the new Uniform Commercial
14 Code.

15 (3) The effectiveness of any financing statement or

16 continuation statement filed prior to the first day of July,
17 one thousand nine hundred seventy-five, may be con-
18 tinued by a continuation statement as permitted by the
19 new Uniform Commercial Code, except that if the new
20 Uniform Commercial Code requires a filing in an office
21 where there was no previous financing statement, a new
22 financing statement conforming to section 11-106 shall be
23 filed in that office.

24 (4) If the record of a mortgage of real estate would
25 have been effective as a fixture filing of goods described
26 therein if the new Uniform Commercial Code had been in
27 effect on the date of recording the mortgage, the mortgage
28 shall be deemed effective as a fixture filing as to such goods
29 under subsection (6) of section 9-402 of the new Uniform
30 Commercial Code on the effective date of the new Uniform
31 Commercial Code.

§46-11-106. Required refilings.

1 (1) If a security interest is perfected or has priority
2 when this act takes effect as to all persons or as to certain
3 persons without any filing or recording, and if the filing
4 of a financing statement would be required for the per-
5 fection or priority of the security interest against those
6 persons under the new Uniform Commercial Code, the
7 perfection and priority rights of the security interest con-
8 tinue until three years after the effective date of the new
9 Uniform Commercial Code. The perfection will then lapse
10 unless a financing statement is filed as provided in sub-
11 section (4) or unless the security interest is perfected
12 otherwise than by filing.

13 (2) If a security interest is perfected when the new
14 Uniform Commercial Code takes effect under a law other
15 than the Uniform Commercial Code which requires no
16 further filing, refiling or recording to continue its per-
17 fection, perfection continues until and will lapse three
18 years after the new Uniform Commercial Code takes
19 effect, unless a financing statement is filed as provided in
20 subsection (4) or unless the security interest is perfected
21 otherwise than by filing, or unless under subsection (3)
22 of section 9-302 the other law continues to govern filing.

23 (3) If a security interest is perfected by a filing, re-
24 filing or recording under a law repealed by this act which
25 required further filing, refiling or recording to continue
26 its perfection, perfection continues and will lapse on the
27 date provided by the law so repealed for such further
28 filing, refiling or recording unless a financing statement
29 is filed as provided in subsection (4) or unless the security
30 interest is perfected otherwise than by filing.

31 (4) A financing statement may be filed within six
32 months before the perfection of a security interest would
33 otherwise lapse. Any such financing statement may be
34 signed by either the debtor or the secured party. It must
35 identify the security agreement, statement or notice (how-
36 ever denominated in any statute or other law repealed or
37 modified by this act), state the office where and the date
38 when the last filing, refiling or recording, if any, was made
39 with respect thereto, and the filing number, if any, or book
40 and page, if any, of recording and further state that the
41 security agreement, statement or notice, however de-
42 nominated, in another filing office under the Uniform
43 Commercial Code or under any statute or other law re-
44 pealed or modified by this act is still effective. Section
45 9-401 and section 9-103 determine the proper place to file
46 such a financing statement. Except as specified in this sub-
47 section, the provisions of section 9-403 (3) for continuation
48 statements apply to such a financing statement.

§46-11-107. Transition provisions as to priorities.

1 Except as otherwise provided in this article, the old
2 Uniform Commercial Code shall apply to any questions of
3 priority if the positions of the parties were fixed prior to
4 the effective date of the new Uniform Commercial Code.
5 In other cases questions of priority shall be determined
6 by the new Uniform Commercial Code.

§46-11-108. Presumption that rule of law continues unchanged.

1 Unless a change in law has clearly been made, the pro-
2 visions of the new Uniform Commercial Code shall be
3 deemed declaratory of the meaning of the old Uniform
4 Commercial Code.

CHAPTER 144

(Com. Sub. for H. B. 842—By Mr. Speaker, Mr. McManus, and Mr. Queen)

[Passed March 5, 1974; in effect July 1, 1974. Approved by the Governor.]

AN ACT providing for the payment of the Vietnam veterans bonus and for the administration thereof, prohibiting certain acts with respect thereto, and prescribing penalties for the violation of such provisions.

Be it enacted by the Legislature of West Virginia:

PAYMENT OF VIETNAM VETERANS BONUS.

- §1. Department of veterans affairs to administer act; veterans advisory committee.
- §2. Veterans entitled to bonus.
- §3. Payment of bonus to relatives of deceased veterans.
- §4. Amount of bonus.
- §5. Limitation on time of filing application.
- §6. Determination by director of the validity of claims.
- §7. Review board hearing.
- §8. Court review of final orders of review board.
- §9. Payment from Vietnam veterans bonus fund; balance to Vietnam veterans bonus sinking fund.
- §10. Penalty for making false statement.
- §11. Penalty for filing more than one application.
- §12. Bonus payment not subject to taxation or legal process; claim therefor not assignable.
- §13. Collection of fees or charges; penalty.

§1. Department of veterans affairs to administer act; veterans advisory committee.

1 The West Virginia department of veterans affairs is hereby
 2 designated as the state agency to administer the provisions
 3 of this act. The director of the department of veterans
 4 affairs shall do all things necessary for the proper ad-
 5 ministration thereof. The director, with the advice and consent
 6 of the veterans council, may adopt and promulgate such
 7 reasonable rules and regulations, not inconsistent herewith,
 8 as may be necessary to effect the purposes of this act,
 9 including regulations concerning evidence or other data re-
 10 quired to establish eligibility and qualifications for the bonus
 11 as herein provided. The director shall prepare and furnish
 12 all necessary forms which shall be distributed by him through

13 such veterans and other organizations as he may deem most
14 practicable.

15 The department of veterans affairs may employ such
16 additional personnel as may be necessary for the proper
17 administration of this act, subject, however, to the approval
18 of the commissioner of finance and administration, who must
19 also approve the salaries and other compensation for such
20 personnel.

21 The governor may appoint a veterans advisory committee,
22 consisting of representatives of veterans organizations char-
23 tered under acts of Congress and operating in this state, to
24 advise and counsel with the director in the administration
25 of this act. Such committee shall meet on the call of the
26 director at such times and places as he may specify.

§2. Veterans entitled to bonus.

1 In grateful recognition of their services in time of grave
2 national emergency, a cash bonus as herein provided shall
3 be paid to veterans of the Vietnam conflict. Such bonus
4 shall be paid to all persons who rendered active service in the
5 armed forces of the United States during the Vietnam conflict
6 between the first day of August, one thousand nine hundred
7 sixty-four, and the twenty-eighth day of March, one thousand
8 nine hundred seventy-three, both dates inclusive, who were
9 bona fide residents of the state of West Virginia at the time
10 of their entry into such service and for a period of at least
11 six months immediately prior thereto, who have not been
12 separated from such armed forces under conditions other than
13 honorable and who within the period specified above, actively
14 served in such armed forces for a period of at least ninety
15 days. Such bonus shall also be paid to any person, otherwise
16 eligible under the preceding sentence, who rendered active
17 service in the armed forces of the United States prior to
18 the first day of August, one thousand nine hundred sixty-four,
19 and who received a Vietnam armed forces expeditionary
20 medal. Such cash bonus shall also be paid to any veteran,
21 otherwise qualified under either of the two sentences next
22 preceding, who was discharged within ninety days after
23 entering the armed forces because of a service-connected dis-
24 ability.

25 As used in this act, "armed forces" means the army, navy,
26 air force, marine corps and coast guard of the United States.

27 As used in this act, "active duty" means full-time active
28 service in the armed forces with full duty pay status, but shall
29 not include time absent from leave, absent over leave, while
30 in confinement or any other time classified by the respective
31 branches of the armed forces as "bad" or "lost" time.

§3. Payment of bonus to relatives of deceased veterans.

1 The bonus to which any deceased veteran would have been
2 entitled, had he lived, shall be paid only to the following
3 surviving relatives of such veteran, provided that such
4 relatives are residents of this state when application for
5 payment is made and if such relatives are living at the time
6 payment is made: Any unremarried widow or widower, or,
7 if none, any child or children under the age of eighteen, or
8 if none, any parent or parents. The categories of persons
9 listed shall be treated as separate categories listed in order
10 of entitlement and where there be more than one member
11 of a class, the bonus shall be paid to each member according
12 to his proportional share. Where a deceased veteran's death
13 was connected with such service and resulted from such
14 service during the time period specified, however, the sur-
15 viving relatives shall be paid, in accordance with the same
16 order of entitlement, the sum of five hundred dollars in lieu
17 of any bonus to which the deceased might have been entitled
18 if living.

19 As used in this act, "unremarried widow" or "unremarried
20 widower" means the spouse of a deceased veteran, legally
21 married to the veteran at the time of his death, who has
22 not remarried at the time of making application.

23 As used in this act, "child" means the natural child,
24 adopted child or stepchild of the deceased veteran upon whose
25 service eligibility is derived and who has not attained the
26 age of eighteen years at the time of making application.

27 As used in this act, "parent" means either the natural, step,
28 or adoptive father or mother of, or person standing in loco
29 parentis to, the deceased veteran upon whose service eligibility
30 is derived.

§4. Amount of bonus.

1 The amount of such bonus shall be calculated on the basis
2 of twenty dollars per month for each month of active service,
3 or major fraction thereof, for veterans who received the
4 Vietnam armed forces expeditionary medal or the Vietnam
5 service medal, up to four hundred dollars, and ten dollars
6 per month for each month of active service, or major fraction
7 thereof, for veterans who have not received the Vietnam
8 armed forces expeditionary medal or the Vietnam service
9 medal, up to three hundred dollars. Not more than one
10 bonus shall be paid to or on behalf of the service of any one
11 veteran.

§5. Limitation on time of filing application.

1 No bonus shall be paid to any person, otherwise entitled
2 thereto, unless application therefor shall be filed with the
3 department of veterans affairs on or before the thirty-first
4 day of December, one thousand nine hundred seventy-six.
5 No warrant for the payment of any bonus shall be issued or
6 reissued to any applicant after the thirty-first day of December,
7 one thousand nine hundred seventy-eight.

§6. Determination by director of the validity of claims.

1 Upon receipt of an application for benefits hereunder, the
2 director shall, as soon as may be practicable, determine the
3 validity of the claim. As soon as such determination has
4 been made, the director shall mail to the applicant a warrant
5 in the amount of the bonus payment he finds to be due. If
6 the determination is made that no benefits hereunder are
7 payable then the director shall mail to the applicant a
8 notification denying benefits and citing the reason or reasons
9 for such denial.

10 Any applicant who is aggrieved by any such determination
11 of the director may demand that his claim be reviewed as
12 hereinafter provided. Such demand for review shall be filed
13 with the director, in writing, within sixty days after the date
14 on which the warrant of award or notice of denial was
15 mailed to the applicant. Upon receipt of such demand for
16 review the director shall certify the demand, together with
17 all files and records relating to the application, to a board

18 of review. Unless such demand for review is duly filed
19 with the director, all findings and orders of the director with
20 reference to such claim shall be final and conclusive upon
21 the applicant.

§7. Review board hearing.

1 For the purposes of this act, the veterans council of the
2 department of veterans affairs is hereby designated as the
3 "Vietnam Veterans Bonus Board of Review." Under rules and
4 regulations adopted by the veterans council, any one or more
5 members of the board of review may conduct hearings on a
6 demand by an applicant for review of the determination of
7 the director, and may report his or their findings thereon,
8 together with the entire record of the case, to the board of
9 review for its final determination and decision.

10 If the number of demands for review hereunder shall
11 become too numerous to be handled expeditiously by the
12 veterans council, the governor, upon the recommendation of
13 the council, may appoint one or more additional boards of
14 review. Additional boards shall consist of not more than
15 three members, one of whom shall be a lawyer, who shall have
16 the same qualifications as the members of the veterans council,
17 and who shall serve at the will and pleasure of the governor
18 for such time as may be necessary for the purposes of this
19 act. Each such additional board of review shall have the same
20 authority and its final decision shall have the same force
21 and effect as that of the veterans council under the provisions
22 of this act.

23 Upon receipt from the director of the files and records
24 relating to any claim, the board, or a member or members
25 thereof as the case may be, shall fix a time and place for a
26 hearing thereon. The applicant shall be notified of the time
27 and place fixed and shall be informed of his right to demand
28 a public hearing if he so desires. At the hearing the claim
29 shall be reexamined de novo and the submission of additional
30 evidence may be required or permitted. Upon the con-
31 clusion of such hearing the board of review, on the basis
32 of the record and the recommendations, if any, made by the
33 member or members who conducted the hearing, shall enter its

34 order reversing, affirming or modifying the determination
35 made by the director.

36 Any order so entered by the board shall be final and
37 conclusive upon the applicant and the director unless an
38 application is made for review to the West Virginia supreme
39 court of appeals as hereinafter provided. The board shall mail
40 to the applicant and to the director a copy of the order entered
41 by it in each case.

42 All notices and correspondence shall be directed to the
43 applicant at the address listed on his application and all
44 notices and correspondence to the director shall be addressed
45 to him at his office in the city of Charleston.

46 The director shall provide for each board of review such
47 clerical and stenographic assistants and such supplies as may
48 be necessary for the performance of its duties.

49 Each member of a board of review shall receive as com-
50 pensation twenty-five dollars per day for each day actually
51 spent in the performance of his duties under the provisions
52 of this act, and shall be reimbursed for all reasonable and
53 necessary expenses actually incurred by him in the performance
54 of such duties.

§8. Court review of final orders of review board.

1 Within thirty days after notification of the entry of any
2 final order of a board of review, the director or the applicant
3 affected may petition for review of such order by the West
4 Virginia supreme court of appeals in the same manner and
5 within the same period of time as is provided by section four,
6 article five, chapter twenty-three of the code, for judicial review
7 of final decisions by the workmen's compensation appeal board.

**§9. Payments from Vietnam veterans bonus fund; balance to Viet-
nam veterans bonus sinking fund.**

1 All bonus payments and other expenses and costs of ad-
2 ministering this act shall be paid from the Vietnam veterans
3 bonus fund, otherwise established by law. Any balance re-
4 maining in such fund after all such bonus payments and other
5 expenses and costs have been made shall be transferred to the
6 Vietnam Veterans bonus sinking fund and used solely for
7 the payment of the bonus bonds.

§10. Penalty for making false statements.

1 Any person who shall knowingly make any false or mis-
2 leading statement or representation, oral or written, in support
3 of any claim for a bonus under the provisions of this act, shall
4 be guilty of a felony, and, upon conviction thereof, shall be
5 punished by imprisonment in the penitentiary for not less than
6 one nor more than five years.

§11. Penalty for filing more than one application.

1 Only one application shall be filed by any veteran or by
2 any person who claims that he is entitled to a share of the
3 bonus payable in the case of any deceased veteran. Any person
4 who, with intent to defraud, violates the provisions of this
5 section shall be guilty of a felony, and, upon conviction
6 thereof, shall be punished by a fine of not less than five
7 hundred dollars nor more than one thousand dollars, or by
8 imprisonment in the penitentiary for not less than one nor
9 more than two years, or by both such fine and imprisonment.

§12. Bonus payment not subject to taxation or legal process; claim therefor not assignable.

1 The bonus provided by this act is hereby declared to be
2 a gift or gratuity made as a token of appreciation for the
3 service rendered by the veteran to the people of West
4 Virginia in time of grave national emergency and is in no
5 sense compensation for such services. The money received
6 as such bonus shall be exempt from taxation and such money,
7 or any claim therefor, shall not be subject to garnishment,
8 attachment or levy of execution. A claim for payment of a
9 bonus under the provisions of this act shall not be assignable
10 for any purpose whatsoever.

§13. Collection of fees or charges; penalty.

1 No fee or charge shall be made by any person, attorney,
2 agent or representative for any service in connection with the
3 filing of an application for payment of a bonus hereunder,
4 except such fees as are provided by law for the performance
5 of official duties by a duly elected or appointed officer of
6 this state or a political subdivision thereof. No person shall,
7 for a consideration, discount or attempt to discount or ad-

8 vance money upon any warrant issued for payment of any
9 bonus provided for in this act.

10 If an applicant shall employ an attorney to represent him
11 in connection with the prosecution of his claim before a
12 board of review, or before the supreme court of appeals, the
13 attorney shall file with the director an executed copy of
14 his contract of employment, and the total amount of the fee
15 therein provided shall not exceed twenty-five percent of the
16 amount under dispute.

17 Any person who violates any provision of this section
18 shall be guilty of a misdemeanor, and, upon conviction there-
19 of, shall be punished by a fine of not less than twenty-five
20 dollars nor more than five hundred dollars, or by imprisonment
21 in the county jail for not less than ten days nor more than
22 twelve months, or by both such fine and imprisonment.

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CHAPTER 145

(Com. Sub. for H. B. 821—By Mr. Speaker, Mr. McManus, and Mr. Seibert)

[Passed March 9, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section one-a, article three, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections sixteen and seventeen, article one of said chapter; to amend and reenact sections one, three, four, five, six, seven, eight, nine and ten, article two of said chapter; to further amend said article two by adding thereto two new sections, designated sections five-a and thirteen; to amend and reenact sections one, one-c, three, six, six-a, eight-a, nine, ten and sixteen, article four of said chapter; and to amend and reenact sections one, two and three, article four-a of said chapter, all relating to workmen's compensation generally; providing that all employers in this state, with certain limited exceptions, must provide workmen's compensation coverage; providing criminal offenses and penalties for employers required to cover their employees who fail to do so; removing

certain obsolete provisions relating to the silicosis fund and the occupational diseases medical board; relating to the annual report of the commissioner and occupational pneumoconiosis board; relating to elective coverage for employers not required to provide coverage; relating to classification of employments and establishing accounts for employers and the rate of premiums to be paid by such employers; relating to charges to be made to an employer's account; relating to the effect of failure to pay premiums or to make payroll reports; providing that no employee of an employer required to provide coverage shall be denied benefits because of the default of his employer; relating to reinstatement of certain employers to the fund; providing civil remedies against defaulting employers; providing liens; providing for injunctive relief; requiring the secretary of state to withhold certificates of dissolution or withdrawal where premiums are unpaid; exempting employers from common law or other statutory liability for injuries or death; providing that the benefits of the chapter may not be waived; relating to the civil liability of certain employers required to provide coverage who fail to do so or who are in default and depriving such employers of certain common-law defenses; permitting certain employers to provide their own system of compensation; specifying that such employers shall pay their proportionate share of losses due to delinquent employers; authorizing rules and regulations relating thereto; relating to the application of the chapter to interstate commerce and extraterritorial coverage; relating to interest on past due premium payments; relating to benefits to be paid and persons to whom such benefits are to be paid; providing for the continuance of payments of temporary total disability benefits following employer's protest and providing for the collection from a claimant of benefits paid to him which it is ultimately determined he was not entitled to; increasing the maximum payable as medical benefits; increasing the maximum and minimum benefits payable for certain disability awards; specifying that certain scheduled awards shall be minimums only; relating to findings of occupational pneumoconiosis board being an award for certain purpose; providing that payments for occupational pneumoconiosis shall be made in the same manner as in any other case of permanent disability; increasing the number of members on the occupational pneumoconiosis board; relating to their qualifications; relating to quorum of such

board; providing limitation on amount to be spent for vocational rehabilitation; increasing and extending death benefits; defining terms; relating to the continuing jurisdiction of the commissioner over cases generally and the time limitation upon awards; increasing benefits payable under the disabled workmen's relief fund to the minimum dollar amounts payable as of July one, one thousand nine hundred seventy-three; and providing criminal offenses and penalties.

Be it enacted by the Legislature of West Virginia:

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

Article

1. **General Administrative Procedures.**
2. **Employers and Employees Subject to Chapter; Premiums.**
4. **Disability and Death Benefits.**
- 4A. **Disabled Workmen's Relief Fund.**

ARTICLE 1. GENERAL ADMINISTRATIVE PROVISIONS.

§23-1-16. Omission to subscribe to workmen's compensation fund or to perform duty required by commissioner; perjury.

§23-1-17. Annual report by commissioner and occupational pneumoconiosis board.

§23-1-16. Omission to subscribe to workmen's compensation fund or to perform duty required by commissioner; perjury.

- 1 Any person, firm or corporation which is required by the
- 2 provisions of this chapter to subscribe to the workmen's com-
- 3 pensation fund, and which knowingly fails to subscribe thereto,
- 4 or which knowingly fails to make any report or perform any
- 5 other act or duty required by the commissioner within the
- 6 time specified by the commissioner, shall be guilty of a mis-
- 7 demeanor, and, upon conviction thereof, shall be fined not

8 more than five thousand dollars. Any person or firm, or the
 9 officer of any corporation, who knowingly makes a false report
 10 or statement under oath, affidavit or certification respecting any
 11 information required by the commissioner, or who shall know-
 12 ingly testify falsely in any proceeding before the commissioner,
 13 shall be deemed guilty of perjury, and, upon conviction there-
 14 of, shall be punished as provided by law.

**§23-1-17. Annual report by commissioner and occupational
 pneumoconiosis board.**

1 Annually, on or about the fifteenth day of September in
 2 each year, the commissioner and the occupational pneu-
 3 moconiosis board shall make a report as of the thirtieth day of
 4 June addressed to the governor, which shall include a state-
 5 ment of the causes of the injuries for which the awards were
 6 made, an explanation of the diagnostic techniques used by the
 7 occupational pneumoconiosis board and all examining physi-
 8 cians to determine the presence of disease, the extent of im-
 9 pairment attributable thereto, a description of the scientific
 10 support for such techniques, and a summary of public and
 11 private research relating to problems and prevention of occupa-
 12 tional diseases. The report shall include a detailed statement
 13 of all disbursements, and the condition of the fund, together
 14 with any specific recommendations for improvements in the
 15 workmen's compensation law and for more efficient and
 16 responsive administration thereof, which the commissioner
 17 may deem appropriate. Copies of all annual reports shall be
 18 filed with the secretary of state and shall be made available
 19 to the Legislature and to the public at large.

**ARTICLE 2. EMPLOYERS AND EMPLOYEES SUBJECT TO CHAPTER;
 PREMIUMS.**

- §23-2-1. Employers and employees subject to chapter.
- §23-2-3. Report forms and other forms for use of employers.
- §23-2-4. Classification of industries; accounts; rate of premiums.
- §23-2-5. Payment of premiums; payroll report; effect of failure to pay premiums or make payroll report; reinstatement; application for benefits; deposit to insure payment of premiums; refund of deposit; notice to employees.
- §23-2-5a. Collection of premiums from defaulting employers; civil remedies; injunctive relief; secretary of state to withhold certificates of dissolution.
- §23-2-6. Exemption of contributing employers from liability.
- §23-2-7. Benefits of chapter may not be waived by contract or regulation.

