ACTS

OF THE

LEGISLATURE

OF

WEST VIRGINIA

Regular Session, 1974
First Extraordinary Session, 1974
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.
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
TABLE OF CONTENTS

ACTS AND RESOLUTIONS

Regular Session, 1974

GENERAL LAWS AND COURTS OF
LIMITED JURISDICTION

AGRICULTURE

1. Manufacture and Sale of Commercial Fertilizer 1

AIRPORTS

2. Powers of County Airport Authorities 14

ALCOHOLIC LIQUORS

3. Consumers Sales Tax on Purchase of Intoxicating Liquors
   Outside Municipalities 16

APPROPRIATIONS

4. Transferring Amounts Between Items of Total Appropriations
   for Certain State Spending Units 17
5. Supplemental Appropriation to the Governor's Office for
   Emergency Purposes in Connection with the Trucking Industry 19

BANKS AND BANKING

6. Industrial Bank and Industrial Loan Company Act 21
7. Prohibiting Conducting of Banking Business from Mobile Units 51

BONDED INDEBTEDNESS

8. Purpose for Which Local Units of Governments May Issue Bonds 52

CHILD WELFARE

9. Continuing