- §23-2-8. Liability of employer electing not to pay or defaulting in payment of premiums; certain common-law defenses prohibited; exceptions.
- §23-2-9. Election of employer to provide own system of compensation.
- §23-2-10. Application of chapter to interstate commerce; extraterritorial coverage.
- §23-2-13. Interest on past due payments.

§23-2-1. Employers and employees subject to chapter.

1 The state of West Virginia and all governmental agencies or
2 departments created by it, including county boards of edu-
3 cation, political subdivisions of the state and emergency service
4 organizations organized under article five, chapter fifteen of
5 this code, and all persons, firms, associations and corporations
6 regularly employing another person or persons for the purpose
7 of carrying on any form of industry, service or business in
8 this state, are employers within the meaning of this chapter and
9 (except for employers of five or fewer full-time employees in
10 agricultural service) are hereby required to subscribe to and
11 pay premiums into the workmen's compensation fund for the
12 protection of their employees and shall be subject to all require-
13 ments of this chapter and all rules and regulations prescribed by
14 the commissioner with reference to rates, classification and
15 premium payment.

16 This chapter shall not apply to employers of employees in
17 domestic service or persons whose employment is prohibited by
18 law nor to employees of an employer while employed without
19 the state except in cases of temporary employment without
20 the state nor to employees of casual employers nor shall a
21 member of a firm of employers or any official of an association
22 or of a corporate employer, including a manager or any elec-
23 tive or appointive official of the state, county, county court,
24 board of education, municipality, other political subdivision of
25 the state or emergency service organization organized as afore-
26 said, whose term of office is definitely fixed by law, be deemed
27 an employee within the meaning of this chapter. An employer
28 is deemed to be a casual employer when the number of his
29 employees does not exceed three and the period of employment
30 is temporary, intermittent and sporadic in nature and does
31 not exceed ten calendar days in any calendar quarter.

32 Employers who are not required to subscribe to the work-
33 men's compensation fund may voluntarily elect to subscribe to

34 and pay premiums into the fund for the protection of their em-
35 ployees and in such case shall be subject to all requirements
36 of this chapter and all rules and regulations prescribed by the
37 commissioner with reference to rates, classifications and pre-
38 mium payments and shall afford to them the protection of this
39 chapter, including section six of this article, but the failure of
40 such employers to elect to subscribe to and to pay premiums
41 into the fund shall not impose any liability upon them other
42 than such liability as would exist notwithstanding the provisions
43 of this chapter.

44 Employees subject to this chapter are all persons in the
45 service of employers and employed by them for the purpose of
46 carrying on the industry, business, service or work in which
47 they are engaged, including persons regularly employed in the
48 state whose duties necessitate employment of a temporary or
49 transitory nature by the same employer without the state,
50 checkweighmen employed according to law, all members of
51 rescue teams assisting in mine accidents with the consent of
52 the owner who, in such case, shall be deemed the employer,
53 or at the direction of the director of the department of mines
54 and all forest fire fighters who, under the supervision of the
55 director of the department of natural resources or his designated
56 representative, assist in the prevention, confinement and sup-
57 pression of any forest fire.

58 The premium and actual expenses in connection with govern-
59 mental agencies and departments of the state of West Virginia
60 shall be paid out of the state treasury from appropriations made
61 for such agencies and departments, in the same manner as other
62 disbursements are made by such agencies and departments.

63 County courts, municipalities, other political subdivisions
64 of the state, county boards of education, emergency service or-
65 ganizations organized as aforesaid and duly incorporated
66 volunteer fire departments or companies shall provide for the
67 funds to pay their prescribed premiums into the fund and
68 such premiums and premiums of state agencies and depart-
69 ments, including county boards of education, shall be paid
70 into the fund in the same manner as herein provided for
71 other employers subject to this chapter. In addition to its
72 usual and ordinary meaning, the term "employer" or "em-
73 ployers," as used in this chapter, shall be taken to extend to and

74 include any duly incorporated volunteer fire department or
75 company or emergency service organization organized as
76 aforesaid and to individuals or organizations employing "volun-
77 teers" and, in addition to its usual and ordinary meaning, the
78 term "employee" or "employees," as used in this chapter,
79 shall be taken to extend to and include all of the members of
80 any such department, company or organization and to such
81 volunteers. All duly incorporated volunteer fire departments or
82 companies and emergency service organizations organized as
83 aforesaid shall be placed in a separate group or class of sub-
84 scribers to be established by the commissioner and such depart-
85 ments, companies or organizations shall pay into the fund such
86 premiums (computed, notwithstanding the provisions of section
87 five of this article, on such basis as to the commissioner shall
88 seem right and proper) as may be necessary to keep such group
89 or class entirely self-supporting. For the purposes of establish-
90 ing a premium rate for "volunteers," their rate of pay shall be
91 deemed to be equivalent to the state minimum wage.

92 Any employer whose employment in this state is to be for
93 a definite or limited period which could not be considered
94 "regularly employing" within the meaning of this section may
95 elect to pay into the workmen's compensation fund the pre-
96 miums herein provided for and, at the time of making applica-
97 tion to the commissioner, such employer shall furnish a state-
98 ment under oath showing the probable length of time the
99 employment will continue in this state, the character of the
100 work, an estimate of the monthly payroll and any other
101 information which may be required by the commissioner. At
102 the time of making application such employer shall deposit
103 with the state compensation commissioner to the credit of
104 the workmen's compensation fund the amount required by
105 section five of this article, which amount shall be returned
106 to such employer if his application be rejected by the com-
107 missioner. Upon notice to such employer of the acceptance
108 of his application by the commissioner, he shall be an em-
109 ployer within the meaning of this chapter and subject to all
110 of its provisions.

111 Any foreign corporation employer electing to comply with
112 the provisions of this chapter and to receive the benefits

113 hereunder shall, at the time of making application to the com-
114 missioner, in addition to other requirements of this chapter,
115 furnish such commissioner with a certificate from the secretary
116 of state showing that it has complied with all the require-
117 ments necessary to enable it legally to do business in this state
118 and no application of such foreign corporation employer shall
119 be accepted by the commissioner until such certificate is filed.

120 For the purpose of this chapter, a mine shall be adjudged
121 within this state when the main opening, drift, shaft or slope
122 is located wholly within this state.

123 Any employee within the meaning of this chapter whose em-
124 ployment necessitates his temporary absence from this state
125 in connection with such employment, and such absence is
126 directly incidental to carrying on an industry in this state,
127 who shall have received injury during such absence in the
128 course of and resulting from his employment shall not be denied
129 the right to participate in the workmen's compensation fund.

§23-2-3. Report forms and other forms for use of employers.

1 The commissioner shall prepare report forms for the use of,
2 and furnish the same to, employers subject to this chapter.
3 Every employer receiving from the commissioner any form
4 or forms with direction for completion and returning the same
5 shall return the same, within the period fixed by the com-
6 missioner, completed so as to answer fully and correctly all
7 pertinent questions therein propounded, and if unable to do so,
8 shall give good and sufficient reasons for such failure. Every
9 employer subject to the provisions of this chapter, shall make
10 application to the commissioner on the forms prescribed by
11 the commissioner for such purpose; and any employer who shall
12 terminate his business or for any other reason is no longer
13 subject to this chapter shall so notify the commissioner on
14 forms to be furnished by the commissioner for that purpose.

§23-2-4. Classification of industries; accounts; rate of premiums.

1 The commissioner shall distribute into groups or classes the
2 employments subject to this chapter, in accordance with the
3 nature of the business and the degree of hazard incident
4 thereto. And the commissioner shall have power, in like man-

5 ner, to reclassify such industries into groups or classes at any
6 time, and to create additional groups or classes. The com-
7 missioner may make necessary expenditures to obtain statis-
8 tical and other information to establish the classes provided
9 for in this section.

10 The commissioner shall keep an accurate account of all
11 money or moneys paid or credited to the compensation fund,
12 and of the liability incurred and disbursements made against
13 same; and an accurate account of all money or moneys re-
14 ceived from each individual subscriber, and of the liability in-
15 curred and disbursements made on account of injuries and
16 death of the employees of each subscriber, and of the re-
17 cepts and incurred liability of each group or class.

18 In compensable fatal and total permanent disability cases,
19 other than occupational pneumoconiosis, the amount charged
20 against the employer's account shall be such sum as is esti-
21 mated to be the average cost of such cases to the fund. The
22 amount charged against the employer's account in compensable
23 occupational pneumoconiosis claims for total permanent dis-
24 ability or for death shall be such sum as is estimated to be the
25 average cost of such occupational pneumoconiosis cases to the
26 fund.

27 It shall be the duty of the commissioner to fix and maintain
28 the lowest possible rates of premiums consistent with the main-
29 tenance of a solvent workmen's compensation fund and the
30 creation and maintenance of a reasonable surplus in each group
31 after providing for the payment to maturity of all liability in-
32 curred by reason of injury or death to employees entitled to
33 benefits under the provisions of this chapter. A readjustment of
34 rates shall be made yearly on the first day of July, or at any
35 time the same may be necessary. The determination of the low-
36 est possible rates of premiums within the meaning hereof and of
37 the existence of any surplus or deficit in the fund, shall be pre-
38 dicated solely upon the experience and statistical data compiled
39 from the records and files in the commissioner's office under
40 this and prior workmen's compensation laws of this state for the
41 period from the first day of June, one thousand nine hundred
42 thirteen, to the nearest practicable date prior to such adjust-
43 ment: *Provided*, That any expected future return, in the nature

44 of interest or income from invested funds shall be predicated
45 upon the average realization from investments to the credit of
46 the compensation fund for the two years next preceding. Any
47 reserves set up for future liabilities and any commutation of
48 benefits shall likewise be predicated solely upon prior experi-
49 ence under this and preceding workmen's compensation laws
50 and upon expected realization from investments determined by
51 the respective past periods, as aforesaid.

52 The commissioner may fix a rate of premiums applicable
53 alike to all subscribers forming a group or class, and such
54 rates shall be determined from the record of such group or
55 class shown upon the books of the commissioner: *Provided,*
56 That if any group has a sufficient number of employers with
57 considerable difference in their degrees of hazard, the com-
58 missioner may fix a rate for each subscriber of such group,
59 such rate to be based upon the subscriber's record on the
60 books of the commissioner for the twelve months last ending
61 June thirtieth of the year in which the rate is to become effec-
62 tive; and the liability part of such record shall include such
63 cases as have been acted upon by the commissioner during
64 such twelve months' period, irrespective of the date the in-
65 jury was received; and any subscriber in a group so rated,
66 whose record for such twelve months' period cannot be ob-
67 tained, shall be given a rate based upon his record for any
68 part of such period as may be deemed just and equitable by
69 the commissioner; and the commissioner shall have author-
70 ity to fix a reasonable minimum and maximum for any group
71 to which this individual method of rating is applied, and to
72 add to the rate determined from the subscriber's record such
73 amount as is necessary to liquidate any deficit in the schedule
74 or to create a reasonable surplus.

75 It shall be the duty of the commissioner, whenever he
76 changes any rate, to notify every employer affected thereby
77 of that fact and of the new rate and when the same takes
78 effect. It shall also be his duty to furnish to each employer
79 yearly, or oftener if requested by the employer, a statement
80 giving the name of each of his employees who were paid
81 for injury and the amounts so paid during the period covered
82 by the statement.

§23-2-5. Payment of premiums; payroll report; effect of failure to pay premiums or make payroll report; reinstatement; application for benefits; deposit to insure payment of premiums; refund of deposit; notice to employees.

1 For the purpose of creating a workmen's compensation
2 fund each employer subject to this chapter shall pay the
3 premiums of liabilities based upon and being such a percent-
4 age of the payroll of such employer as may have been
5 determined by the commissioner and be then in effect. The
6 premiums shall be paid quarterly on or before the last day
7 of the next succeeding month for the preceding quarter, and
8 shall be the prescribed percentage of the total earnings of
9 all employees within the meaning of this chapter, for such
10 preceding quarter. The minimum premium to be paid by
11 any employer for any quarter shall be one dollar and fifty
12 cents. The premiums and deposits provided for in this
13 chapter shall be paid by the employers to the state compensa-
14 tion commissioner, who shall issue receipts for all sums so
15 received to the state treasurer and retain a copy for his own
16 records. All sums received by the workmen's compensation
17 commissioner as herein provided shall be deposited in the
18 state treasury to the credit of the workmen's compensation
19 fund in the manner now prescribed by law for depositing
20 money in the state treasury. Each employer shall make a
21 payroll report to the commissioner for each quarter as
22 heretofore specified, and such report shall be on the form
23 or forms prescribed by the commissioner, and furnish all
24 information required by him.

25 No employee of an employer required by this chapter to
26 subscribe and pay premiums to the workmen's compensation
27 fund as herein prescribed shall be denied benefits provided by
28 this chapter because of the failure of his employer to sub-
29 scribe, or pay premiums into, the workmen's compensation
30 fund as herein provided, or because of the employer's failure
31 to make the quarterly payroll reports required by the com-
32 missioner: *Provided*, That any employer required by this
33 chapter to subscribe and pay premiums to the workmen's
34 compensation fund as herein provided and who fails to do
35 so shall be liable to the workmen's compensation fund for

36 all benefits paid from the fund to his employees, as well as
37 for all premiums otherwise due and owing to said fund as
38 herein provided: *Provided, however,* That any employer re-
39 quired by this chapter to subscribe and pay premiums to
40 the workmen's compensation fund, or to make the quarterly
41 payroll reports required by the commissioner, as herein pro-
42 vided, and who fails to comply with such requirements, shall
43 be deprived of the benefits and protection afforded by
44 this chapter, including section six of this article, and shall
45 be liable as provided in section eight of this article,
46 as well as for all benefits paid to said employee as provided by
47 this chapter.

48 An employer required by this chapter to subscribe and
49 pay premiums to the workmen's compensation fund, and to
50 make the quarterly payroll reports required by the com-
51 missioner as herein provided, and who defaults or fails to
52 comply with any of said requirements shall be restored to
53 the benefits and protection of this chapter only upon the
54 payment into the workmen's compensation fund of all unpaid
55 premiums, penalties, and charges, provided herein, and the
56 making of all delinquent quarterly payroll and other reports
57 required by the commissioner.

58 Failure by any employer not required by this chapter,
59 but voluntarily electing to subscribe and pay premiums
60 to the workmen's compensation fund as herein provid-
61 ed, to pay premiums as herein provided, or to make
62 the quarterly payroll reports required by this chapter, shall
63 deprive the employer so delinquent of the benefits and
64 protection afforded by this chapter, including section six
65 of this article, and shall automatically terminate the election
66 of such employer to pay into the workmen's compensation
67 fund as herein provided, and such employer shall be
68 liable for the injury or death of any employee occurring
69 after the termination of such election, and as pro-
70 vided in section eight of this article. The commissioner
71 shall not be required to notify the delinquent employer
72 of such termination, but he shall notify the employees
73 of such employer by written notice posted as herein-
74 after provided for in this section. The termination of
75 election of such delinquent employer shall date from

76 twelve o'clock p.m., of the last day of the month in
77 which he fails to pay the premiums or make a pay-
78 roll report, as above provided, for the preceding quar-
79 ter.

80 The employer so delinquent may be reinstated upon
81 application under such terms as are prescribed by this
82 chapter and by the commissioner hereunder, after the pay-
83 ment into the workmen's compensation fund of all un-
84 paid premiums, penalties and charges. Such reinstatement
85 shall be in effect from and after the date that the new
86 application is accepted by the commissioner: *Provided,*
87 That such delinquent employer shall be entitled to the
88 benefits and protection of this chapter until twelve o'clock
89 p.m., of the last day of the month immediately succeeding
90 the month in which his election is terminated, and his
91 employees shall be entitled to compensation for injuries
92 received during such period.

93 Any employer required by this chapter to subscribe and
94 pay premiums to the workmen's compensation fund, or here-
95 after electing to avail himself of the benefits of this chapter
96 as herein provided, shall at the time of making application
97 to the commissioner deposit in the workmen's compensation
98 fund an amount estimated to be equal to the amount of the
99 premium which shall be paid by him for the next succeeding
100 quarter. Any employer whose deposit is less than the
101 amount of his premium for the last quarter shall, upon
102 written request from the commissioner mailed to his address
103 as carried upon the books of the commissioner by twelve
104 o'clock p.m., of the last day of the month in which request
105 is mailed, pay to the commissioner a sum sufficient to make
106 his deposit at least equal to the amount of his premium for
107 the last preceding quarter, and failure of any employer to
108 comply with such written request within the time specified
109 shall constitute a default in performance of the requirements
110 of this chapter and shall deprive him of the benefits and
111 protection afforded by this chapter, and shall automatically
112 terminate any voluntary election to pay into the workmen's
113 compensation fund as herein provided, and such employer
114 shall be liable to his employees as provided in section eight
115 of this article; and the commissioner shall not be required

116 to notify the delinquent employer of such termination or
117 default, but he shall notify the employees of such employer
118 by written notice posted as hereafter provided for in this
119 section. The termination of election of such employer shall
120 date from twelve o'clock p.m., of the last day of the month
121 in which he is notified by the commissioner that his deposit
122 is not equal to the sum of his premium for the last pre-
123 ceding quarter. Such employer may be reinstated upon
124 application under such terms as are prescribed by this
125 chapter and the rules of the commissioner. The deposit
126 hereinbefore described shall be credited to the employer's
127 account on the books of the commissioner and used to pay
128 premiums and any other sums due the fund when such em-
129 ployer becomes delinquent in the payment of same.

130 Upon withdrawal from the fund or termination of election
131 of any employer, he shall be refunded the balance due him of
132 his deposit, after deducting all amounts owed by him to the
133 workmen's compensation fund, and the commissioner shall
134 notify the employees of such employer of said termination
135 in such manner as he may deem best and sufficient.

136 Notices to employees in this section provided for shall be
137 given by posting written notice that the employer is de-
138 linquent under the compensation law of West Virginia, and
139 in the case of employers required by this chapter to subscribe
140 and pay premiums to the fund, that the delinquent employer
141 is liable to his employees for injury or death, both in work-
142 men's compensation benefits and in damages at common
143 law or by statute; and, in the case of employers not required
144 by this chapter to subscribe and pay premiums to the fund,
145 but voluntarily electing to do so as herein provided, that
146 neither the employer nor the employees of such employer
147 are protected by said law as to any injury or death sustained
148 after the date specified in said notice. Such notice shall be
149 in the form prescribed by the commissioner and shall be
150 posted in a conspicuous place at the chief works of the
151 employer, as the same appear in records of the commissioner.
152 If the said chief works of the employer cannot be found or
153 identified, then said notices shall be posted at the front
154 door of the courthouse of the county in which said chief
155 works are located, according to the records in the commis-

156 sioner's office. Any person who shall, prior to the reinstatement of the said employer, as hereinbefore provided for, or 157 prior to sixty days after the posting of said notice, whichever 158 shall first occur, remove, deface or render illegible the said 159 notice, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not to exceed five hundred 160 dollars, and the said notice shall state this provision upon 161 its face. The commissioner may require any sheriff, deputy 162 sheriff, constable, or other official of the state of West 163 Virginia, who may be authorized to serve civil process, to 164 post such notice and to make return thereof of the fact of 165 such posting to the commissioner, and any failure of such 166 officer to post any notice within ten days after he shall have 167 received the same from the commissioner, without just cause 168 or excuse, shall constitute a willful failure or refusal to 169 perform a duty required of him by law within the meaning 170 of section twenty-eight, article five, chapter sixty-one of 171 this code. Any person actually injured by reason of 172 such failure shall have an action against said official, and 173 upon any official bond he may have given, for such damages 174 as such person may actually have incurred, but not to 175 exceed, in the case of any surety upon said bond, the 176 amount of the penalty of said bond. Any official posting said 177 notice as herein required shall be entitled to the same fee 178 as is now or may hereafter be provided for the service of 179 process in suits instituted in courts of record in the state 180 of West Virginia, which fee shall be paid by the commissioner 181 out of any funds at his disposal, but shall be charged by him 182 against the account of the employer to whose delinquency 183 such notice relates. 184 185

§23-2-5a. Collection of premiums from defaulting employers; civil remedies; injunctive relief; secretary of state to withhold certificates of dissolution.

1 The commissioner in the name of the state may commence
2 a civil action against an employer who, after due notice, de-
3 faults in any payment required by this chapter. If judgment is
4 against the employer he shall pay the costs of the action. Civil
5 actions under this section shall be given preference on the cal-
6 endar of the court over all other civil actions.

7 Any payment and interest thereon due and unpaid under this
8 chapter shall be a personal obligation of the employer and
9 shall, in addition thereto, be a lien enforceable against all the
10 property of the employer: *Provided*, That no such lien shall be
11 enforceable as against a purchaser (including a lien creditor)
12 of real estate or personal property for a valuable consideration
13 without notice, unless docketed as provided in chapter ninety-
14 nine, acts of the Legislature, regular session, one thousand nine
15 hundred forty-three.

16 In addition to all other civil remedies prescribed herein the
17 commissioner may in the name of the state distrain upon any
18 personal property, including intangible property, of any em-
19 ployer delinquent for any payment and interest thereon. If the
20 commissioner has good reason to believe that such property or
21 a substantial portion thereof is about to be removed from the
22 county in which it is situated, he may likewise distrain in the
23 name of the state before such delinquency occurs. For such pur-
24 pose, the commissioner may require the services of a sheriff of
25 any county in the state in levying such distress in the county in
26 which the sheriff is an officer and in which such personal prop-
27 erty is situated. A sheriff so collecting any payments and in-
28 terest thereon shall be entitled to such compensation as is pro-
29 vided by law for his services in the levy and enforcement of
30 executions.

31 In case a business subject to the payments and interests
32 thereon imposed under this chapter shall be operated in con-
33 nection with a receivership or insolvency proceeding in any
34 state court in this state, the court under whose direction such
35 business is operated shall, by the entry of a proper order or de-
36 cree in the cause, make provisions, so far as the assets in ad-
37 ministration will permit, for the regular payment of such pay-
38 ments as the same become due.

39 The secretary of state of this state shall withhold the is-
40 suance of any certificate of dissolution or withdrawal in the
41 case of any corporation organized under the laws of this state,
42 or organized under the laws of any other state and admitted
43 to do business in this state, until notified by the commissioner
44 that all payments and interest thereon against any such cor-
45 poration which is an employer under this chapter have been

46 paid or that provision satisfactory to the commissioner has
47 been made for payment.

48 In any case when an employer defaults in payments, or in-
49 terest thereon, for as many as two calendar quarters, which
50 quarters need not be consecutive, and remains delinquent after
51 due notice, and the commissioner has been unable to collect
52 such payments by any of the other civil remedies prescribed
53 herein, the commissioner may bring action in the circuit court
54 of Kanawha County to enjoin such employer from continuing
55 to carry on the business in which such liability was incurred:
56 *Provided*, That the commissioner may as an alternative to this
57 action require such delinquent employer to file a bond in the
58 form prescribed by the commissioner with satisfactory surety
59 in an amount not less than fifty percent more than the pay-
60 ments and interest due.

§23-2-6. Exemption of contributing employers from liability.

1 Any employer subject to this chapter who shall subscribe
2 and pay into the workmen's compensation fund the premiums
3 provided by this chapter or who shall elect to make direct pay-
4 ments of compensation as herein provided, shall not be liable
5 to respond in damages at common law or by statute for the
6 injury or death of any employee, however occurring, after
7 so subscribing or electing, and during any period in which such
8 employer shall not be in default in the payment of such pre-
9 miums or direct payments and shall have complied fully with
10 all other provisions of this chapter. The continuation in the
11 service of such employer shall be deemed a waiver by the em-
12 ployee and by the parents of any minor employee of the right
13 of action as aforesaid, which the employee or his or her par-
14 ents would otherwise have: *Provided*, That in case of em-
15 ployers not required by this chapter to subscribe and pay
16 premiums into the workmen's compensation fund, the injured
17 employee has remained in such employer's service with no-
18 tice that his employer has elected to pay into the workmen's
19 compensation fund the premiums provided by this chapter, or
20 has elected to make direct payments as aforesaid.

§23-2-7. Benefits of chapter may not be waived by contract or regulation.

1 No employer or employee shall exempt himself from the

2 burden or waive the benefits of this chapter by any contract,
3 agreement, rule or regulation, and any such contract, agree-
4 ment, rule or regulation shall be pro tanto void.

**§23-2-8. Liability of employer electing not to pay or defaulting in
payment of premiums; certain common-law defenses
prohibited; exceptions.**

1 All employers required by this chapter to subscribe to and
2 pay premiums into the workmen's compensation fund, ex-
3 cept the state of West Virginia, the governmental agencies or
4 departments created by it, and municipalities and political sub-
5 divisions of the state, and who do not subscribe to and pay
6 premiums into the workmen's compensation fund as required
7 by this chapter and have not elected to pay individually and
8 directly or from benefit funds compensation and expenses to
9 injured employees or fatally injured employees' dependents un-
10 der the provisions of section nine of this article, or having so
11 subscribed or elected, shall be in default in the payment of
12 same, or not having otherwise fully complied with the pro-
13 visions of section five or section nine of this article, shall be
14 liable to their employees (within the meaning of this article)
15 for all damages suffered by reason of personal injuries sus-
16 tained in the course of employment caused by the wrongful
17 act, neglect or default of the employer or any of the employer's
18 officers, agents or employees while acting within the scope of
19 their employment and in the course of their employment and
20 also to the personal representatives of such employees where
21 death results from such personal injuries, and in any action by
22 any such employee or personal representative thereof, such de-
23 fendant shall not avail himself of the following common-law de-
24 fenses: The defense of the fellow-servant rule; the defense of
25 the assumption of risk; or the defense of contributory negli-
26 gence; and further shall not avail himself of any defense that the
27 negligence in question was that of someone whose duties are
28 prescribed by statute: *Provided*, That such provision depriving
29 a defendant employer of certain common-law defenses under
30 the circumstances therein set forth shall not apply to an action
31 brought against a county court, board of education, municipi-
32 pality, or other political subdivision of the state or against any
33 employer not required to cover his employees under the pro-
34 visions of this chapter.

§23-2-9. Election of employer to provide own system of compensation.

1 Notwithstanding anything contained in this chapter, em-
2 ployers subject to this chapter who are of sufficient financial
3 responsibility to insure the payment of compensation to in-
4 jured employees and the dependents of fatally injured em-
5 ployees, whether in the form of pecuniary compensation or
6 medical attention, funeral expenses or otherwise as herein pro-
7 vided, of the value at least equal to the compensation provided
8 in this chapter, or employers of such financial responsibility
9 who maintain their own benefit funds, or system of compen-
10 sation, to which their employees are not required or permitted
11 to contribute, or such employers as shall furnish bond or other
12 security to insure such payments, may, upon a finding of such
13 facts by the compensation commissioner, elect to pay indi-
14 vidualy and directly, or from such benefit funds, department
15 or association, such compensation and expenses to injured em-
16 ployees or fatally injured employees' dependents. The compen-
17 sation commissioner shall require security or bond from such
18 employer, to be approved by him, and of such amount as is
19 by him considered adequate and sufficient to compel or secure
20 to such employees, or their dependents, payment of the com-
21 pensation and expenses herein provided for, which shall in no
22 event be less than the compensation paid or furnished out of
23 the state workmen's compensation fund in similar cases to in-
24 jured employees or the dependents of fatally injured em-
25 ployees whose employers contribute to such fund. Any em-
26 ployer electing under this section shall on or before the twen-
27 tieth day of the first month of each quarter, for the preceding
28 quarter, file with the commissioner a sworn statement of the
29 total earnings of all his employees subject to this chapter for
30 such preceding quarter, and shall pay into the workmen's
31 compensation fund a sum sufficient to pay his proper propor-
32 tion of the expenses of the administration of this chapter, and
33 a sum sufficient to pay his proper portion of the expenses for
34 claims for those employers who are delinquent in the payment
35 of premiums, as may be determined by the commissioner. The
36 commissioner shall make and publish rules and regulations
37 governing the mode and manner of making application, and
38 the nature and extent of the proof required to justify the find-

39 ing of facts by the commissioner, to consider and pass upon
40 such election by employers subject to this chapter, which rules
41 and regulations shall be general in their application. Any
42 employer subject to this chapter who shall elect to carry his
43 own risk and who has complied with the requirements of this
44 section and the rules of the compensation commissioner shall
45 not be liable to respond in damages at common law or by
46 statute for the injury or death of any employee, however oc-
47 ccurring, after such election and during the period that he is
48 allowed by the commissioner to carry his own risk.

49 Any employer whose record upon the books of the compen-
50 sation commissioner shows a liability against the workmen's
51 compensation fund incurred on account of injury to or death
52 of any of his employees, in excess of premiums paid by such
53 employer, shall not be granted the right, individually and di-
54 rectly or from such benefit funds, department or association,
55 to compensate his injured employees and the dependents of
56 his fatally injured employees until he has paid into the work-
57 men's compensation fund the amount of such excess of liability
58 over premiums paid, including his proper proportion of the
59 liability incurred on account of explosions, catastrophes or
60 second injuries as defined in section one, article three of this
61 chapter, occurring within the state and charged against such
62 fund.

63 All employers who have heretofore elected, or shall here-
64 after elect, to pay compensation and expenses directly as pro-
65 vided in this section, shall, unless they give the catastrophe and
66 second injury security or bond hereinafter provided for, pay in-
67 to the surplus fund referred to in section one, article three of
68 this chapter, upon the same basis and in the same percentages,
69 subject to the limitations herein set forth, as funds are set
70 aside for the maintenance of the surplus fund out of payments
71 made by premium-paying subscribers, such payments to be
72 made at the same time as hereinbefore provided with respect
73 to payment of proportion of expenses of administration. In
74 case there be a catastrophe or second injury, as defined in
75 section one, article three of this chapter, to the employees of
76 any employer making such payments, the employer shall not
77 be liable to pay compensation or expenses arising from or
78 necessitated by the catastrophe or second injury, and such

79 compensation and expenses shall not be charged against such
80 employer, but such compensation and expenses shall be paid
81 from the surplus fund in the same manner and to the same
82 extent as in the case of premium-paying subscribers.

83 If an employer elect to make payments into the surplus fund
84 as aforesaid, then the bond or other security required by this
85 section shall be of such amount as the commissioner considers
86 adequate and sufficient to compel or secure to the employees
87 or their dependents payment of compensation and expenses,
88 except any compensation and expenses that may arise from, or
89 be necessitated by, any catastrophe or second injury, as de-
90 fined in section one, article three of this chapter, which last
91 are secured by and shall be paid from the surplus fund as
92 hereinbefore provided.

93 If any employer elect not to make payments into the sur-
94 plus fund, as hereinbefore provided, then, in addition to bond
95 or security in the amount hereinbefore set forth, such employer
96 shall furnish catastrophe and second injury security or bond,
97 approved by the commissioner, in such additional amount as
98 the commissioner shall consider adequate and sufficient to
99 compel or secure payment of all compensation and expenses
100 arising from, or necessitated by, any catastrophe or second
101 injury that might thereafter ensue.

102 All employers hereafter making application to carry their
103 own risk under the provisions of this section, shall with such
104 application, make a written statement as to whether such em-
105 ployer elects to make payments as aforesaid into the surplus
106 fund or not to make such payments and to give catastrophe
107 and second injury security or bond hereinbefore in such case
108 provided for.

109 All employers who have heretofore elected to carry their
110 own risk under the provisions of this section shall be deemed
111 to have elected to make payments into the surplus fund un-
112 less, within thirty days after the effective date of this act, they
113 notify the commissioner in writing to the contrary: *Provided,*
114 That such employers, as have heretofore elected, under the
115 rules heretofore promulgated by the commissioner, not to
116 make payments into the surplus fund, shall be deemed to
117 have elected to give the catastrophe and second injury security

118 or bond hereinbefore provided for and not to make payments
119 into the surplus fund. Any catastrophe and second injury
120 security or bond heretofore given under rules and regulations
121 promulgated by the commissioner and approved by him shall
122 be valid under this section, and any election heretofore made
123 under rules and regulations of the commissioner to make pay-
124 ments into the surplus fund shall be valid and protective to the
125 person so electing from and after the date of such election.

126 In any case under the provisions of this section that shall
127 require the payment of compensation or benefits by an em-
128 ployer in periodical payments, and the nature of the case
129 makes it possible to compute the present value of all future
130 payments, the commissioner may, in his discretion, at any
131 time compute and permit or require to be paid into the work-
132 men's compensation fund an amount equal to the present value
133 of all unpaid compensation for which liability exists, in trust;
134 and thereupon such employer shall be discharged from any
135 further liability upon such award, and payment of the same
136 shall be assumed by the workmen's compensation fund.

**§23-2-10. Application of chapter to interstate commerce; extra-
territorial coverage.**

1 (a) In case any employer within the meaning of this
2 chapter is also engaged in interstate or foreign commerce,
3 and for whom a rule of liability or method of compensation
4 has been established by the Congress of the United States,
5 this chapter shall apply to him only to the extent that his
6 mutual connection with work in this state is clearly separable
7 and distinguishable from his interstate work, and to the extent
8 that such work in this state is clearly separable and distinguish-
9 able from his interstate work, such employer shall be subject to
10 the terms and provisions of this chapter in like manner as all
11 other employers hereunder. Payments of premiums shall be on
12 the basis of the payroll of those employees who perform work
13 in this state only.

14 Unless and until the Congress of the United States has
15 by appropriate legislation established a rule of liability or
16 method of compensation governing employers and employees
17 engaged in commerce within the purview of the commerce
18 clause of the federal Constitution (article I, section 8), section

19 one of this article shall apply without regard to the interstate
20 or intrastate character or nature of the work or business
21 engaged in: *Provided*, That this chapter shall not apply to
22 employees of steam railroads, or steam railroads partly electri-
23 fied, or express companies, engaged in interstate commerce.

24 (b) Whenever, with respect to an employee of an employer
25 who is a subscriber in good standing to the workmen's com-
26 pensation fund or an employer who has elected to pay com-
27 pensation directly, as provided in section nine of this
28 article, there is a possibility of conflict with respect to
29 the application of workmen's compensation laws because
30 the contract of employment is entered into and all or some
31 portion of the work is performed or is to be performed in a
32 state or states other than this state, the employer and the
33 employee may agree to be bound by the laws of this state
34 or by the laws of such other state in which all or some
35 portion of the work of the employee is to be performed. Such
36 agreement shall be in writing and filed with the commissioner
37 within ten days after execution thereof and shall remain in
38 effect until terminated or modified by agreement of the parties
39 similarly filed. If the parties agree to be bound by the laws
40 of this state, an employee injured within the terms and pro-
41 visions of this chapter shall be entitled to benefits under this
42 chapter regardless of the situs of the injury or exposure to
43 occupational pneumoconiosis or other occupational disease,
44 and the rights of the employee and his dependents under
45 the laws of this state shall be the exclusive remedy against
46 the employer on account of injury, disease or death in the
47 course of and as a result of the employment.

48 If the parties agree to be bound by the laws of another
49 state and the employer has complied with the laws of that
50 state, the rights of the employe and his dependents under
51 the laws of that state shall be the exclusive remedy against
52 the employer on an account of injury, disease or death in the
53 course of and as a result of the employment without regard
54 to the situs of the injury or exposure to occupational pneumo-
55 coniosis or other occupational disease.

56 If the employee is a resident of a state other than this
57 state and is subject to the terms and provisions of the work-
58 men's compensation law or similar laws of a state other than

59 this state, such employee and his dependents shall not be
 60 entitled to the benefits payable under this chapter on account
 61 of injury, disease or death in the course of and as a result of
 62 employment temporarily within this state, and the rights of
 63 such employee and his dependents under the laws of such other
 64 state shall be the exclusive remedy against the employer on
 65 account of such injury, disease or death.

66 If any employ~~ee~~ or his dependents be awarded workmen's
 67 compensa~~tion~~ benefits or recover damages from the employer
 68 under the laws of another state for an injury received in the
 69 course of and resulting from the employment, the amount so
 70 awarded or recovered, whether paid or to be paid in future in-
 71 stallments, shall be credited against the amount of any benefits
 72 payable under this chapter for the same injury.

§23-2-13. Interest on past due payments.

1 Payments unpaid on the date on which due and payable,
 2 as prescribed by the commissioner, shall after the first fifteen
 3 days bear interest at the rate of one percent per month until
 4 payment plus accrued interest is received by the commissioner.
 5 Interest collected pursuant to this section shall be paid into the
 6 workmen's compensation fund.

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

- §23-4-1. To whom compensation fund disbursed; occupational pneumoconiosis and other occupational diseases included in "injury" and "personal injury"; definition of occupational pneumoconiosis and other occupational diseases.
- §23-4-1c. Payment of temporary total disability benefits directly to claimant; payments of benefits during protest; right of commissioner to collect payments improperly made.
- §23-4-3. Schedule of maximum disbursements for medical, surgical, dental and hospital treatment; charges in excess of scheduled amounts not to be made; contract by employer with hospital, physician, etc., prohibited; penalties.
- §23-4-6. Classification of disability benefits.
- §23-4-6a. Benefits and mode of payment to employees and dependents for occupational pneumoconiosis; further adjustment of claim for occupational pneumoconiosis.
- §23-4-8a. Occupational pneumoconiosis board—Composition; term of office; duties; quorum; remuneration.
- §23-4-9. Physical and vocational rehabilitation.
- §23-4-10. Classification of death benefits; "dependent" defined.
- §23-4-16. Commissioner's jurisdiction over case continuous; modification of finding or order; time limitation on awards; reimbursement of claimant for expenses.

§23-4-1. To whom compensation fund disbursed; occupational pneumoconiosis and other occupational diseases included in "injury" and "personal injury"; definition of occupational pneumoconiosis and other occupational diseases.

1 Subject to the provisions and limitations elsewhere in this
2 chapter set forth, the commissioner shall disburse the work-
3 men's compensation fund to the employees of employers sub-
4 ject to this chapter, which employees have received personal
5 injuries in the course of and resulting from their covered em-
6 ployment or to the dependents, if any, of such employees in
7 case death has ensued, according to the provisions hereinafter
8 made; and also for the expenses of the administration of this
9 chapter, as provided in section two, article one of this chapter.

10 For the purposes of this chapter the terms "injury" and "per-
11 sonal injury" shall include occupational pneumoconiosis and
12 any other occupational disease, as hereinafter defined, and
13 the commissioner shall likewise disburse the workmen's com-
14 pensation fund to the employees of such employers in whose
15 employment such employees have been exposed to the hazards
16 of occupational pneumoconiosis or other occupational disease
17 and in this state have contracted occupational pneumoconiosis
18 or other occupational disease, or have suffered a perceptible
19 aggravation of an existing pneumoconiosis or other occupa-
20 tional disease, or to the dependents, if any, of such employees,
21 in case death has ensued, according to the provisions herein-
22 after made: *Provided*, That compensation shall not be payable
23 for the disease of occupational pneumoconiosis, or death re-
24 sulting therefrom, unless the employee has been exposed to
25 the hazards of occupational pneumoconiosis in the state of
26 West Virginia over a continuous period of not less than two
27 years during the ten years immediately preceding the date of
28 his last exposure to such hazards. An application for bene-
29 fits on account of occupational pneumoconiosis shall set forth
30 the name of the employer or employers and the time worked
31 for each, and the commissioner may allocate to and divide any
32 charges resulting from such claim among the employers by
33 whom the claimant was employed for as much as sixty days
34 during the period of three years immediately preceding the
35 date of last exposure to the hazards of occupational pneumo-

36 coniosis. The allocation shall be based upon the time and de-
37 gree of exposure with each employer.

38 For the purposes of this chapter disability or death resulting
39 from occupational pneumoconiosis, as defined in the imme-
40 diately succeeding sentence, shall be treated and compensated
41 as an injury by accident.

42 Occupational pneumoconiosis is a disease of the lungs
43 caused by the inhalation of minute particles of dust over a
44 period of time due to causes and conditions arising out of and
45 in the course of the employment. The term "occupational
46 pneumoconiosis" shall include, but shall not be limited to such
47 diseases as silicosis, anthracosilicosis, coal worker's pneumo-
48 coniosis, commonly known as black lung or miner's asthma,
49 silico-tuberculosis (silicosis accompanied by active tubercu-
50 losis of the lungs), coal worker's pneumoconiosis accompanied
51 by active tuberculosis of the lungs, asbestosis, siderosis, an-
52 thrax and any and all other dust diseases of the lungs and
53 conditions and diseases caused by occupational pneumoconiosis
54 which are not specifically designated herein meeting the defini-
55 tion of occupational pneumoconiosis set forth in the im-
56 mediately preceding sentence.

57 X-ray evidence shall not necessarily be held conclusive inso-
58 far as it bears upon the absence of occupational pneumocon-
59 iosis.

60 For the purposes of this chapter, occupational disease means
61 a disease incurred in the course of and resulting from employ-
62 ment. No ordinary disease of life to which the general public
63 is exposed outside of the employment shall be compensable
64 except when it follows as an incident of occupational disease
65 as defined in this chapter. Except in the case of occupational
66 pneumoconiosis, a disease shall be deemed to have been in-
67 curred in the course of or to have resulted from the employ-
68 ment only if it is apparent to the rational mind, upon consi-
69 deration of all the circumstances (1) that there is a direct
70 causal connection between the conditions under which work
71 is performed and the occupational disease, (2) that it can
72 be seen to have followed as a natural incident of the work as
73 a result of the exposure occasioned by the nature of the em-
74 ployment, (3) that it can be fairly traced to the employment

75 as the proximate cause, (4) that it does not come from a
76 hazard to which workmen would have been equally exposed
77 outside of the employment, (5) that it is incidental to the
78 character of the business and not independent of the rela-
79 tion of employer and employee, and (6) that it must appear
80 to have had its origin in a risk connected with the employment
81 and to have flowed from that source as a natural consequence,
82 though it need not have been foreseen or expected before
83 its contraction.

84 Except in the case of silicosis, no award shall be made
85 under the provisions of this chapter for any occupational dis-
86 ease contracted prior to the first day of July, one thousand
87 nine hundred forty-nine. An employee shall be deemed to have
88 contracted an occupational disease within the meaning of this
89 paragraph if the disease or condition has developed to such
90 an extent that it can be diagnosed as an occupational disease.

91 Claims for occupational disease as hereinbefore defined,
92 except occupational pneumoconiosis, shall be processed in
93 like manner as claims for all other personal injuries.

§23-4-1c. Payment of temporary total disability benefits directly to claimant; payments of benefits during protest; right of commissioner to collect payments improperly made.

1 Upon a finding by the commissioner that a claimant has sus-
2 tained a compensable injury within the meaning of section
3 one of this article, and upon proof by proper physician's
4 report, or otherwise, that disability will last longer than
5 three days as provided in section five of this article,
6 the commissioner shall immediately commence payment
7 of temporary total disability benefits to the claimant in
8 the amounts provided for in sections six and fourteen of
9 this article, without waiting for the expiration of the thirty-
10 day period during which objections may be filed to such
11 findings as provided in section one, article five of this chapter.
12 The commissioner shall give immediate notice to the em-
13 ployer of his findings and of the commencement of such pay-
14 ments.

15 The commissioner shall determine whether or not the
16 claimant has sustained a compensable injury within the meaning

17 of section one of this article, and shall commence pay-
18 ment of temporary total disability benefits as provided
19 herein within fifteen days of receipt of the employee's or
20 employer's report of injury, whichever is received sooner,
21 and receipt of either a proper physician's report or any other in-
22 formation necessary for a determination.

23 Where the employer is a subscriber to the workmen's com-
24 pensation fund under the provisions of article three of this
25 chapter, and upon the findings aforesaid, the commissioner
26 shall mail all workmen's compensation checks paying tem-
27 porary total disability benefits directly to the claimant and not
28 to the employer for delivery to the claimant.

29 Where the employer has elected to carry his own risk under
30 section nine, article two of this chapter, and upon the findings
31 aforesaid, the commissioner shall immediately issue a pay
32 order directing the employer to pay such amounts as are due
33 the claimant for temporary total disability benefits.

34 In the event that an employer files a timely objection to any
35 finding or order of the commissioner, as provided in section
36 one, article five of this chapter, with respect to the payment or
37 continued payment of temporary total disability benefits, as
38 provided herein, the commissioner shall continue to pay to the
39 claimant such benefits during the period of such disability un-
40 less it is subsequently found by the commissioner that the clai-
41 mant was not entitled to receive the temporary total disability
42 benefits, or any part thereof, so paid, in which event the com-
43 missioner shall, where the employer is a subscriber to the fund,
44 credit said employer's account with the amount of the overpay-
45 ment; and, where the employer has elected to carry his own
46 risk, the commissioner shall refund to such employer the
47 amount of the overpayment. The amounts so credited to a sub-
48 scriber or repaid to a self-insurer shall be charged by the com-
49 missioner to the surplus fund created by section one, article
50 three of this chapter. If the final decision in any case determines
51 that a claimant was not lawfully entitled to benefits paid to him
52 pursuant to a prior decision, such amount of benefits so paid
53 shall be deemed overpaid. The commissioner may recover such
54 amount by civil action or in any manner provided in this code
55 for the collection of past-due payment and shall withhold, in

56 whole or in part, as determined by the commissioner, any future
57 benefits payable to the individual and credit such amount
58 against the overpayment until it is repaid in full.

§23-4-3. Schedule of maximum disbursements for medical, surgical, dental and hospital treatment; charges in excess of scheduled amounts not to be made; contract by employer with hospital, physician, etc., prohibited; penalties.

1 The commissioner shall establish, and alter from time to
2 time as he may determine to be appropriate a schedule of
3 the maximum reasonable amounts to be paid to physicians,
4 surgeons, hospitals or other persons, firms or corporations
5 for the rendering of treatment to injured employees under
6 this chapter.

7 The commissioner shall disburse and pay from the funds
8 for such personal injuries to such employees as may be
9 entitled thereto hereunder as follows:

10 (a) Such sums for medicines, medical, surgical, dental
11 and hospital treatment, crutches, artificial limbs and such
12 other and additional approved mechanical appliances and
13 devices, as may be reasonably required and as are, in the case
14 of medical, surgical, dental or hospital treatment only, within
15 the maximum amount provided for by schedule established by
16 the commissioner as aforesaid, but not as to any one injured
17 employee in excess of seven thousand five hundred dollars:
18 *Provided*, That in special cases where the treatment required,
19 in the opinion of competent medical authority, is such as to
20 necessitate an expenditure in excess of said sum of seven
21 thousand five hundred dollars, the commissioner may pay out
22 of any available funds such additional sum as may be
23 necessary, but such additional sum shall not be charged to
24 the account of the employer.

25 (b) Payment for such medicine, medical, surgical, dental
26 and hospital treatment, crutches, artificial limbs and such
27 other and additional approved mechanical appliances and
28 devices authorized under subdivision (a) hereof may be made
29 to the injured employee, or to the person, firm or corporation
30 who or which has rendered such treatment or furnished any

31 of the items specified above, or who has advanced payment
32 for same, as the commissioner may deem proper, but no
33 such payments or disbursements shall be made or awarded
34 by him unless duly verified statements on forms prescribed
35 by the commissioner shall be filed with the commissioner
36 within one year after the cessation of such treatment or the
37 delivery of such appliances: *Provided*, That no payment here-
38 under shall be made unless such verified statement shows
39 no charge for or with respect to such treatment or for or
40 with respect to any of the items specified above has been or
41 will be made against the injured employee or any other
42 person, firm or corporation, and when an employee covered
43 under the provisions of this chapter is injured in the course
44 of and as a result of his employment and is accepted for
45 medical, surgical, dental or hospital treatment, the person,
46 firm or corporation rendering such treatment is hereby
47 prohibited from making any charge or charges therefor or
48 with respect thereto against the injured employee or any
49 other person, firm or corporation which would result in a
50 total charge for the treatment rendered in excess of the
51 maximum amount set forth therefor in the commissioner's
52 schedule established as aforesaid.

53 (c) No employer shall enter into any contracts with any
54 hospital, its physicians, officers, agents or employees to
55 render medical, dental or hospital service or to give medical
56 or surgical attention therein to any employee for injury
57 compensable within the purview of this chapter, and no
58 employer shall permit or require any employee to contribute,
59 directly or indirectly, to any fund for the payment of such
60 medical, surgical, dental or hospital service within such
61 hospital for such compensable injury. Any employer violat-
62 ing this section shall be liable in damages to his employees as
63 provided in section eight, article two of this chapter, and
64 any employer or hospital or agent or employee thereof violat-
65 ing the provisions of this section shall be guilty of a misde-
66 meanor, and, upon conviction thereof, shall be sentenced to
67 pay a fine not exceeding one thousand dollars or undergo
68 imprisonment not exceeding one year, or both.

69 (d) When an injury has been reported to the commissioner
70 by the employer without protest, the commissioner may pay,

71 or order an employer who or which made the election and
72 who or which received the permission mentioned in section
73 nine, article two of this chapter to pay, within the maximum
74 amount provided by schedule established by the commissioner
75 as aforesaid, bills for medical or hospital services without
76 requiring the injured employee to file an application for
77 benefits.

§23-4-6. Classification of disability benefits.

1 Where compensation is due an employee under the provi-
2 sions of this chapter for personal injury, such compensation
3 shall be as provided in the following schedule:

4 (a) The expressions "average weekly wage earnings, wher-
5 ever earned, of the injured employee, at the date of injury" and
6 "average weekly wage in West Virginia," as used in this chap-
7 ter, shall have the meaning and shall be computed as set forth
8 in section fourteen of this article.

9 (b) If the injury causes temporary total disability, the em-
10 ployee shall receive during the continuance thereof weekly
11 benefits as follows: A maximum weekly benefit to be computed
12 on the basis of sixty-six and two-thirds percent of the average
13 weekly earnings, wherever earned, of the injured employee, at
14 the date of injury, not to exceed the percentage of the average
15 weekly wage in West Virginia, as follows: On or after July
16 one, one thousand nine hundred sixty-nine, forty-five percent;
17 on or after July one, one thousand nine hundred seventy, fifty
18 percent; on or after July one, one thousand nine hundred sev-
19 enty-one, fifty-five percent; on or after July one, one thousand
20 nine hundred seventy-three, sixty percent; on or after July one,
21 one thousand nine hundred seventy-four, eighty percent; on
22 or after July one, one thousand nine hundred seventy-five, one
23 hundred percent.

24 The minimum weekly benefits paid hereunder shall not be
25 less than twenty-six dollars per week for injuries occurring on
26 or after July one, one thousand nine hundred sixty-nine; not
27 less than thirty-five dollars per week for injuries occurring on
28 or after July one, one thousand nine hundred seventy-one; not
29 less than forty dollars per week for injuries occurring on or
30 after July one, one thousand nine hundred seventy-three and

31 not less than forty-five dollars per week for injuries occurring
32 on or after July one, one thousand nine hundred seventy-four.

33 (c) Subdivision (b) shall be limited as follows: Aggregate
34 award for a single injury causing temporary disability shall be
35 for a period not exceeding two hundred eight weeks.

36 (d) If the injury causes permanent total disability, benefits
37 shall be payable during the remainder of life at the maximum
38 or minimum weekly benefits as provided in subdivision (b) of
39 this section for temporary total disability. A permanent dis-
40 ability of eighty-five percent or more shall be deemed a per-
41 manent total disability for the purpose of this section.

42 (e) If the injury causes permanent disability less than per-
43 manent total disability, the percentage of disability to total
44 disability shall be determined and the award computed on the
45 basis of four weeks compensation for each percent of disability
46 determined, at the following maximum or minimum benefit
47 rates: Sixty-six and two-thirds percent of the average weekly
48 earnings, wherever earned, of the injured employee, at the
49 date of injury, not to exceed the percentage of the average
50 weekly wage in West Virginia, as follows: On or after July
51 one, one thousand nine hundred sixty-nine, forty-five percent;
52 on or after July one, one thousand nine hundred seventy,
53 fifty percent; on or after July one, one thousand nine hundred
54 seventy-one, fifty-five percent; on or after July one, one
55 thousand nine hundred seventy-three, sixty percent.

56 The minimum weekly benefit under this subdivision shall
57 be as provided in subdivision (b) of this section for temporary
58 total disability.

59 (f) If the injury results in the total loss by severance of any
60 of the members named in this subdivision, the percentage of
61 disability shall be determined by the commissioner, with the
62 following table establishing the minimum percentage of dis-
63 ability. In determining the percentage of disability, the
64 commissioner may be guided by but shall not be limited to
65 the disabilities enumerated in the following table, and in no
66 event shall the disability be less than that specified in the
67 following table:

- 68 The loss of a great toe shall be considered a ten percent
69 disability.
- 70 The loss of a great toe (one phalanx) shall be considered a
71 five percent disability.
- 72 The loss of other toes shall be considered a four percent
73 disability.
- 74 The loss of other toes (one phalanx) shall be considered a
75 two percent disability.
- 76 The loss of all toes shall be considered a twenty-five percent
77 disability.
- 78 The loss of forepart of foot shall be considered a thirty
79 percent disability.
- 80 The loss of foot shall be considered a thirty-five percent
81 disability.
- 82 The loss of a leg shall be considered a forty-five percent
83 disability.
- 84 The loss of thigh shall be considered a fifty percent disability.
- 85 The loss of thigh at hip joint shall be considered a sixty per-
86 cent disability.
- 87 The loss of a little or fourth finger (one phalanx) shall be
88 considered a three percent disability.
- 89 The loss of little or fourth finger shall be considered a
90 five percent disability.
- 91 The loss of ring or third finger (one phalanx) shall be
92 considered a three percent disability.
- 93 The loss of ring or third finger shall be considered a five
94 percent disability.
- 95 The loss of middle or second finger (one phalanx) shall be
96 considered a three percent disability.
- 97 The loss of middle or second finger shall be considered a
98 seven percent disability.
- 99 The loss of index or first finger (one phalanx) shall be
100 considered a six percent disability.

101 The loss of index or first finger shall be considered a ten
102 percent disability.

103 The loss of thumb (one phalanx) shall be considered a
104 twelve percent disability.

105 The loss of thumb shall be considered a twenty percent
106 disability.

107 The loss of thumb and index finger shall be considered a
108 thirty-two percent disability.

109 The loss of index and middle finger shall be considered a
110 twenty percent disability.

111 The loss of middle and ring finger shall be considered a
112 fifteen percent disability.

113 The loss of ring and little finger shall be considered a ten
114 percent disability.

115 The loss of thumb, index and middle finger shall be
116 considered a forty percent disability.

117 The loss of index, middle and ring finger shall be considered
118 a thirty percent disability.

119 The loss of middle, ring and little finger shall be considered
120 a twenty percent disability.

121 The loss of four fingers shall be considered a thirty-two
122 percent disability.

123 The loss of hand shall be considered a fifty percent
124 disability.

125 The loss of forearm shall be considered a fifty-five percent
126 disability.

127 The loss of arm shall be considered a sixty percent disability.

128 The total and irrecoverable loss of the sight of one eye
129 shall be considered a thirty-three percent disability. For the
130 partial loss of vision in one, or both eyes, the percentage of
131 disability shall be determined by the commissioner, using as
132 a basis the total loss of one eye.

133 The total and irrecoverable loss of the hearing of one ear

134 shall be considered a fifteen percent disability, and the injured
135 employee shall be entitled to compensation for a period of
136 sixty weeks. The total and irrecoverable loss of hearing of
137 both ears shall be considered a forty-five percent disability,
138 and the injured employee shall be entitled to compensation for
139 a period of one hundred eighty weeks.

140 For the partial loss of hearing in one, or both ears, the
141 percentage of disability shall be determined by the commis-
142 sioner, using as a basis the total loss of hearing in both ears.

143 Should a claimant sustain a compensable injury which re-
144 sults in the total loss by severance of any of the bodily mem-
145 bers named in this subdivision, die from sickness or noncom-
146 pensable injury before the commissioner makes the proper
147 award for such injury, the commissioner shall make such
148 award to claimant's dependents as defined in this chapter, if
149 any; such payment to be made in the same installments that
150 would have been paid to claimant if living: *Provided*, That no
151 payment shall be made to any widow of such claimant after
152 her remarriage, and that this liability shall not accrue to the
153 estate of such claimant and shall not be subject to any debts
154 of, or charges against, such estate.

155 (g) Should a claimant to whom has been made a permanent
156 partial award of from one percent to eighty-four percent, both
157 inclusive, die from sickness or noncompensable injury, the
158 unpaid balance of such award shall be paid to claimant's de-
159 pendents as defined in this chapter, if any; such payment to be
160 made in the same installments that would have been paid to
161 claimant if living: *Provided*, That no payment shall be made
162 to any widow of such claimant after her remarriage, and that
163 this liability shall not accrue to the estate of such claimant and
164 shall not be subject to any debts of, or charges against, such
165 estate.

166 (h) For the purpose of the immediately preceding para-
167 graph, a finding of the occupational pneumoconiosis board shall
168 have the force and effect of an award.

169 (i) The award for permanent disabilities intermediate to
170 those fixed by the foregoing schedule and permanent disability
171 of from one percent to eighty-four percent shall be the same

172 proportion and shall be computed and allowed by the com-
173 missioner.

174 (j) The percentage of all permanent disabilities other than
175 those enumerated in subdivision (f) of this section shall be de-
176 termined by the commissioner, and awards made in accordance
177 with the provisions of subdivisions (d) or (e) of this section.
178 Where there has been an injury to a member as distinguished
179 from total loss by severance of that member, the commissioner
180 in determining the percentage of disability may be guided by
181 but shall not be limited to the disabilities enumerated in sub-
182 division (f) of this section.

183 (k) Compensation payable under any subdivision of this
184 section shall not exceed the maximum nor be less than the
185 weekly benefits specified in subdivision (b) of this section.

186 (l) Temporary total disability benefits payable under sub-
187 division (b) of this section shall not be deductible from per-
188 manent partial disability awards payable under subdivision (e)
189 or (f) of this section. Compensation, either total temporary or
190 permanent partial, under this section shall be payable only to
191 the injured employee and the right thereto shall not vest in
192 his or her estate, except that any unpaid compensation which
193 would have been paid or payable to the employee up to the
194 time of his death, if he had lived, shall be paid to the de-
195 pendents of such injured employee if there be such dependents
196 at the time of death.

197 (m) The following permanent disabilities shall be conclu-
198 sively presumed to be total in character:

199 Loss of both eyes or the sight thereof.

200 Loss of both hands or the use thereof.

201 Loss of both feet or the use thereof.

202 Loss of one hand and one foot or the use thereof.

203 In all other cases permanent disability shall be determined
204 by the commissioner in accordance with the facts in the case,
205 and award made in accordance with the provisions of sub-
206 division (d) or (e).

207 (n) A disability which renders the injured employee unable

208 to engage in substantial gainful activity requiring skills or
209 abilities comparable to those of any gainful activity in which
210 he has previously engaged with some regularity and over a
211 substantial period of time shall be considered in determining
212 the issue of total disability.

§23-4-6a. Benefits and mode of payment to employees and dependents for occupational pneumoconiosis; further adjustment of claim for occupational pneumoconiosis.

1 If an employee is found to be permanently disabled due to
2 occupational pneumoconiosis, as defined in section one of
3 this article, the percentage of permanent disability shall be
4 determined by the commissioner in accordance with the facts
5 in the case and with the advice and recommendation of the
6 occupational pneumoconiosis board. Compensation shall be
7 paid therefor in the same manner and at the same rate as is
8 provided for permanent disability under the provisions of
9 subdivisions (d), (e), (g), (h), (i), (j), (k), (m) and (n) of
10 the preceding section of this article.

11 If the employee dies from occupational pneumoconiosis,
12 the benefits shall be as provided for in section ten of
13 this article; as to such benefits sections eleven to fourteen,
14 inclusive, of this article shall apply.

15 In cases of permanent disability or death due to oc-
16 cupational pneumonconiosis, as defined in section one
17 of this article, accompanied by active tuberculosis of
18 the lungs, compensation shall be payable as for disability
19 or death due to occupational pneumoconiosis alone.

20 The provisions of section sixteen, article four and sections
21 one-a, one-b, one-c and one-d, article five of this chapter
22 providing for the further adjustment of claims shall be ap-
23 plicable to the claim of any claimant who receives a permanent
24 partial disability award for occupational pneumoconiosis.

§23-4-8a. Occupational pneumoconiosis board—Composition; term of office; duties; quorum; remuneration.

1 The occupational pneumoconiosis board shall consist of
2 five licensed physicians, who shall be appointed by the com-
3 missioner. No person shall be appointed as a member of

4 such board, or as a consultant thereto, who has not by special
5 study or experience, or both, acquired special knowledge of
6 pulmonary diseases. All members of the occupational pneumo-
7 coniosis board shall be physicians of good professional stand-
8 ing, admitted to practice medicine and surgery in this state,
9 and two of them shall be roentgenologists. One of the
10 board shall be designated annually as chairman by the com-
11 missioner. The term of office of each member of such board
12 shall be six years. The three members of the existing board,
13 as redesignated herein, in office on the effective date of this
14 act shall continue to serve until their terms expire and until
15 their successors have been appointed and have qualified. Any
16 member of the board may be appointed to any number of
17 terms. The function of the board shall be to determine all
18 medical questions relating to cases of compensation for occu-
19 pational pneumoconiosis under the direction and supervision
20 of the commissioner. Any three members of the board shall
21 constitute a quorum for the transaction of its business, if at
22 least one of the members present is a roentgenologist. The
23 commissioner, from time to time, shall fix the per diem salary,
24 computed on the basis of actual time devoted to the discharge
25 of their duties, to be paid each member of such board, and they
26 shall also be entitled to reasonable and necessary traveling and
27 other expenses incurred while actually engaged in the per-
28 formance of their duties.

§23-4-9. Physical and vocational rehabilitation.

1 In cases where an employee has sustained a permanent dis-
2 ability, or has sustained injuries likely to result in permanent
3 disability, and such fact has been determined by the com-
4 missioner, and the employee can be physically and vocation-
5 ally rehabilitated and returned to remunerative employment
6 by vocational training, by the use of crutches, artificial limbs,
7 or other approved mechanical appliances, or by medicines,
8 medical, surgical, dental or hospital treatment, the commis-
9 sioner shall forthwith, after due notice to the employer, ex-
10 pend such an amount as may be necessary for the aforesaid
11 purposes: *Provided*, That such expenditure for vocational re-
12 habilitation shall not exceed two thousand dollars for any one
13 injured employee: *Provided, however*, That no payment shall
14 be made for such purposes as provided by this section unless

15 authorized by the commissioner prior to the rendering of such
16 physical or vocational rehabilitation.

17 In every case in which the commissioner shall order physical
18 or vocational rehabilitation of a claimant as provided herein,
19 the claimant shall, during the time he is receiving any voca-
20 tional rehabilitation or rehabilitative treatment that renders
21 him totally disabled during the period thereof, be compensated
22 on a temporary total disability basis for such period, unless
23 he is being paid compensation under an award granted prior
24 to the time such rehabilitation is authorized by the commis-
25 sioner.

§23-4-10. Classification of death benefits; "dependent" defined.

1 In case a personal injury, other than occupational pneumo-
2 coniosis or other occupational disease, suffered by an em-
3 ployee in the course of and resulting from his employment,
4 causes death and disability is continuous from date of such
5 injury until date of death, or if death results from occupa-
6 tional pneumoconiosis or from any other occupational dis-
7 ease, the benefits shall be in the amounts and to the per-
8 sons as follows:

9 (a) If there be no dependents, the disbursements shall be
10 limited to the expense provided for in sections three and four
11 of this article.

12 (b) If there be dependents as defined in subdivision (d)
13 of this section, such dependents shall be paid for as long as
14 their dependency shall continue in the same amount as was
15 paid or would have been paid the deceased employee for total
16 disability had he lived. The order of preference of payment and
17 length of dependence shall be as follows:

18 (1) A dependent widow or invalid widower until death or
19 remarriage of such widow or widower.

20 (2) A dependent child or children until each such child
21 shall reach eighteen years of age or where such child after
22 reaching eighteen years of age continues as a full-time student
23 in an accredited high school, college, university, business or
24 trade school, until such child reaches the age of twenty-three
25 years or if an invalid child to continue as long as such child

26 remains an invalid. The commissioner has the discretion to
27 distribute the payments to the children in more than one
28 household as he may deem just and equitable.

29 (3) A wholly dependent father or mother until death.

30 (4) Any other wholly dependent person for a period of
31 six years after the death of the deceased employee.

32 (c) If the deceased employee leaves no wholly dependent
33 person, but there are partially dependent persons at the time
34 of death, the payment shall be fifty dollars a month, to con-
35 tinue for such portion of the period of six years after the
36 death, as the commissioner may determine, but no such par-
37 tially dependent person shall receive compensation payments
38 as a result of the death of more than one employee.

39 Compensation under subdivisions (b) and (c) hereof shall,
40 except as may be specifically provided to the contrary therein,
41 cease upon the death of the dependent, and the right thereto
42 shall not vest in his or her estate.

43 (d) Dependent, as used in this chapter, shall mean a
44 widow, invalid widower, child under eighteen years of age,
45 or under twenty-three years of age when a full-time student
46 as provided herein, invalid child or posthumous child, who,
47 at the time of the injury causing death, is dependent in whole
48 or in part for his or her support upon the earnings of the
49 employee, stepchild under eighteen years of age, or under
50 twenty-three years of age when a full-time student as provided
51 herein, child under eighteen years of age legally adopted
52 prior to the injury causing death, or under twenty-three years
53 of age when a full-time student as provided herein, father,
54 mother, grandfather or grandmother, who at the time of the
55 injury causing death, is dependent in whole or in part for his
56 or her support upon the earnings of the employee; and invalid
57 brother or sister wholly dependent for his or her support upon
58 the earnings of the employee at the time of the injury causing
59 death.

**§23-4-16. Commissioner's jurisdiction over case continuous; modi-
fication of finding or order; time limitation on
awards; reimbursement of claimant for expenses.**

1 The power and jurisdiction of the commissioner over each

2 case shall be continuing and he may from time to time, after
3 due notice to the employer, make such modifications or changes
4 with respect to former findings or orders as may be justified:
5 *Provided*, That no further award may be made in fatal cases
6 arising after March seventh, one thousand nine hundred
7 twenty-nine, except within two years after the death of the
8 employee, or in case of nonfatal injuries, on and after March
9 seventh, one thousand nine hundred twenty-nine, except within
10 three years after payments for temporary disability shall have
11 ceased or not more than two times within five years after the
12 commissioner shall have made the last payment in the original
13 award or any subsequent increase thereto in any permanent
14 disability case: *Provided, however*, That no such modification
15 or change may be made in any case in which no award has been
16 made, except within three years after the date of injury: *Pro-*
17 *vided further*, That a further award may be made for medical
18 benefits only at any time. In any case in which an injured
19 employee shall make application for a further adjustment
20 of his claim, if such application be in writing and filed within
21 the applicable time limit as prescribed herein, the commissioner
22 shall pass upon and determine the merits of such application
23 within thirty days after the filing thereof.

24 If such application is based on a report of any medical
25 examination made of the claimant and submitted by the
26 claimant to the commissioner in support of his application,
27 and the claim is opened for further consideration and additional
28 award is later made, the claimant shall be reimbursed for the
29 expenses of such examination. Such reimbursement shall be
30 made by the commissioner to the claimant, in addition to all
31 other benefits awarded, upon due proof of the amount thereof
32 being furnished the commissioner by the claimant, but shall in
33 no case exceed the sum of one hundred dollars.

ARTICLE 4A. DISABLED WORKMEN'S RELIEF FUND.

§23-4A-1. Disabled workmen's relief fund created.

§23-4A-2. To whom benefits paid.

§23-4A-3. Computation of benefits.

§23-4A-1. Disabled workmen's relief fund created.

1 For the relief of persons who are receiving workmen's
2 compensation benefits by virtue of and under the laws of

3 this state in amounts less than the minimum amount payable
4 under the laws in effect on July one, one thousand nine
5 hundred seventy-three, there is hereby created a separate
6 fund to be known as the "Disabled Workmen's Relief Fund,"
7 which fund shall consist of such sums as are from time to time
8 made available to carry out the objects and purposes of
9 this article. Said fund shall be in the custody of the state
10 treasurer and disbursements therefrom shall be made upon
11 requisition signed by the commissioner to those persons
12 entitled to participate therein and in such amounts to each
13 participant as is provided in section three of this article.

§23-4A-2. To whom benefits paid.

1 In order to participate in the disabled workmen's relief
2 fund, an individual must be receiving workmen's compensa-
3 tion benefits by virtue of and under the laws of this state
4 in amounts less than the minimum amount payable under
5 the laws in effect on July one, one thousand nine hundred
6 seventy-three, and be receiving such benefits under a perma-
7 nent total disability award or be receiving such benefits
8 because of the death of an employee.

§23-4A-3. Computation of benefits.

1 Each individual entitled to participate in the disabled
2 workmen's relief fund shall be entitled to receive payments
3 without application (except that an application shall be re-
4 quired under section five of this article) from said fund of
5 an amount equal to the difference between the minimum
6 amount payable under the rates in effect as of July one, one
7 thousand nine hundred seventy-three that is, the express
8 and specific monetary amounts set forth in sections six and
9 ten of article four of this chapter as of July one, one
10 thousand nine hundred seventy-three, and the amount said
11 individual is in fact receiving by virtue of and under the
12 laws of this state. The first such payment shall be made
13 concurrently with the payment to him of workmen's com-
14 pensation on August one, one thousand nine hundred seventy-
15 four and subsequent payments shall be made during the
16 period thereafter in which such participant shall be entitled
17 to workmen's compensation benefits by virtue of and under
18 the laws of this state.

CHAPTER 146

(H. B. 633—By Mr. Queen and Mr. Jeter)

[Passed January 17, 1974; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section eighteen, article four, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to mode of payment of workmen's compensation benefits and the time between payments.

Be it enacted by the Legislature of West Virginia:

That section eighteen, article four, 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 4. DISABILITY AND DEATH BENEFITS.

§23-4-18. Mode of paying benefits generally; exemptions of compensation from legal process.

1 Except by this section provided compensation shall be
2 paid only to such employees or their dependents, and shall
3 be exempt from all claims of creditors and from any attach-
4 ment, execution or assignment other than compensation to
5 counsel for legal services, under the provisions of, and
6 subject to the limitations contained in section five, article
7 five of this chapter. Payments may be made in such periodical
8 installments as may seem best to the commissioner in each
9 case but in no event less frequently than semimonthly for any
10 temporary award and monthly for any permanent award.
11 In all cases where compensation is awarded or increased, the
12 amount thereof shall be calculated and paid from the date of
13 disability.

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CHAPTER 147

(H. B. 1279—By Mrs. Smirl and Mr. Polan)

[Passed March 9, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three and four, chapter one

hundred seventy-eight, acts of Legislature, regular session, one thousand nine hundred fifty-nine, as last amended and reenacted by chapter two hundred, acts of the Legislature, regular session, one thousand nine hundred sixty-three, relating to the Cabell County youth center; medium security school for the detention of youths pending hearing before the juvenile court and for juveniles adjudged delinquent; commingling of juveniles; centralized foster home for homeless, abandoned, dependent and neglected children; time when petition for release may be filed; use of youth center facilities for a diagnostic clinic and treatment center.

Be it enacted by the Legislature of West Virginia:

That sections three and four, chapter one hundred seventy-eight, acts of the Legislature, regular session, one thousand nine hundred fifty-nine, as last amended by chapter two hundred, acts of the Legislature, regular session, one thousand nine hundred sixty-three, be amended and reenacted to read as follows:

CABELL COUNTY YOUTH CENTER.

- §3. Medium security school.
- §4. Foster homes division.

§3. Medium security school.

1 The medium security school of the Cabell County youth center shall be maintained at the Cabell County farm at Ona, West
 2 Virginia, by the board of supervisors as one of the divisions of
 3 the Cabell County youth center. It may be used for the detention
 4 of juveniles pending hearing before the juvenile court of
 5 Cabell County within the discretion of the judge of said court;
 6 and it shall be used for the training of juveniles who have been
 7 adjudged delinquent and committed thereto by said court. It
 8 shall not be deemed a penal institution, a jail or a prison. It
 9 shall be conducted and respected as comparable to a "school
 10 away from home." There shall be maintained at the school, or
 11 in close proximity thereto, by the board of supervisors, sufficient
 12 classrooms and equipment for the proper education and
 13 training during the regular nine months school period, of all
 14 juveniles residing in said medium security school. The board of
 15 education of Cabell County, at its own expense, shall furnish
 16 sufficient teachers of proper qualifications to adequately
 17

18 staff said classrooms and to furnish proper educational train-
19 ing for all those committed to said school, to the end that
20 those so committed shall be allowed and required to progress
21 in education and in spiritual and moral development in prep-
22 aration for a return to a normal life.

23 The board of supervisors may appoint an assistant director
24 in charge of the medium security school who shall be answer-
25 able to the executive director and to the board. The assistant
26 director in charge of the medium security school shall be pro-
27 vided with such other personnel as to the board may seem
28 necessary to assist in maintaining the school, securing the cus-
29 tody of the juveniles therein, and carrying out general super-
30 vision of the school to the end that order and discipline shall
31 be maintained. Compensation to be paid the assistant director
32 and all personnel of said school shall be fixed by the board
33 and paid as hereinafter provided.

34 The board of supervisors, shall, within its discretion, have
35 the power and authority to accept juveniles upon commitment
36 by the juvenile courts of other counties in West Virginia, and
37 to make arrangements with the county court of such counties
38 for the payment of the fair per capita, per diem cost for each
39 juvenile so committed, and which payments shall be credited
40 to the fiscal account of the Cabell County youth center.

41 The procedure for the release of juveniles committed to the
42 medium security school shall be as follows:

43 After a juvenile has been committed to the school he shall
44 be advised by the executive director of his right to apply in
45 writing for release. He shall be afforded and may sign a peti-
46 tion in which he shall state the reasons he thinks are grounds
47 for his release. The executive director shall then call a meeting
48 with the assistant director, the teachers and all other paid
49 employees who have had personal contract with and supervi-
50 sion of said juvenile and said staff shall then review the peti-
51 tion and shall make such recommendations as they deem prop-
52 er to the next meeting of the board of supervisors. After re-
53 view of the juvenile's petition and record the board may take
54 such action as to it may seem proper. If the board be of opin-
55 ion to recommend the release of the juvenile, it shall then sub-
56 mit such recommendation to the juvenile court over the sig-

57 nature of the executive director, the president of the board and
58 the teacher that last had the juvenile in school.

59 Within a reasonable time thereafter the juvenile court shall
60 review the case history of the juvenile and after considering
61 the recommendations of the staff and the board, shall enter
62 such order as to the court may seem to be in the best interest
63 of the juvenile.

§4. Foster homes division.

1 The foster homes division of the Cabell County youth
2 center shall be erected and maintained at the Cabell County
3 farm at Ona, West Virginia, as homes for Cabell County
4 children who are orphans, homeless, neglected or deserted,
5 or who, if permitted to run ungoverned or undisciplined, are
6 apt to become delinquent, and which said children are within
7 the age prescribed by the statutes of this state for juveniles.

8 The board of supervisors of the Cabell County youth
9 center shall cause to be erected and maintained at said farm
10 sufficient cottages and of capacity to comfortably house in
11 each cottage not more than twenty children. Each cottage
12 when children are housed therein shall have as "cottage
13 parents" a husband and wife team in charge, both of whom
14 shall be persons of good moral character, experienced in
15 child care, having proper understanding of children and
16 temperamentally fit to care and rear them. Each cottage
17 shall be conducted comparable to a well-ordered home, with
18 proper supervision and understanding discipline maintained
19 by the "cottage parents." The children therein housed shall
20 be treated as members of a well-ordered family where there
21 is proper intellectual, physical, spiritual and exemplary moral
22 training. Each child shall be given a home therein so long
23 as its need therefor exists and it remains a juvenile or until
24 a satisfactory permanent home has been found or it is placed
25 for adoption.

26 A part of the facilities of the foster homes division may
27 be utilized for a diagnostic clinic and treatment center.

28 The foster homes division shall be made available for
29 any and all Cabell County children now or hereafter to be
30 under the control of the state or county department of

31 welfare, all Cabell County children cared for by any of the
32 other welfare agencies, youth or child centers, private homes
33 or institutions within the county.

34 Both the West Virginia and Cabell County departments of
35 welfare, at the earliest practicable time after the facilities
36 hereinabove provided have been made ready to receive said
37 children, shall appear before the juvenile court of Cabell
38 County and bring to the court's attention the name of each
39 and every child then in Cabell County and in the custody of
40 both of the said departments, the whereabouts of each child,
41 and all the facts and circumstances which to the department
42 or the court may appear pertinent with relation to each
43 child, and all of which the court shall consider, and having
44 so considered shall then enter an order committing said
45 child to the foster homes division, or releasing it to the
46 department as to the court may seem just and proper, and
47 the court may from time to time make such other and further
48 orders for the disposition of said child or children as may
49 be just or proper: *Provided*, That the above procedure shall
50 apply only to children of school age. All children of pre-
51 school age may be maintained at said foster homes division
52 or elsewhere, within the sound discretion of the departments
53 of welfare, but wherein children in preschool age are placed
54 in said foster division, then such placement shall be by
55 order of the juvenile court of Cabell County in the same
56 manner as hereinabove provided for all other children.

57 For the support and maintenance of the children placed
58 in said foster homes division by the departments of welfare,
59 they shall contribute the standard amount paid by the depart-
60 ments to private foster homes in other counties of the state.
61 The money so contributed shall be paid to the county court
62 of Cabell County and by that court set aside for the use of
63 said foster homes division.

64 The "cottage parents" and all other personnel required
65 for the efficient operation of said cottages in which children
66 are maintained shall be carefully selected by the West Virginia
67 department of welfare. Said "cottage parents" under the
68 guidance and supervision of the West Virginia department
69 of welfare, shall be responsible for the supervision and

70 training of all the children committed to their care; for
71 keeping them in school during school terms and hours; for
72 teaching them to do a reasonable amount of work, and for
73 making each cottage as nearly self-supporting as possible.
74 The husband member of the "cottage parents" shall lead
75 and teach the older male children under his care, at
76 reasonable times and seasons, in agricultural practices and
77 methods, which may include gardening, truck farming, fruit
78 growing, poultry raising, dairying, and like occupations, and
79 upon such land as may be assigned by the board of super-
80 visors for such purposes. The wife member of the "cottage
81 parents" shall lead and teach the older female children
82 under her care, at reasonable times, in the art and practices
83 of homemaking which may include cooking, laundering,
84 cleaning, and the like.

85 The children residing in said foster homes shall be re-
86 quired, when within school age, and when their health and
87 physical condition permits, to attend the public schools.
88 The board of education of said county shall make provisions
89 for them in the public school at Ona, West Virginia, or if
90 any one or more of them be in a grade higher than is taught
91 at Ona, then provision therefor shall be made in a school
92 wherein such grade is taught.

93 Complete supervision of the foster homes division, to-
94 gether with the employment and discharge of any and all
95 personnel including "cottage parents" shall be under the
96 West Virginia department of welfare. The salary of each
97 person so employed shall be reasonable and be determined
98 by the department, and when approved by the board of
99 supervisors shall be certified for payment as is provided in
100 section six hereof. In advance of the submission by the
101 board of supervisors of the estimate of all monetary needs
102 of the Cabell County youth center to the county court as
103 provided in section six hereof, the West Virginia department
104 of welfare shall furnish to the board of supervisors an
105 estimate of all reasonable monetary needs of the foster
106 homes division for the next fiscal year, said estimate shall
107 cover all anticipated costs for services for all employees
108 and personnel employed in the reasonable operation of said
109 foster homes, and all other reasonable expenses incident

110 thereto, and which said estimate shall be certified to the
111 board of supervisors and by that board included in the
112 estimate rendered to the county court of Cabell County as
113 required by section six, paragraph one, hereof.

CHAPTER 148

(Com. Sub. for H. B. 897—By Mr. Kincaid and Mrs. Smirl)

[Passed March 9, 1974; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact chapter twenty-six, acts of the Legislature, regular session, one thousand nine hundred twenty-five (municipal charters); as amended by chapter one hundred twenty-two, acts of the Legislature, regular session, one thousand nine hundred thirty-three, and by chapter one hundred thirty-two, acts of the Legislature, regular session, one thousand nine hundred seventy-two, all relating to the board of park commissioners of the City of Huntington; definitions; park district defined; board generally, composition, terms, political affiliation, conflicts; compensation; expenses; vacancies; oaths; elections; duties; bonds; meetings; board a public corporate body; perpetual existence; seal; powers; financing; law enforcement; title to property.

Be it enacted by the Legislature of West Virginia:

That chapter twenty-six, acts of the Legislature, regular session, one thousand nine hundred twenty-five (municipal charters), as amended by chapter one hundred twenty two, acts of the Legislature, regular session, one thousand nine hundred thirty-three, and by chapter one hundred thirty-two, acts of the Legislature, regular session, one thousand nine hundred seventy-two, be amended and reenacted, all to read as follows:

HUNTINGTON PARK COMMISSION.

- §1. Definitions.
- §2. Board of park commissioners; composition; terms of office; political affiliation; no commissioner may hold another elected public office; compensation; expenses; no commissioner may be personally interested in contracts or property controlled by board.
- §3. Vacancies in office of park commissioners.

- §4. Oath of park commissioners; election of officers; election of other officers; duties of officers; bond of secretary; secretary pro tempore.
- §5. Meetings; quorum; parliamentary authority; office.
- §6. Board a public corporate body; perpetual existence; seal; powers.
- §7. Financing and financial powers.
- §8. Law enforcement.
- §9. Title to property.

§1. Definitions.

1 Unless the context clearly indicates otherwise:

2 "Board" means the board of park commissioners of the
3 city of Huntington.

4 "City" means the city of Huntington, in the counties of
5 Cabell and Wayne.

6 "Commissioners" means the commissioners of the board of
7 park commissioners of the city of Huntington.

8 "Control" means the right and authority to manage, direct,
9 order and otherwise exercise dominion over.

10 "Park district" means the area within the corporate boun-
11 daries of the city of Huntington, as the boundaries are, or
12 may be in the future, established.

13 "Park system" means public parks, arboretums, arenas,
14 athletic fields and facilities, cemeteries, concession stands,
15 gardens, golf courses, museums, parkways and boulevards,
16 playgrounds, ponds and lakes, restaurants and lodges, skating
17 rinks, skiing facilities, stadiums, theaters, zoos and other
18 public park and recreational facilities.

19 "Public office" means any elective office, whether federal,
20 state or municipal, where the office holder is elected by the
21 public at large and is obligated to perform duties as an
22 office holder.

§2. Board of park commissioners; composition; terms of office; political affiliation; no commissioner may hold another elected public office; compensation; expenses; no commissioner may be personally interested in contracts or property controlled by board.

1 (a) The purpose of the board of park commissioners of
2 the city of Huntington, as heretofore created and established

3 by the acts hereby amended and reenacted, shall be to establish,
4 own, develop and operate a park system for the benefit,
5 health, safety, welfare, pleasure and relaxation of the in-
6 habitants of the park district.

7 (b) The board shall consist of six commissioners who shall
8 be elected and continue in office as follows:

9 (1) Commissioners shall be nominated and elected in the
10 general election for state officers on the first Tuesday after
11 the first Monday in November, and in the manner prescribed
12 by the general law for the nomination and election of district
13 officers and shall be elected for terms of six years. Two of
14 said commissioners shall be elected every two years to fill
15 staggered terms of office due to expire as heretofore estab-
16 lished by the acts hereby amended and reenacted. Each
17 commissioner's term shall commence on the first day of
18 January following his election and continue until his successor
19 is elected and qualified.

20 (2) The commissioners in office upon the effective date
21 of this act under the authority of the acts hereby amended
22 and reenacted, shall continue in office for the term for which
23 they were elected.

24 (c) Not more than three commissioners shall be members
25 of the same political party.

26 (d) No commissioner shall hold any other elected public
27 office.

28 (e) Commissioners shall receive no compensation for their
29 services as commissioners, but they shall be entitled to
30 reimbursement for all reasonable and necessary expenses
31 actually incurred in the performance of their duties as com-
32 missioners.

33 (f) Commissioners shall have no personal financial interest,
34 directly or indirectly, in any contract entered into by the
35 board, or hold any remunerative position in connection with
36 the establishment, construction, improvement, extension, de-
37 velopment, maintenance or operation of any of the property
38 under their control as commissioners.

§3. Vacancies in office of park commissioners.

1 Any vacancy which may occur in the office of park com-
2 missioner, by death, resignation, refusal to serve, or otherwise,
3 shall be filled by the board of park commissioners at its first
4 regular meeting thereafter, by appointment of a suitable per-
5 son, who is a member of the same political party as the board
6 member whose death, resignation, refusal to serve or otherwise
7 shall have caused the vacancy, and the person so appointed
8 shall hold office until the next election for park commissioners,
9 when a person shall be elected for the remainder of the unex-
10 pired term of park commissioner.

§4. Oath of park commissioners; election of officers; election of other officers; duties of officers; bond of secretary; secretary pro tempore.

1 (a) After appointment or election, and before entering upon
2 his duties as commissioner, each new commissioner shall take
3 the following oath as administered by the clerk of the city of
4 Huntington:

5 "I _____do solemnly swear that I will
6 faithfully perform the duties as a member of the board of park
7 commissioners of the city of Huntington during the term for
8 which I was elected, to the best of my ability according to
9 law."

10 (b) At the board's first meeting and every year thereafter,
11 the board shall elect one of its members as president, and
12 another member as vice president. The board shall elect a
13 secretary who need not be a member of the board, as well as
14 elect a member of the board who shall serve as treasurer. The
15 board shall have the power to appoint from among its mem-
16 bers such other officers as it deems necessary and to delegate
17 such duties and authority to these other officers as is consis-
18 tent with carrying out the purpose of this charter. Any officer
19 may be removed from office, although not relieved of his duties
20 as a commissioner, by a vote of the majority of commissioners
21 present and voting.

22 (c) The officers of the board shall have the following speci-
23 fied duties and any duty which is reasonably inferred there-

24 from and which is consistent with carrying out the purposes
25 of this charter.

26 (1) President — The president shall perform such duties as
27 ordinarily devolve upon the presiding officer of a deliberative
28 body, except that he shall have a vote upon each and every
29 question, as every other commissioner, but he shall have only
30 one vote on each question. Additionally, the president shall:
31 (a) Act as chief administrative officer and legal representative
32 of the board; (b) represent and speak for the board to other
33 organizations and to the public; (c) appoint committees and
34 delegate duties; (d) sign letters or documents necessary to
35 carry out the will of the board.

36 (2) Vice President — The vice president shall assume the
37 duties of the president in case of the absence or incapacity of
38 the president and shall become president on the death, resig-
39 nation or permanent incapacity of the president as determined
40 by the board.

41 (3) Secretary — The Secretary shall be the chief recording
42 and corresponding officer and the custodian of the records of
43 the board. The duties of the secretary shall be to: (a) Take
44 careful and authentic notes of the proceedings of the meet-
45 ings as a basis for preparing the minutes; (b) prepare and certi-
46 fy the correctness of the minutes and enter them in the official
47 minute book; (c) read or circulate the minutes to the board for
48 correction and approval; (d) enter any corrections approved by
49 the commissioners in the minute book and initial them; (e) re-
50 cord and attest by his signature the approved minutes as the
51 official minutes of the board, with the date of approval; (f)
52 provide the presiding officer of the assembly with the exact
53 wording of a pending motion or of one previously acted on;
54 (g) prepare a list of members and call the roll when directed
55 by the presiding officer; (h) read all papers, documents, or
56 communications as directed by the presiding officer; (i) bring
57 to each meeting the minute book, a copy of ordinances, rules,
58 and policies, a list of the members, a list of standing and
59 special committees, and a copy of the parliamentary authority
60 adopted by the organization; (j) search the minutes for informa-
61 tion requested by officers or members; (k) assist the presiding
62 officer before each meeting in preparing a detailed agenda;

63 (l) preserve all records, reports, and official documents of the
64 board except those specifically assigned to the custody of oth-
65 ers as well as preserve all papers containing evidence of title,
66 contracts and obligations; (m) prepare and send required no-
67 tices of meetings and proposals; (n) provide the chairman of
68 each special committee with a list of his committee members,
69 a copy of the motion referring the subject to the committee,
70 and instructions and other documents that may be useful; (o)
71 provide the chairman of each standing committee with a copy
72 of all proposals referred to it, instructions, or material that
73 may be useful; (p) authenticate official documents by his sig-
74 nature; (q) carry on the official correspondence of the board
75 as directed, except correspondence assigned to other officers;
76 (r) make available the minute book for public inspection as a
77 public record; (s) codify and preserve all ordinances enacted
78 by the board.

79 For this service the secretary, who is not a commissioner,
80 may receive such compensation as the board may allow. Be-
81 fore entering upon the duties of his office, the secretary shall
82 enter into a bond with one or more sureties deemed sufficient
83 by the board and approved by the board, conditioned upon the
84 faithful performance of his duties, the bond to be payable to
85 the board of park commissioners of the city of Huntington, in
86 such penal sum as the board determines, which bond shall be
87 filed with the board for safekeeping. In the secretary's absence,
88 the board may appoint a secretary pro tempore.

89 (4) Treasurer — The treasurer shall be responsible for the
90 collection, safekeeping, investing and expenditure of all funds
91 and assets of the board, and for keeping an accurate financial
92 record thereof which record shall be available for public in-
93 spection. Before entering upon the duties of his office, the
94 treasurer shall enter into a bond with one or more sureties
95 deemed sufficient by the board, and approved by the board,
96 conditioned upon the faithful discharge of his duties and the
97 accounting for and paying over, as may be required, all moneys
98 which may come into his possession by virtue of his office.
99 Such bond shall be in such penal sum as the board may require,
100 payable to the board of park commissioners of the city of
101 Huntington, and filed with the board for safekeeping.

§5. Meetings; quorum; parliamentary authority; office.

1 (a) The commissioners shall select a regular time and
2 place for meetings of the board which meetings shall be open
3 to the public. Not less than four members shall constitute a
4 quorum to transact business. Special meetings, also open to
5 the public, may be called by the president, or at the request
6 of two members, by the secretary. The concurrence of four
7 members of the board shall be required to decide all questions
8 involving the expenditure of money.

9 (b) All meetings of the board shall be conducted under
10 the rules of parliamentary procedure as established by the
11 Sturgis Standard Code of Parliamentary Procedure.

12 (c) The board shall have and maintain an office in a
13 location of its own choosing in facilities presently owned by
14 the board and which office shall be open to the public during
15 normal business hours.

§6. Board a public corporate body; perpetual existence; seal; powers.

1 The board of park commissioners of the city of Huntington
2 shall be a public corporate body, although not a municipal
3 corporation, and shall have perpetual existence and a com-
4 mon seal. The board shall have powers to:

5 (1) Purchase, hold, own, sell, convey or lease or take
6 lease of real or personal property;

7 (2) Receive any gift, grant, donation, bequest, devise or
8 trust funds;

9 (3) Sue and be sued;

10 (4) Contract and be contracted with;

11 (5) Do any and all things and acts which may be neces-
12 sary, appropriate, convenient or incidental to carry out and
13 effectuate the purposes and provisions of this charter;

14 (6) Retain complete and exclusive control and manage-
15 ment of all of the properties owned by the board and dispose
16 of the same as in the board's opinion will best serve the
17 purposes of this charter and the interests of the public;

18 (7) Acquire in the board's name by purchase, lease, or
19 by exercise of the power of eminent domain, or otherwise,
20 such lands, structures or bodies of water, located anywhere
21 within the state of West Virginia, as the board shall determine
22 to be necessary, appropriate, convenient or incidental to the
23 establishment, construction, improvement, extension, develop-
24 ment, maintenance or operation of a park system;

25 (8) Establish, construct, improve, extend, develop, main-
26 tain and operate a park system;

27 (9) Employ such persons as, in its opinion, may be
28 necessary for the establishment, construction, improvement,
29 extension, development, maintenance, operation or manage-
30 ment of the property under its control, at such wages, salaries
31 or fees as it shall deem proper, and the board shall have
32 full control of all employees;

33 (10) Promulgate those ordinances, rules and regulations
34 necessary to maintain the property belonging to the board as
35 places of beauty, education and recreation or necessary to
36 promote the health, property, lives, decency, morality and
37 good order of the independent park district, its inhabitants
38 and members of the general public making use of such
39 property owned or controlled by the board, or necessary to
40 regulate the use of or driving upon the property owned or
41 controlled by the board;

42 (11) Abate, or cause to be abated, all nuisances affecting
43 the board's property or persons thereupon;

44 (12) Regulate or prohibit the placing of signs, billboards,
45 posters and advertisements upon the board's property, or
46 adjacent thereto;

47 (13) Keep the board's property in good order and free
48 from obstruction for the use and benefit of the public;

49 (14) Construct, improve, maintain, repair, operate, curb
50 or recurb, pave or repave, grade or regrade, surface or re-
51 surface roads, bridges, sewers, culverts, sidewalks, public ways,
52 easements and other public works upon lands controlled or
53 owned by the board;

54 (15) Enter into contracts, agreements, leases and other

55 legal obligations extending beyond a period of one fiscal
56 year; provided that the contract, agreement, lease or other legal
57 obligation does not require the expenditure of tax revenues;

58 (16) Enter into intergovernmental agreements as any
59 municipal corporation would be so entitled to enter into accord-
60 ing to law and under such conditions as are required by law
61 of municipal corporations before they enter intergovernmental
62 agreements; provided, every such intergovernmental agreement
63 shall, prior to and as a condition precedent to its becoming
64 effective, be submitted to the attorney general of the state of
65 West Virginia who shall determine whether the agreement
66 is in proper form and is compatible with the laws of this
67 state;

68 (17) Provide by contract with the city of Huntington for
69 the joint construction of sewers and other public works upon
70 property owned or controlled by the board, to be paid
71 for by joint funds;

72 (18) Spend moneys of the board to effectuate the purposes
73 set forth in this charter.

§7. **Financing and financial powers.**

1 The board shall have the following powers to:

2 (1) Make reasonable charges to the public for services of-
3 fered or goods sold by the board or for the privilege of using
4 any of the recreational or other facilities provided in parks
5 or upon other lands owned or controlled by the board.

6 (2) Annually levy on each one hundred dollars of the as-
7 sessed valuation of the property taxable in said park district,
8 according to the last assessment thereof for state and county
9 purposes, as follows:

10 On Class 1 property, one and one-half cents; on Class II
11 property, three cents; on Class IV property, six cents; except
12 that the board may levy a lesser amount, in which case the
13 above levies shall be reduced proportionately. These levies
14 shall be made at the time and in the manner provided by arti-
15 cle eight, chapter eleven of the code of West Virginia, one
16 thousand nine hundred thirty-one, as amended; except that

17 the levies shall be included in the maximum rates for the city
18 of Huntington as established by law.

19 After the board has made the levy, it shall certify to the
20 finance director of the city of Huntington the amount of the
21 said levy, and the finance director shall thereupon extend the
22 levy upon the tax tickets, and all levies made by the board shall
23 be collected by the finance director who shall occupy a fidu-
24 ciary relationship with the board, and then such levy funds
25 shall be paid to the board upon written order of the board
26 signed by the president of the board and countersigned by the
27 secretary of the board.

28 (3) Assess the cost of improvements to or construction of
29 streets, sidewalks, sewers, curbs, alleys, public ways or ease-
30 ments, or portions thereof, upon the abutting property owners
31 whose property lies within the park district. Such assessments
32 shall require approval of a majority of the commissioners pre-
33 sent and voting, and shall be commenced and conducted in
34 such manner as is prescribed by article eighteen, chapter eight
35 of the code of West Virginia, one thousand nine hundred
36 thirty-one, as amended.

37 (4) The city of Huntington and the counties of Cabell and
38 Wayne are hereby empowered and authorized to issue, in the
39 manner prescribed by law, revenue bonds or general obli-
40 gation bonds, for the purpose of raising funds to establish,
41 construct, improve, extend, develop, maintain or operate, a
42 system of public parks and recreational facilities for the city
43 or counties, or to refund any bonds of the city or counties,
44 the proceeds of which were expended in the establishing, con-
45 structing, improving, extending, developing, maintaining or
46 operating of such public park and recreation system or any
47 part thereof. Any bonds issued for any of the purposes stated
48 in this section shall contain in the title or subtitle thereto the
49 words "public park and recreation bonds," in order to identify
50 the same, and shall be of such form, denomination and matur-
51 ity and shall bear such rate of interest as shall be fixed by
52 ordinance of the governing body of the city or counties. The
53 governing body may provide for the issuance of bonds for
54 other lawful purposes of the city or counties in the same ordi-
55 nance in which provision shall be made for the issuance of

56 bonds under the provisions of this section. The board shall
57 pay all of the costs and expenses of any election which shall
58 be held to authorize the issuance of public park and recreation
59 bonds only. The costs and expenses of holding an election to
60 authorize the issuance of public park and recreation bonds
61 and bonds for other city or county purposes shall be paid by
62 the board and the city or counties respectively, in the propor-
63 tion that the public park and recreation bonds bear to the total
64 amount of bonds authorized.

65 Whenever the governing body of the city or counties and
66 the requisite majority of the legal votes cast at the election
67 thereon shall authorize in the manner prescribed by law, the
68 issuance of bonds for the purpose of establishing, constructing,
69 improving, extending, developing, maintaining or operating, or
70 any combination of the foregoing, a system of public parks and
71 recreational facilities for the city or counties, or for refunding
72 any outstanding bonds, the proceeds of which were applied to
73 any of said purposes, said bonds shall be issued and delivered
74 to the board to be by it sold in the manner prescribed by law,
75 and the proceeds thereof shall be paid into the treasury of the
76 board, and the same shall be applied and utilized by the board
77 for the purposes prescribed by the ordinance authorizing the
78 issuance of such bonds. In any ordinance for the issuance of
79 bonds for such purposes, it shall be a sufficient statement of
80 the purposes for creating the debt to specify that the same is
81 for purposes of establishing, constructing, improving, extend-
82 ing, developing, maintaining or operating, or any combination
83 of the foregoing, a public park and recreation system for the
84 city or counties, without specifying the particular establish-
85 ment, construction, improvement, extension, development,
86 maintenance or operation contemplated; but an ordinance for
87 refunding bonds shall designate the issue and the number of
88 bonds which it is proposed to refund.

89 (5) Borrow money which debt shall be paid off in full
90 within the same fiscal year in which the money is borrowed.
91 In no event shall the property owned or controlled by the
92 board be used as collateral or security for such a loan nor
93 shall said property be in any manner encumbered nor shall
94 any form of lien be placed upon said property.

95 (6) Create trusts of such kind as will expedite the efficient
96 management of the property and other assets owned or con-
97 trolled by the board. The trustee, whether individual or cor-
98 porate, in any such trust shall have a fiduciary relationship
99 with the board and may be removed by the board for good
100 cause shown or for a breach of the fiduciary relationship with
101 the board.

§8. Law enforcement.

1 (a) The board is authorized and empowered to employ as
2 many park rangers as the board shall deem proper and neces-
3 sary. Park rangers shall have the power to make arrests for
4 violations of ordinances promulgated by the board upon the
5 property under the jurisdiction of the board. Park rangers
6 may not carry a gun without obtaining a license therefor as re-
7 quired by law.

8 (b) Police officers employed by the city of Huntington,
9 members of the West Virginia department of public safety,
10 sheriff's deputies and constables when acting within their
11 respective counties of Cabell or Wayne, are hereby authorized
12 and empowered to make arrests for violations of ordinances
13 promulgated by the board upon property within the park
14 district which is under the jurisdiction of the board; and all of
15 the foregoing officers of the law, except members of the
16 Huntington police department, are hereby authorized and
17 empowered to make arrests for violations of ordinances pro-
18 mulgated by the board upon property under the jurisdiction
19 of the board which is outside of the park district.

20 (c) For violations of board ordinances committed within
21 the city of Huntington, jurisdiction of all warrants relating
22 thereto to be issued is hereby granted to the municipal judge
23 of the city of Huntington; further, all persons arrested under
24 such ordinances shall be tried by the municipal judge of the
25 city of Huntington. For violations of board ordinances com-
26 mitted outside of the city of Huntington, jurisdiction of all
27 warrants relating thereto to be issued is hereby granted to
28 such courts as have criminal jurisdiction of misdemeanors
29 committed upon property outside the city of Huntington which
30 is owned or controlled by the board.

§9. Title to property.

1 The title to all parks, parkways, playgrounds, athletic
2 fields, cemeteries, boulevards and other property, real, per-
3 sonal and mixed, vested in the board of park commissioners
4 under the power and authority of the acts hereby amended
5 and reenacted shall be and remain vested in the board of
6 park commissioners of the city of Huntington as herein
7 reconstituted.

8 Notwithstanding any provisions of this chapter to the
9 contrary, the board is hereby authorized and empowered to
10 grant and convey to any municipality, town, village, county or
11 to the state of West Virginia, all right, title, control and
12 interest, jurisdiction and maintenance of any streets or boule-
13 vards owned by the board, whenever the board deems such
14 action to be necessary or convenient and proper and in the
15 best interest of the inhabitants of the park district.

CHAPTER 149

(H. B. 1362—By Mr. Shingleton)

[Passed March 8, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, chapter forty-eight, acts of the Legislature, regular session, one thousand nine hundred twenty-seven, relating to the powers and duties of The Prickett's Fort State Park Commission.

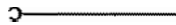
Be it enacted by the Legislature of West Virginia:

That section two, chapter forty-eight, acts of the Legislature, regular session, one thousand nine hundred twenty-seven, be amended and reenacted to read as follows:

PRICKETT'S FORT STATE PARK COMMISSION.**§2. Powers and duties.**

1 The commission is authorized to examine, survey and locate
2 lines for a state park for the use and benefit of the public,

3 not exceeding ten acres, situate in Winfield district in the
4 county of Marion, near the mouth of Prickett's creek, but
5 so as to include the site of Prickett's Fort, which was erected
6 for the protection of the pioneers of the Upper Monongahela
7 valley from the ravages of Indian warfare. It is further
8 authorized to procure an option, or options, thereon; to
9 contract for the payment of the purchase price out of any
10 moneys which may hereafter be appropriated for that purpose;
11 to participate in, and plan for, recreational and historical
12 development of Prickett's Fort; and, to assist The Prickett's
13 Fort Memorial Foundation in its activities and projects.



CHAPTER 150

(Com. Sub. for H. B. 1287—By Mr. Peak)

[Passed March 8, 1974; in effect from passage. Approved by the Governor.]

AN ACT to authorize and empower the county court of Putnam County to establish, equip, maintain, operate and manage an emergency clinic and hospital in said county for the treatment and care of patients, charitable and otherwise, and to enter into agreements or contracts with other hospitals, public or private to effectuate such purpose.

Be it enacted by the Legislature of West Virginia:

PUTNAM COUNTY EMERGENCY CLINIC AND HOSPITAL.

- §1. Hospital established.
- §2. Appropriation and levy.
- §3. Care of poor.
- §4. Discrimination prohibited.

§1. Hospital established.

1 The county court of Putnam County is hereby authorized
2 and empowered to establish, equip, maintain, operate and
3 manage an emergency clinic and hospital and is further
4 authorized and empowered to enter into agreements or con-
5 tracts with other hospitals, public or private to effectuate
6 such purpose.

§2. Appropriation and levy.

1 The cost thereof and of so doing may be provided for by
2 said county court out of any funds in the hands of said court
3 not otherwise appropriated or may be provided for by
4 special levy.

§3. Care of poor.

1 Such court shall at all times reserve in said buildings all
2 such room as shall be necessary to care for the poor, who
3 are a county charge, as prescribed by law.

§4. Discrimination prohibited.

1 Said court shall make no discrimination among the pa-
2 tients seeking admission.

○

CHAPTER 151

(S. B. 369—By Mr. Jones)

[Passed February 22, 1974; in effect from passage. Approved by the Governor.]

AN ACT authorizing and empowering the county court of Roane county to sell and convey to Norris Industries, Inc., a corporation, and Interstate Manufacturing Company, a corporation, respectively, certain respective parcels of land owned by the county court of Roane county for industrial development purposes.

Be it enacted by the Legislature of West Virginia:

COUNTY COURT OF ROANE COUNTY AUTHORIZED TO SELL LAND.

§1. Sale and conveyance of Roane industrial park property for industrial development purposes authorized.

1 The Legislature hereby finds and declares that the sale
2 and conveyance of portions of that certain tract or parcel
3 of land known as the Roane county industrial park, for-
4 merly the Roane county airport, located on the waters
5 of Spring creek, in Spencer magisterial district, Roane

6 county, by the county court of Roane county for in-
7 dustrial development purposes for less than an adequate
8 consideration and notwithstanding any provision of gen-
9 eral law relating to sale or lease of lands by county courts
10 to the contrary, is for a public purpose and is necessary
11 for the public good. The Legislature hereby finds and
12 declares that said land is peculiarly suited for such use
13 and will, if so sold for such use, produce tax revenues
14 for said county equal to or in excess of the fair market
15 value of the said property. The Legislature hereby finds
16 and declares that the said county court has negotiated,
17 subject to authorization by the Legislature, the sale of a
18 portion thereof containing approximately five acres to
19 said Interstate Manufacturing Company, a corporation,
20 for the price and sum of three thousand dollars and the
21 sale of another portion thereof containing approximately
22 thirty-eight acres to said Norris Industries, Inc., a corpora-
23 tion, for the price and sum of ten thousand dollars; that
24 the said proposed sales include also the necessary in-
25 gress, egress and utility easements to and from said re-
26 spective properties and the public highway and utility
27 lines; that a substantial investment will be necessary by
28 said Norris Industries, Inc., a corporation, to level said
29 land and improve the same for industrial use; that both
30 of said corporations will provide substantial employment,
31 and income and tax revenues to said county; and that in
32 the particular circumstances existing in regard to the
33 said property, the method of accomplishing its industrial
34 development, which is hereby declared to be a public
35 purpose, would be best accomplished by the method set
36 forth in this section.

37 Based upon the above legislative findings and declara-
38 tions, the county court of Roane county, notwithstanding
39 any provision of general law relating to sale or lease of
40 lands by county courts to the contrary, is hereby autho-
41 rized and empowered to sell and convey a portion con-
42 taining approximately five acres of that certain tract or
43 parcel of land known as the Roane county industrial
44 park, situate in Spencer magisterial district, Roane coun-
45 ty, to Interstate Manufacturing Company, a corporation,
46 for the price and sum of three thousand dollars, under

47 such other terms and conditions as, in the sole discretion
48 of the said county court, will insure the use of the said
49 land for the public purpose of industrial development.

50 Based upon the above legislative findings and declara-
51 tions, the county court of Roane county, notwithstanding
52 any provision of general law relating to sale or lease of
53 lands by county courts to the contrary, is hereby autho-
54 rized and empowered to sell and convey a portion con-
55 taining approximately thirty-eight acres of that certain
56 tract or parcel of land known as the Roane county in-
57 dustrial park, formerly the Roane county airport, situate
58 in Spencer magisterial district, Roane county, to Norris
59 Industries, Inc., a corporation, for the price and sum of
60 ten thousand dollars, under such other terms and condi-
61 tions as in the sole discretion of the said county court,
62 will insure the use of the said land for the public pur-
63 pose of industrial development:



CHAPTER 152

(H. B. 643—By Mr. Pauley and Mr. McKenzie)

[Passed March 1, 1974; in effect from passage. Approved by the Governor.]

AN ACT to authorize the City of Welch, a municipal corporation, in the County of McDowell, West Virginia, to lease a certain parcel of real property and permit the lessee or lessees of said property to use the same for private purposes, the said parcel of real property as herein described being a portion of parcel number one, containing some four and thirteen one-hundredth acres, conveyed to the City of Welch by the Norfolk and Western Railway Company by deed dated February 16, 1962, and of record as herein specified.

WHEREAS, In order to relieve traffic congestion, the City of Welch is desirous of leasing a portion of the parcels conveyed to said City by the Norfolk and Western Railway Company by deed dated February 16, 1962, to a lessee or lessees to be used by said lessee or lessees for private purposes, and in order to do so must have authorization by the Legislature; therefore,

Be it enacted by the Legislature of West Virginia:

LEASE OF CERTAIN REAL PROPERTY BY CITY OF WELCH.

§1. Authorizing the City of Welch to lease certain real property.

1 The City of Welch, a municipal corporation, in the County
2 of McDowell, West Virginia, is hereby authorized to lease a
3 parcel of the real property conveyed to it by the Norfolk and
4 Western Railway Company by deed dated February 16, 1962,
5 and of record in Deed Book No. 256, page 287, in the Office
6 of the Clerk of the County Court of McDowell County, which
7 parcel to be leased is described as follows:

8 Beginning at point in the northeasterly boundary of land
9 conveyed to the City of Welch by the Norfolk and Western
10 Railway Company, recorded in the Office of the Clerk of
11 the County Court of McDowell County in Deed Book No.
12 256, Page No. 287, at about Station 710+48.70; thence
13 with said property line for a distance of 250.00' on a radius
14 of 1128.10'; thence with said property line for a distance of
15 80.00' to a point on a radius curve of 421.67'; thence S 41°
16 00' E 47.50' to a point in the northwest edge of the side-
17 walk on the northwesterly end of the City Hall Building of
18 the City of Welch; thence N 49° 00' E 247.00', more or
19 less, to a point in the street 12.30' from the northeasterly
20 corner of the Welch City Hall Building; thence S 41° 00'
21 E 67.00' parallel to and 4' from the eastern line of the afore-
22 said Welch City Hall to the center line of the old Norfolk
23 and Western Railway tracks; thence with the center line of
24 the aforesaid tracks 120.00' to a point; thence leaving cen-
25 ter line of aforesaid tracks and with the western line of
26 Parcel No. 1, N 55° 00' W 120.00' to the point of begin-
27 ning, containing 0.51 acres, more or less.

RESOLUTIONS

HOUSE CONCURRENT RESOLUTION NO. 5

(By Mr. Morasco)

[Adopted February 8, 1974]

Memorializing the Federal Energy Administration to consider the feasibility of implementation of a hydroelectric facility at the Tygart Dam, Taylor County, West Virginia, as a means of providing an additional source of electricity during the energy crisis.

WHEREAS, The recent energy crisis necessitates full utilization of all energy producing resources; and

WHEREAS, A possible source of clean and efficient energy for production of hydroelectric power now exists at the Tygart Dam, near Grafton in Taylor County; and

WHEREAS, The Tygart Dam was constructed in 1938 with the possible potential for conversion to the production of hydroelectric power; and

WHEREAS, Now is the time for the study of the feasibility and potential for production of hydroelectric power at the Tygart Dam by the appropriate agency charged with responsibility of administering energy resources; therefore, be it

Resolved by the Legislature of West Virginia:

That it memorialize the Federal Energy Administration to study the feasibility and potential for production of hydroelectric power at the Tygart Dam, Taylor County, West Virginia; and be it

Further Resolved, That true copies of this resolution be sent to the Honorable William Simon, Director, Federal Energy Administration, Washington, D. C., to members of the West Virginia Congressional Delegation, to the Clerk of the United States Senate, to the Clerk of the United States House of Representatives, to the United States Army Corps of Engineers, Pittsburgh District, Pittsburgh, Pennsylvania 15219 and to the West Virginia Department of Natural Resources.

HOUSE CONCURRENT RESOLUTION NO. 19

(Originating in the Committee on Health and Welfare)

[Adopted February 15, 1974]

Directing attention to the situation within the State regarding the need for more extensive training of licensed practical nurse candidates in the field of geriatric care and calling for the West Virginia State Board of Examiners for Licensed Practical Nurses and the assistant superintendent of Vocational Adult Education, West Virginia Department of Education, to institute appropriate instructional programs for increased training in this area of geriatric care.

WHEREAS, The federal government and state governments have the duty to care for their aged citizens; and

WHEREAS, The Committee on Health and Welfare of the House of Delegates concurs with certain pertinent findings of a study done by the subcommittee to study aged citizen programs of the Joint Committee on Government and Finance pursuant to the authority of House Concurrent Resolution No. 15, adopted January 25, 1973; to wit, that there is a need for additional training in certain areas of licensed practical nurse study, one of which is geriatric care; and

WHEREAS, The Legislature of the State of West Virginia is desirous of maintaining continued high standards for licensure of practical nurses; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature of the State of West Virginia and its aged citizens hereby direct attention to the need for more extensive training of licensed practical nurse candidates in the field of geriatric care and call upon the West Virginia State Board of Examiners for Licensed Practical Nurses and the assistant superintendent of Vocational Adult Education, West Virginia Department of Education, to act forthwith in mandating an adjusted curriculum to reinforce the current units of instruction being presented to licensed practical nurse candidates in the area of geriatric care; and, be it

Further Resolved, That the Clerk of the House of Delegates be directed to cause copies of this resolution to be forwarded to Jane D. Alderman, R. N., executive secretary, West Virginia Board of

Examiners for Licensed Practical Nurses, and C. E. Burdette, assistant state superintendent of Vocational Adult Education, West Virginia Department of Education.

COMMITTEE SUBSTITUTE
FOR
HOUSE CONCURRENT RESOLUTION NO. 22

(By Mr. Jolliffe and Mr. Moats)

[Adopted March 5, 1974]

Creating a Commission on Establishment and Rearrangement of Judicial Circuits and prescribing its power and duties.

WHEREAS, Since the original judicial circuits were established by the Constitution, the number of circuits have been increased from time to time and in recent years new circuits have been superimposed upon existing circuits, all these changes being made without a thorough study being made of a realignment of circuits with the view of achieving the most effective system for the administration of justice; and

WHEREAS, The existing circuits have been established at random without consideration of work loads of judges resulting from litigation in the various areas of the State, and without regard to inconvenience to judges and litigants due to territory embraced in circuits, and without providing for expeditious trails of actions and other important factors necessary to provide the best judicial system; and

WHEREAS, The Constitution requires that rearrangement of judicial circuits shall be made only at a session of the Legislature next preceding the election of judges; therefore, be it

Resolved by the Legislature of West Virginia:

That there is hereby created a Commission on Establishment and Rearrangement of Judicial Circuits. The Commission shall consist of fifteen members as follows: Three members of the State Senate, to be appointed by the President of the Senate; three members of the House of Delegates, to be appointed by the Speaker of the House; three members of the West Virginia State Bar, to be appointed by the president of that organization; three members of the West Virginia

Bar Association, to be appointed by the president of the Association; and three members of the West Virginia Judicial Association, to be appointed by the president of said Association.

The persons herein authorized to appoint members of the Commission shall forthwith make such appointments and submit the names of the persons appointed to the Clerks of the two Houses of the Legislature, but the making of such appointments shall be coordinated so that no fewer than three persons shall be appointed from each congressional district.

It shall be the duty of the Commission to review the existing arrangement of judicial circuits, and to examine the work load of judges in the various circuits, the geographical areas embraced in such circuits, population and other factors pertinent to conducting a comprehensive study of the need and advisability of realigning existing circuits and establishing new circuits; and to report its recommendations to the Legislature not later than December 15, 1974, together with drafts of legislation necessary to carry out such recommendations as it shall make.

The Commission is hereby authorized to employ a reporter and such other clerical and technical aides as may be necessary to assist it in the discharge of its duties. The executive secretary of the West Virginia Judicial Council shall be ex officio secretary of the Commission.

The Commission shall be appointed and hold its first meeting within sixty days after the adoption of this resolution. At its organizational meeting it shall select a chairman and such other officers as it may deem advisable.

The members of the Commission shall be entitled to such expenses as are now provided for members of the Joint Committee on Government and Finance, and such expenses and any other expenses necessary to conduct this study and prepare a report shall be paid from legislative appropriations to the Joint Committee on Government and Finance.

The services of full-time legislative personnel and all legislative facilities shall be made available to the Commission.

HOUSE CONCURRENT RESOLUTION NO 24

(By Mr. Shingleton)

[Adopted March 9, 1974]

Expressing the sentiment of the Legislature of West Virginia on the desirability of including in contracts entered into by State agencies suitable and appropriate clauses allowing relief to parties when nonperformance or delayed performance occurs as a result of energy or materials shortages.

WHEREAS, The Nation and West Virginia are being seriously affected by shortages of energy resources and necessary materials which may continue for a period of many years; and

WHEREAS, Parties desirous of bidding on contracts with various state agencies or who enter into such contracts are faced with increasing uncertainties as to their ability to timely and fully performed as a result of such shortages; and

WHEREAS, Such uncertainties may cause greatly increased costs to the State as it contracts for goods and services, particularly for goods and services to be delivered or performed in the future; and

WHEREAS, It is believed that such uncertainties, and thereby costs, can be reduced by the employment of suitable and appropriate contractual provisions addressed thereto; therefore, be it

Resolved by the Legislature of West Virginia:

That all agencies of the State which contract for goods and services, and particularly those agencies which contract for goods and services to be delivered or performed in the future, be urged to take steps necessary to include in such contracts appropriate and suitable provisions which will provide equitable relief from the vagaries and uncertainties of the supply of energy resources and materials, including, but not limited to, provisions providing relief from late-performance penalties; and, be it

Further Resolved, That the Clerk of the House of Delegates is hereby directed to send a copy of this resolution to the Governor and the Commissioner of Finance and Administration.

HOUSE CONCURRENT RESOLUTION NO. 37

(By Mr. Teets)

[Adopted March 12, 1974]

Urging and requesting the National Railroad Passenger Corporation, commonly known as "Amtrak," to institute passenger train service on an experimental basis between Cumberland, Maryland and St. Louis, Missouri.

WHEREAS, The Nation is confronted with a major energy crisis and fuel shortage; and

WHEREAS, All reasonable means should be used to remedy or alleviate the existing problem; and

WHEREAS, Passenger train service between Cumberland, Maryland, and St. Louis, Missouri, would serve some of the most important and populous areas in the United States; therefore, be it

Resolved by the Legislature of West Virginia:

That the National Railroad Passenger Corporation is hereby urged and requested to institute passenger train service on an experimental basis between Cumberland, Maryland, and St. Louis, Missouri, and, if it is successful, to continue such service on a permanent basis; and, be it

Further Resolved, That the Clerk of the House of Delegates send copies of this resolution to the Secretary of the United States Department of Transportation, the Secretary of the Interstate Commerce Commission, the Director of the National Railroad Passenger Corporation and members of the West Virginia Congressional Delegation.

HOUSE CONCURRENT RESOLUTION NO. 65

(Br. Mr. Sommerville)

[Adopted March 12, 1974]

Requesting the Governor to designate May 1 of each year as LAW DAY U.S.A.

WHEREAS, In order to rededicate West Virginia to the principles of the democratic form of government and emphasize ours as a govern-

ment of law and not of men; and to further the philosophy that the welfare of the people shall be the supreme law; therefore, be it

Resolved by the Legislature of West Virginia:

That the Governor of West Virginia is hereby requested to designate and proclaim May 1 of each year as LAW DAY U.S.A.; and, be it

Further Resolved, That it is not the purpose of this resolution to declare another legal holiday, but a day for rededication by the citizens of West Virginia to the principles of democracy, a respect for law that is so vital to the democratic way of life, and to the support of our state and federal courts which uphold and safeguard individual rights and liberties.

SENATE CONCURRENT RESOLUTION NO. 19

(By Mr. Gainer)

[Adopted February 23, 1974]

Requesting the West Virginia Board of Regents to provide adequate greenhouse space at West Virginia University necessary for conducting research on native ornamental plants and developing selections of those plants in quantities sufficient to make them available to West Virginia Nurserymen.

WHEREAS, West Virginia University, a land grant higher education institution has been conducting important breeding propagation and exploration research for West Virginia Nurserymen on hollies, azaleas, rhododendron and other native ornamental plants for over twenty years; and

WHEREAS, West Virginia Nurserymen have cooperated in this research program for over ten years; and

WHEREAS, Ten holly selections have been developed and are being released cooperatively by the United States Department of Agriculture and West Virginia University; and

WHEREAS, Greenhouse space now provided for this research and development of selections, so vital to expansion of the nursery industry, is inadequate; therefore, be it

Resolved by the Legislature of West Virginia:

That the West Virginia Board of Regents is hereby requested to provide adequate greenhouse space at West Virginia University necessary for conducting breeding propagation and exploration research on native ornamental plants and developing selections of those plants in quantities sufficient to make them available to West Virginia Nurserymen; and, be it

Further Resolved, That the Clerk of the Senate send a copy of this resolution to each member of the West Virginia Board of Regents and to its Chancellor.

SENATE CONCURRENT RESOLUTION NO. 27

(By Mr. Dillon)

[Adopted March 5, 1974]

Authorizing and requesting the West Virginia Water Festival to have a medal or similar artifact designed and struck.

WHEREAS, The West Virginia Water Festival based at Hinton, West Virginia, has grown and developed into an event of great significance for Summers County and all of West Virginia; and

WHEREAS, The exhibition of water and boating skills at the West Virginia Water Festival demonstrates the versatility, art and beauty of water sports; and

WHEREAS, The 1974 West Virginia Water Festival promises to be the finest festival of its kind anywhere in the United States; therefore, be it

Resolved by the Legislature of West Virginia:

That the West Virginia Water Festival, Inc., a corporation, is hereby authorized and requested to have an official medal or other artifact designed and struck commemorating the 1974 West Virginia Water Festival and such other matter as the Board of Directors of such corporation shall deem appropriate and to make such medal or artifact available to the public; and, be it

Further Resolved, That the Clerk of the Senate send a copy of this resolution to each member of the Board of Directors of the West Virginia Water Festival, Inc.

SENATE CONCURRENT RESOLUTION NO. 33

(By Mr. Hatfield and Mr. Jones)

[Adopted March 9, 1974]

Commending the United Mine Workers of America, urging its Executive Board to select a headquarters site in West Virginia and extending a warm welcome to the national leadership and their families.

WHEREAS, The United Mine Workers of America is to be commended for having wisely decided to move its national union headquarters to the heartland of coal production in the United States; and

WHEREAS, The State of West Virginia is preeminently suited for selection as the site for the national headquarters because it is located in the geographic center of the greatest coal producing region in the world; and

WHEREAS, West Virginia, the birthplace of the labor movement in the coal industry, not only enjoys a worldwide reputation as the center of coal production but the residents of this State are noted for their friendly attitude and hospitality; therefore, be it

Resolved by the Legislature of West Virginia:

That the United Mine Workers of America, and its membership is hereby commended for its many contributions to the State of West Virginia and the Executive Board thereof is sincerely urged to select a location in West Virginia for that union's national headquarters; and, be it

Further Resolved, That the Executive Board of the United Mine Workers of America is hereby assured that the people of this State will extend a warm welcome to the national leadership of the United Mine Workers and to their families; and, be it

Further Resolved, That the Clerk of the Senate transmit copies of this resolution to the President and each member of the Executive Board of the United Mine Workers of America.

Resolutions authorizing and continuing studies by the Joint Committee on Government and Finance:

(Since these resolutions take the same general form, they are listed herein by subject only. They may be found in the House and Senate Journals of the session, and are indexed under tabular indices of House and Senate Concurrent Resolutions in the Journals of the session.)

House Concurrent

- 12. Fire services
- 28. Orphan roads
- 35. Health insurance
- 40. Public employee retirement
- 44. State aid school formula
- 50. Dredging of creeks
- 61. Flood insurance
- 66. Controlled substances

Senate Concurrent

- 6. Land use
- 9. Duplication of federal services by the State
- 25. Administration of Workmen's Compensation Fund
- 28. Aged Citizens, Programs, etc.; Civil Procedure; Coal Mining; Coal Waste Disposal; Consolidation of Environmental Agencies; Criminal and Juvenile Laws; Economic and Industrial Growth of the State; Elk River, Pollution, etc.; Exceptional Children; Family Physicians; Highway Safety Program; Institutional Reorganization; Legislative Data Processing; Manufacturing, Employment, etc.; No-Fault Insurance; Penal System; Scenic Railroad; School Personnel; State Park System; Taxation; and W.V.U. Medical School Admissions
- 31. Recodification of school law
- 35. Regulation, control and financing political campaigns

COMMITTEE SUBSTITUTE

FOR

SENATE JOINT RESOLUTION NO. 6

(By Mr. Palumbo)

[Adopted March 9, 1974]

Proposing an amendment to the Constitution of the State of West Virginia, amending section thirteen, article three, and article eight thereof; and amending article nine thereof by adding thereto five new sections, designated sections nine through thirteen, all relating to the judiciary and the

judicial functions of the State and to county government; 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 seventy-four, or at any special election held prior thereto for the purpose of presenting to the voters of the State the question of ratification or rejection of one or more constitutional amendments, which proposed amendment is that section thirteen, article three, and article eight thereof be amended; and that article nine be amended by adding thereto five new sections, designated sections nine through thirteen, all to read as follows:

ARTICLE III. BILL OF RIGHTS.

§13. Right of jury trial.

In suits at common law, where the value in controversy exceeds twenty dollars exclusive of interest and costs, the right of trial by jury, if required by either party, shall be preserved; and in such suit in a court of limited jurisdiction a jury shall consist of six persons. No fact tried by a jury shall be otherwise reexamined in any case than according to rule of court or law.

ARTICLE VIII. THE JUDICIARY.

§1. Judicial power.

The judicial power of the State shall be vested solely in a supreme court of appeals and in the circuit courts, and in such intermediate appellate courts and magistrate courts as shall be hereafter established by the Legislature, and in the justices, judges and magistrates of such courts.

§2. Supreme court of appeals.

The supreme court of appeals shall consist of five justices. A majority of the justices of the court shall constitute a quorum for the transaction of business.

The justices shall be elected by the voters of the State for a term of twelve years, unless sooner removed or retired as authorized in this article. The Legislature may prescribe by law whether the election of such justices is to be on a partisan or nonpartisan basis.

Provision shall be made by rules of the supreme court of appeals for the selection of a member of the court to serve as chief justice thereof. If the chief justice is temporarily disqualified or unable to serve, one of the justices of the court designated in accordance with the rules of the court shall serve temporarily in his stead.

When any justice is temporarily disqualified or unable to serve, the chief justice may assign a judge of a circuit court or of an intermediate appellate court to serve from time to time in his stead.

§3. Supreme court of appeals; jurisdiction and powers; officers and employees; terms.

The supreme court of appeals shall have original jurisdiction of proceedings in habeas corpus, mandamus, prohibition and certiorari.

The court shall have appellate jurisdiction in civil cases at law where the matter in controversy, exclusive of interest and costs, is of greater value or amount than three hundred dollars unless such value or amount is increased by the Legislature; in civil cases in equity; in controversies concerning the title or boundaries of land; in proceedings in quo warranto, habeas corpus, mandamus, prohibition and certiorari; and in cases involving personal freedom or the constitutionality of a law. It shall have appellate jurisdiction in criminal cases, where there has been a conviction for a felony or misdemeanor in a circuit court, and such appellate jurisdiction as may be conferred upon it by law where there has been such a conviction in any other court. In criminal proceedings relating to the public revenue, the right of appeal shall belong to the State as well as to the defendant. It shall have such other appellate jurisdiction, in both civil and criminal cases, as may be prescribed by law.

The court shall have power to promulgate rules for all cases

and proceedings, civil and criminal, for all of the courts of the State relating to writs, warrants, process, practice and procedure, which shall have the force and effect of law.

The court shall have general supervisory control over all intermediate appellate courts, circuit courts and magistrate courts. The chief justice shall be the administrative head of all the courts. He may assign a judge from one intermediate appellate court to another, from one circuit court to another, or from one magistrate court to another, for temporary service. The court shall appoint an administrative director to serve at its pleasure at a salary to be fixed by the court. The administrative director shall, under the direction of the chief justice, prepare and submit a budget for the court.

The officers and employees of the supreme court of appeals, including the clerk and the law librarian, shall be appointed and may be removed by the court. Their duties and compensation shall be prescribed by the court.

The number, times and places of the terms of the supreme court of appeals shall be prescribed by law. There shall be at least two terms of the court held annually.

§4. Writ of error, supersedeas and appeal; scope and form of decisions.

A writ of error, supersedeas or appeal shall be allowed by the supreme court of appeals, or a justice thereof, only upon a petition assigning error in the judgment or proceedings of a court and then only after the court, or a justice thereof, shall have examined and considered the record and is satisfied that there probably is error in the record, or that it presents a point proper for the consideration of the court.

No decision rendered by the court shall be considered as binding authority upon any court, except in the particular case decided, unless a majority of the justices of the court concur in such decision.

When a judgment or order of another court is reversed, modified or affirmed by the court, every point fairly arising upon the record shall be considered and decided; the reasons therefor shall be concisely stated in writing and preserved with the

record; and it shall be the duty of the court to prepare a syllabus of the points adjudicated in each case in which an opinion is written and in which a majority of the justices thereof concurred, which shall be prefixed to the published report of the case.

§5. Circuit courts.

The judge or judges of each circuit court shall be elected by the voters of the circuit for a term of eight years, unless sooner removed or retired as authorized in this article. The Legislature may prescribe by law whether the election of such judges is to be on a partisan or nonpartisan basis. Upon the effective date of this article, each statutory court of record of limited jurisdiction existing in the State immediately prior to such effective date shall become part of the circuit court for the circuit in which it presently exists, and each such judge of such statutory court of record of limited jurisdiction shall thereupon become a judge of such circuit court. During his continuance in office, a judge of a circuit court shall reside in the circuit of which he is a judge.

The Legislature may increase, or other than during term of office decrease, the number of circuit judges within any circuit. The judicial circuits in existence on the effective date of this article shall remain as so constituted until changed by law, and the Legislature, at any session thereof held in the odd-numbered year next preceding the time for the full term election of the judges thereof, may rearrange the circuits and may increase or diminish the number of circuits. A judge of a circuit court in office at the time of any such change shall continue as a judge of the circuit in which he shall continue to reside after such change until his term shall expire, unless sooner removed or retired as authorized in this article.

There shall be at least one judge for each circuit court and as many more as may be necessary to transact the business of such court. If there be two or more judges of a circuit court, provision shall be made by rules of such circuit court for the selection of one of such judges to serve as chief judge thereof. If the chief judge is temporarily disqualified or unable to serve, one of the judges of the circuit court designated in accordance

with the rules of such court shall serve temporarily in his stead.

The supreme court of appeals shall provide for dividing the business of those circuits in which there shall be more than one judge between the judges thereof so as to promote and secure the convenient and expeditious transaction of such business.

In every county in the State the circuit court for such county shall sit at least three times in each year. The supreme court of appeals shall designate the times at which each circuit court shall sit, but until this action is taken by the supreme court of appeals, each circuit court shall sit at the times prescribed by law. If there be two or more judges of a circuit court, such judges may hold court in the same county or in different counties within the circuit at the same time or at different times.

§6. Circuit court; jurisdiction, authority and power.

Circuit courts shall have control of all proceedings before magistrate courts by mandamus, prohibition and certiorari.

Circuit courts shall have original and general jurisdiction of all civil cases at law where the value or amount in controversy, exclusive of interest and costs, exceeds one hundred dollars unless such value or amount is increased by the Legislature; of all civil cases in equity; of proceedings in habeas corpus, mandamus, quo warranto, prohibition and certiorari; and of all crimes and misdemeanors. On and after January one, one thousand nine hundred seventy-six, the Legislature may provide that all matters of probate, the appointment and qualification of personal representatives, guardians, committees and curators, and the settlements of their accounts, shall be vested exclusively in circuit courts or their officers, but until such time as the Legislature provides otherwise, jurisdiction in such matters shall remain in the county commissions or tribunals existing in lieu thereof or the officers of such county commissions or tribunals.

Circuit courts shall have appellate jurisdiction in all cases, civil and criminal, where an appeal, writ of error or super-sedeas is allowed by law to the judgment or proceedings of any magistrate court, unless such jurisdiction is conferred by

law exclusively upon an intermediate appellate court or the supreme court of appeals.

Circuit courts shall also have such other jurisdiction, authority or power, original or appellate or concurrent, as may be prescribed by law.

Subject to the approval of the supreme court of appeals, each circuit court shall have the authority and power to establish local rules to govern the court.

Subject to the supervisory control of the supreme court of appeals, each circuit court shall have general supervisory control over all magistrate courts in the circuit. Under the direction of the chief justice of the supreme court of appeals, the judge of the circuit court, or the chief judge thereof if there be more than one judge of the circuit court, shall be the administrative head of the circuit court and all magistrate courts in the circuit.

§7. General provisions relating to justices, judges and magistrates.

All justices, judges and magistrates must be residents of this State and shall be commissioned by the governor. No person may hereafter be elected as a justice of the supreme court of appeals unless he has been admitted to practice law for at least ten years prior to his election, and no person may hereafter be elected as a judge of a circuit court unless he has been admitted to practice law for at least five years prior to his election.

Justices, judges and magistrates shall receive the salaries fixed by law, which shall be paid entirely out of the state treasury, and which may be increased but shall not be diminished during their term of office, and they shall receive expenses as provided by law. The salary of a circuit judge shall also not be diminished during his term of office by virtue of the statutory courts of record of limited jurisdiction of his circuit becoming a part of such circuit as provided in section five of this article.

Any justice of the supreme court of appeals and any judge of any circuit court, including any statutory court of record

of limited jurisdiction which becomes a part of a circuit court by virtue of section five of this article, in office on the effective date of this article shall continue in office until his term shall expire, unless sooner removed or retired as authorized in this article: *Provided*, That as to the term of any judge of a statutory court of record of limited jurisdiction which does not expire on the thirty-first day of December, one thousand nine hundred seventy-six, the following provisions shall govern and control unless any such judges shall be sooner removed or retired as authorized in this article: (1) If the term would otherwise expire before the thirty-first day of December, one thousand nine hundred seventy-six, such term shall continue through and expire on said thirty-first day of December, one thousand nine hundred seventy-six, (2) if the term would otherwise expire on the first day of January, one thousand nine hundred seventy-seven, such term shall terminate and expire on the thirty-first day of December, one thousand nine hundred seventy-six, and (3) if the term would otherwise expire after the thirty-first day of December, one thousand nine hundred seventy-six, but other than on the first day of January, one thousand nine hundred seventy-seven, such term shall continue through and expire on the thirty-first day of December, one thousand nine hundred eighty-four.

No justice, judge or magistrate shall hold any other office, or accept any appointment or public trust, under this or any other government; nor shall he become a candidate for any elective public office or nomination thereto, except a judicial office; and the violation of any of these provisions shall vacate his judicial office. No justice of the supreme court of appeals or judge of an intermediate appellate court or of a circuit court shall practice the profession of law during the term of his office, but magistrates who are licensed to practice this profession may practice law except to the extent prohibited by the Legislature.

If from any cause a vacancy shall occur in the office of a justice of the supreme court of appeals or a judge of a circuit court, the governor shall issue a directive of election to fill such vacancy in the manner prescribed by law for electing a justice or judge of the court in which the vacancy exists, and the justice or judge shall be elected for the unexpired term;

and in the meantime, the governor shall fill such vacancy by appointment until a justice or judge shall be elected and qualified. If the unexpired term be less than two years, or such additional period, not exceeding a total of three years, as may be prescribed by law, the governor shall fill such vacancy by appointment for the unexpired term.

§8. Censure, temporary suspension and retirement of justices, judges and magistrates; removal.

Under its inherent rule-making power, which is hereby declared, the supreme court of appeals shall, from time to time, prescribe, adopt, promulgate and amend rules prescribing a judicial code of ethics, and a code of regulations and standards of conduct and performances for justices, judges and magistrates, along with sanctions and penalties for any violation thereof, and the supreme court of appeals is authorized to censure or temporarily suspend any justice, judge or magistrate having the judicial power of the State, including one of its own members, for any violation of any such code of ethics, code of regulations and standards, or to retire any such justice, judge or magistrate who is eligible for retirement under the West Virginia judges' retirement system (or any successor or substituted retirement system for justices, judges and magistrates of this State) and who, because of advancing years and attendant physical or mental incapacity, should not, in the opinion of the supreme court of appeals, continue to serve as a justice, judge or magistrate.

No justice, judge or magistrate shall be censured, temporarily suspended or retired under the provisions of this section unless he shall have been afforded the right to have a hearing before the supreme court of appeals, nor unless he shall have received notice of the proceedings, with a statement of the cause or causes alleged for his censure, temporary suspension or retirement, at least twenty days before the day on which the proceeding is to commence. No justice of the supreme court of appeals may be temporarily suspended or retired unless all of the other justices concur in such temporary suspension or retirement. When rules herein authorized are prescribed, adopted and promulgated, they shall supersede all laws and parts of laws in conflict therewith, and such laws

shall be and become of no further force or effect to the extent of such conflict.

A retired justice or judge may, with his permission and with the approval of the supreme court of appeals, be recalled by the chief justice of the supreme court of appeals for temporary assignment as a justice of the supreme court of appeals, or judge of an intermediate appellate court, a circuit court or a magistrate court.

A justice or judge may be removed only by impeachment in accordance with the provisions of section nine, article four of this Constitution. A magistrate may be removed from office in the manner provided by law for the removal of county officers.

§9. Clerks of circuit courts.

The voters of each county shall elect a clerk of the circuit court, whose term of office shall be six years; his duties, responsibilities, compensation and the manner of removing him from office shall be prescribed by law. Whenever the clerk shall be so situated as to make it improper for him to act in any matter, a clerk to act therein shall be appointed by the judge of the circuit court or the chief judge thereof, if there be more than one judge of the circuit court. Vacancies shall be filled in the manner prescribed by law. A clerk of the circuit court in office on the effective date of this article shall continue in office until his term shall expire, unless sooner removed in the manner prescribed by law.

§10. Magistrate courts.

The Legislature shall establish in each county a magistrate court or courts with the right of appeal as prescribed by law. Such courts shall be courts of record if so prescribed by law.

The Legislature shall determine the qualifications and the number of magistrates for each such court to be elected by the voters of the county, and the Legislature may prescribe by law whether the election of such magistrates is to be on a partisan or nonpartisan basis: *Provided*, That any person in office as a justice of the peace of this State on the effective date of this article and who has served as a justice of the peace

of this State for at least one year prior to such effective date shall, insofar as any qualifications established by the Legislature for the office of magistrate are concerned and notwithstanding the same, be deemed qualified for life to run for election as a magistrate of any such court: *And provided further*, That the Legislature shall not have the power to require that a magistrate be a person licensed to practice the profession of law, nor shall any justice or judge of any higher court establish any rules which by their nature would dictate or mandate that a magistrate be a person licensed to practice the profession of law. The magistrates of such courts shall hold their offices for the term of four years unless sooner removed or retired as authorized in this article. The Legislature shall also determine the number of officers to be selected for each such court and the manner of their selection. During his continuance in office a magistrate or officer of such a court shall reside in the county for which he is elected or selected. The Legislature shall prescribe by law for the filling of any vacancy in the office of a magistrate or officer of such court.

The jurisdiction of a magistrate court shall extend throughout the county for which it is established, shall be uniform for all counties of the State and shall be subject to such regulations as to venue of actions and the counties in which process may be executed or served on parties or witnesses as may be prescribed by law. The times and places for holding such courts shall be designated or determined in such manner as shall be prescribed by law.

Magistrate courts shall have such original jurisdiction in criminal matters as may be prescribed by law, but no person shall be convicted or sentenced for a felony in such courts. In criminal cases, the procedure may be by information or warrant of arrest, without presentment or indictment by a grand jury. Such courts shall have original jurisdiction in all civil cases at law wherein the value or amount in controversy, exclusive of interest and costs, shall not exceed fifteen hundred dollars, unless such amount and value shall be increased by the Legislature, except such civil matters as may be excluded from their jurisdiction by law; and, to the extent provided by law, in proceedings involving real estate when the title thereto is not in controversy. No judgment of a magistrate in any pro-

ceeding involving real estate or any right pertaining thereto shall bar the title of any party or any remedy therefor.

The division of the business of a magistrate court in any county in which there shall be more than one magistrate of such court between the magistrates thereof so as to promote and secure the convenient and expeditious transaction of such business shall be determined in such manner or by such method as shall be prescribed by the judge of the circuit court of such county, or the chief judge thereof, if there be more than one judge of such circuit court.

In a trial by jury in a magistrate court, the jury shall consist of six jurors who are qualified as prescribed by law.

No magistrate or any officer of a magistrate court shall be compensated for his services on a fee basis or receive to his own use for his services any pecuniary compensation, reward or benefit other than the salary prescribed by law.

§11. Municipal courts.

The Legislature may provide for the establishment in incorporated cities, towns or villages of municipal, police or mayors' courts, and may also provide the manner of selection of the judges of such courts. Such courts shall have jurisdiction to enforce municipal ordinances, with the right of appeal as prescribed by law. Until otherwise provided by law, all such courts heretofore established shall remain and continue as now constituted, and with the same right of appeal, insofar as their jurisdiction to enforce municipal ordinances is concerned; but on and after January one, one thousand nine hundred seventy-seven, any other jurisdiction now exercised by such courts shall cease. No judge of a municipal, police or mayor's court or any officer thereof shall be compensated for his services on a fee basis or receive to his own use for his services any pecuniary compensation, reward or benefit other than the salary prescribed therefor.

§12. Issuance and execution of writs, warrants and process; admission to bail.

The Legislature may designate the courts and officers or deputies thereof who shall have the power to issue, execute or serve such writs, warrants or any other process as may be pre-

scribed by law, and may specify before what courts or officers thereof such writs, warrants or other process shall be returnable. The Legislature may also designate the courts and officers or deputies thereof who shall have the power to admit persons to bail. No person exercising such powers shall be compensated therefor on a fee basis.

§13. Parts of existing law effective.

Except as otherwise provided in this article, such parts of the common law, and of the laws of this State as are in force on the effective date of this article and are not repugnant thereto, shall be and continue the law of this State until altered or repealed by the Legislature.

§14. Pending causes; transfer of causes; records.

Until otherwise provided by law, all matters pending in any court on the effective date of this article shall remain and be prosecuted in the court in which they are pending.

Whenever the jurisdiction, powers or duties of any court are terminated or changed, the Legislature shall provide by law for the transfer of all matters pending therein as to which the court shall not thereafter act, together with all of the records and papers pertaining thereto, to a court having jurisdiction, powers or duties as to such matters, and shall provide for the prosecution therein of such matters as if then and there pending.

All records and papers pertaining to matters already disposed of in any court shall be preserved or disposed of in a manner prescribed by law.

§15. Offices phased out; effective date of article; certain provisions to be operable at time specified; effect of article on certain provisions of Constitution.

Notwithstanding the provisions of section one of this article, the office of justice of the peace, as heretofore constituted, shall continue until January one, one thousand nine hundred seventy-seven. No person shall be elected to the office of justice of the peace or constable at the general election to be held in the year one thousand nine hundred seventy-six, and said

offices shall cease to exist as of January one, one thousand nine hundred seventy-seven.

This article shall take effect from the time of ratification, but in any case where it is specified in this article that a provision shall become operable on and after a certain date, such date shall govern and control as to the operable date of such provision.

The provisions of this article shall supersede and prevail over all other provisions of this Constitution which are expressly or impliedly in conflict or inconsistent therewith.

ARTICLE IX. COUNTY ORGANIZATION.

§9. County commissions.

The office of county court or tribunal in lieu thereof heretofore created is hereby continued in all respects as heretofore constituted, but from and after the effective date of this amendment shall be designated as the county commission and wherever in this Constitution, the code of West Virginia, Acts of the Legislature or elsewhere in law a reference is made to the county court of any county, such reference shall be read, construed and understood to mean the county commission.

Except as otherwise provided in section eleven or thirteen of this article, there shall be in each county of the state a county commission, composed of three commissioners, and two of said commissioners shall be a quorum for the transaction of business. It shall hold four regular sessions in each year, and at such times as may be fixed and entered of record by the said commission. Provisions may be made by law for holding special sessions of said commissions.

§10. Terms of office of county commissioners.

The commissioners shall be elected by the voters of the county, and hold their office for a term of six years, except that at the first meeting of said commissioners they shall designate by lot, or otherwise in such manner as they may determine, one of their number, who shall hold his office for a term of two years, one for four years, and one for six years, so that one shall be elected every two years; but no two of said commissioners shall be elected from the same magisterial district.

If two or more persons residing in the same district shall receive the greater number of votes cast at any election, then only the one of such persons receiving the highest number shall be declared elected, and the person living in another district, who shall receive the next highest number of votes, shall be declared elected. Said commissioners shall annually elect one of their number as president. The commissioners of said commissions, now in office, shall remain therein for the term for which they have been elected, unless sooner removed therefrom, in the manner prescribed by law.

§11. Powers of county commissions.

The county commissions, through their clerks, shall have the custody of all deeds and other papers presented for record in their counties, and the same shall be preserved therein, or otherwise disposed of, as now is, or may be prescribed by law. They shall also, under such regulations as may be prescribed by law, have the superintendence and administration of the internal police and fiscal affairs of their counties, including the establishment and regulation of roads, ways, bridges, public landings, ferries and mills, with authority to lay and disburse the county levies: *Provided*, That no license for the sale of intoxicating liquors in any incorporated city, town or village, shall be granted without the consent of the municipal authorities thereof, first had and obtained. Until otherwise prescribed by law, they shall, in all cases of contest, be the judge of the election, qualification and returns of their own members, and of all county and district officers, subject to such regulations, by appeal or otherwise, as may be prescribed by law. Such commissions may exercise such other powers, and perform such other duties, not of a judicial nature, as may be prescribed by law. Such existing tribunals as have been heretofore established by the Legislature to act as to police and fiscal matters in lieu of county commissions in certain counties shall remain and continue as now constituted in the counties in which they have been respectively established until otherwise provided by law, and they shall have and exercise the powers which the county commissions have under this article, and, until otherwise provided by law, such clerk as is mentioned in section twelve of this article shall exercise any powers and discharge any duties, heretofore conferred on, or required of, any such

tribunal or the clerk of such tribunal respecting the recording and preservation of deeds and other papers presented for record and such other matters as are prescribed by law to be exercised and discharged by the clerk thereof.

§12. Clerk of county commission.

The voters of each county shall elect a clerk of the county commission, whose term of office shall be six years. His duties and compensation and the manner of his removal shall be prescribed by law. But the clerks of said commissions, now in office, shall remain therein for the term for which they have been elected, unless sooner removed therefrom, in the manner prescribed by law.

§13. Reformation of county commissions.

The Legislature shall, upon the application of any county, reform, alter or modify the county commission established by this article in such county, and in lieu thereof, with the assent of a majority of the voters of such county voting at an election, create another tribunal for the transaction of the business required to be performed by the county commission created by this article. Whenever a county commission shall receive a petition signed by ten percent of the registered voters of such county requesting the reformation, alteration or modification of such county commission, it shall be the mandatory duty of such county commission to request the Legislature, at its next regular session thereafter, to enact an act reforming, altering or modifying such county commission and establishing in lieu thereof another tribunal for the transaction of the business required to be performed by such county commission, such act to take effect upon the assent of the voters of such county, as aforesaid. Whenever any such tribunal is established, all of the provisions of this article in relation to the county commission shall be applicable to the tribunal established in lieu of said commission. When such tribunal has been established, it shall continue to act in lieu of the county commission until otherwise provided by law.

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. 2" and designated as the "Judicial Reorganization Amendment," and the purpose of the proposed amendment is summarized as follows: "To amend the State Constitution to provide a unified court system which assures the prompt and efficient administration of justice in West Virginia."

HOUSE JOINT RESOLUTION NO. 12

(By Mr. Speaker, Mr. McManus)

[Adopted March 9, 1974]

Proposing an amendment to the Constitution of the State of West Virginia, amending section ten, article ten thereof, reducing from sixty percent to a simple majority the number of votes required for approval of an excess levy for school purposes or the incurring of indebtedness and the issuance of bonds by a county board of education; 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 shall be submitted to the voters of the State at the next general election to be held in the year one thousand nine hundred seventy-six, or at any special election held prior thereto in the year one thousand nine hundred seventy-six, or at any special election held prior thereto in the year one thousand nine hundred seventy-six, for the purpose of presenting to the voters of the State the question of ratification or rejection of one or more constitutional amendments, which proposed amendment is that section ten, article ten thereof be amended to read as follows:

ARTICLE X. TAXATION AND FINANCE.

§10. Better schools amendment.

Notwithstanding any other provision of the Constitution to the contrary, the maximum rates authorized and allocated by law for tax levies on the several classes of property for the support of public schools may be increased in any school district for a period not to

exceed five years, and in an amount not to exceed one hundred percent of such maximum rates, if such increase is approved, in the manner provided by law, by at least a majority of the votes cast for and against the same.

Notwithstanding any other provision of the Constitution to the contrary, the maximum rates provided for tax levies by school districts on the several classes of property may be used entirely for current expense purposes; and all levies required for principal and interest payments on any bonded indebtedness, now or hereafter contracted, not to exceed five per centum on the value of the taxable property therein, the value to be ascertained in accordance with section eight of this article, shall be laid separate and apart and in addition to such maximum rates, but in the same proportions as such maximum rates are levied on the several classes of property.

Notwithstanding the provisions of section eight of this article relating to a vote of the people or any other provisions of this Constitution, a county board of education may contract indebtedness and issue bonds for public school purposes as provided by law, if, when submitted to a vote of the people of the county, in the manner provided by law, the question of contracting indebtedness and issuing bonds is approved by a majority of the votes cast for and against the same.

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. 3" and designated as the "Modern Schools Amendment," and the purpose of the proposed amendment is summarized as follows: "To amend the State Constitution to permit county school levies, indebtedness and bonds to be approved by a simple majority of the votes cast for and against the same."

ACTS

FIRST EXTRAORDINARY SESSION

(April 29 - May 24, 1974)

CHAPTER 1

(H. B. 219—By Mr. Speaker, Mr. McManus, and Mr. Seibert)

[Passed May 23, 1974; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections fifteen and sixteen, article one, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the administrative office of the supreme court of appeals; authorizing the appointment of a director of and assistants and secretaries for such office; providing that such appointees shall serve at the will and pleasure of such court and shall receive such compensation as may be fixed from time to time by such court; relating to the expenses of such appointees; relating to their duties; and specifying that no director or assistant director shall engage directly or indirectly in the practice of law during the term of his employment as such.

Be it enacted by the Legislature of West Virginia:

That sections fifteen and sixteen, article one, 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 1. SUPREME COURT OF APPEALS.

§51-1-15. Administrative office of the supreme court of appeals continued; director; assistants and secretaries; seal.

§51-1-16. Director and assistant directors not to practice law.

§51-1-15. Administrative office of supreme court of appeals continued; director; assistants and secretaries; seal.

1 The administrative office of the supreme court of appeals
2 heretofore established is hereby continued. The court shall
3 appoint a director thereof and such assistants and secretaries
4 as it deems necessary to perform the duties of the office
5 as specified in section seventeen of this article and such other
6 duties as may be specified by the court. Such appointees
7 shall serve at the will and pleasure of the court and shall
8 receive such compensation as may be fixed from time to
9 time by the court. They shall also be reimbursed out of the
10 state treasury for all reasonable and necessary expenses
11 actually incurred for travel, meals and lodging incident to
12 the performance of their duties as such appointees. The
13 director, when so directed by the court, shall cause a seal of
14 office to be made for such office of such design as the court
15 shall approve, and judicial notice shall be taken of such seal.

§51-1-16. Director and assistant directors not to practice law.

1 During his employment in the administrative office, no
2 director or assistant director shall engage directly or indirectly
3 in the practice of law in any of the courts of this state.

~

CHAPTER 2

(H. B. 216—By Mr. Seibert)

[Passed May 24, 1974; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article ten, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to municipal corporations; permitting all municipalities to elect or appoint police court or municipal judges and providing for their compensation and jurisdiction.

Be it enacted by the Legislature of West Virginia:

That section two, article ten, 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 10. POWERS AND DUTIES OF CERTAIN OFFICERS.

§8-10-2. Police court or municipal judge for municipalities.

1 Notwithstanding any charter provision to the contrary, any
2 city may provide by charter provision and any municipality
3 may provide by ordinance for the creation and maintenance of
4 a police or municipal court, for the appointment or election of
5 an officer to be known as police court judge or municipal
6 court judge, and for his compensation, and authorize the
7 exercise by such court or judge of such of the jurisdiction and
8 the judicial powers, authority and duties set forth in section one
9 of this article and similar or related judicial powers, authority
10 and duties enumerated in any applicable charter provisions, as
11 set forth in the charter or ordinance. Such court or judge shall
12 in all events have the criminal jurisdiction of a justice of the
13 peace or county magistrate.

~

CHAPTER 3

(H. B. 215—By Mr. Lohr and Mr. Stacy)

[Passed May 24, 1974; In effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-eight, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to natural resources; wildlife resources; when licenses or permits not required; permitting any resident who was honorably discharged from the armed forces and receives a veteran's pension based on total permanent service connected disability to hunt, trap or fish without obtaining a license, promulgation of rules and regula-

tions governing same; permitting any disabled veteran who is a resident, and eligible to to be exempt from the payment of any motor vehicle registration fee in this state to hunt, trap or fish without obtaining a license, promulgation of rules and regulations governing same.

Be it enacted by the Legislature of West Virginia:

That section twenty-eight, 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.

§20-2-28. When licenses or permits not required.

1 Persons in the following categories shall not be required to
2 obtain licenses or permits as indicated:

3 (a) Bona fide resident landowners or their resident children,
4 or resident parents, or bona fide resident tenants of such land,
5 may hunt, trap or fish on their own land during open season in
6 accordance with the laws and regulations applying to such hunt-
7 ing, trapping and fishing without obtaining a license to do so
8 unless such lands have been designated as a wildlife refuge or
9 preserve.

10 (b) Any bona fide resident of this state who is totally blind
11 may fish in this state without obtaining a fishing license to do
12 so. A written statement or certificate from a duly licensed phy-
13 sician of this state showing the said resident to be totally blind
14 shall serve in lieu of a fishing license and shall be carried on the
15 person of said resident at all times while he is fishing in this state.

16 (c) All residents of West Virginia on active duty in the
17 armed forces of the United States of America, while on leave
18 or furlough, shall have the right and privilege to hunt, trap or
19 fish in season in West Virginia without obtaining a license to
20 do so. Leave or furlough papers shall serve in lieu of any such
21 license and shall be carried on the person at all times while
22 trapping, hunting or fishing.

23 (d) In accordance with the provisions of section twenty-
24 seven of this article, any resident sixty-five years of age or
25 older shall not be required to have a license to hunt, trap or
26 fish during the legal seasons in West Virginia, but in lieu of

27 such license any such person shall at all times while hunting,
28 trapping or fishing, carry on his person a card issued by the
29 director stating his name, address and date of birth.

30 (e) Residents of the state of Maryland who carry hunting or
31 fishing licenses valid in that state may hunt or fish from the
32 West Virginia banks of the Potomac river without obtaining
33 licenses to do so, but such hunting or fishing shall be confined
34 to the fish and waterfowl of the river proper and not on its
35 tributaries: *Provided*, That the state of Maryland shall first
36 enter into a reciprocal agreement with the director extending a
37 like privilege of hunting and fishing on the Potomac river from
38 the Maryland banks of said river to licensed residents of West
39 Virginia, without requiring said residents to obtain Maryland
40 hunting and fishing licenses.

41 (f) Residents of the state of Ohio who carry hunting or fish-
42 ing licenses valid in that state may hunt or fish on the Ohio river
43 or from the West Virginia banks of said river without obtain-
44 ing licenses to do so, but such hunting or fishing shall be con-
45 fined to fish and waterfowl of the river proper and not on its
46 tributaries: *Provided*, That the state of Ohio shall first enter
47 into a reciprocal agreement with the director extending a like
48 privilege of hunting and fishing from the Ohio banks of said
49 river to licensed residents of West Virginia without requiring
50 said residents to obtain Ohio hunting and fishing licenses. In
51 the event the state of Ohio accords this privilege to residents
52 of West Virginia, such Ohio residents will not be required to
53 obtain the license provided for by section forty-two of this
54 article.

55 (g) Any resident of West Virginia who was honorably dis-
56 charged from the armed forces of the United States of Ameri-
57 ca, and who receives a veteran's pension based on total
58 permanent service connected disability as certified to by
59 the veterans administration, shall be permitted to hunt, trap or
60 fish in this state without obtaining a license therefor. The di-
61 rector shall promulgate rules and regulations setting forth the
62 procedure for the certification of the veteran, manner of ap-
63 plying for and receiving the certification and requirements as
64 to identification while said veteran is hunting, trapping or
65 fishing.

66 (h) Any disabled veteran, who is a resident of West Vir-
67 ginia, and who, as certified to by the commissioner of motor
68 vehicles, is eligible to be exempt from the payment of any fee
69 on account of registration of any motor vehicle owned by such
70 disabled veteran as provided for in section eight, article ten,
71 chapter seventeen-a of this code, shall be permitted to hunt,
72 trap or fish in this state without obtaining a license therefor.
73 The director shall promulgate rules and regulations setting
74 forth the procedure for the certification of the disabled vet-
75 eran, manner of applying for and receiving the certification,
76 and requirements as to identification while said disabled vet-
77 eran is hunting, trapping or fishing.

78 (i) Any resident or in-patient in any state mental health,
79 health or benevolent institution or facility may fish in this
80 state, under proper supervision of the institution involved,
81 without obtaining a fishing license to do so. A written state-
82 ment or certificate signed by the superintendent of the mental
83 health, health or benevolent institution or facility in which the
84 resident or in-patient, as the case may be, is institutionalized
85 shall serve in lieu of a fishing license and shall be carried on
86 the person of the resident or in-patient at all times while he is
87 fishing in this state.

**Resolutions authorizing studies by the Joint Committee on Govern-
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(They may be found in the House and Senate Journals of the session,
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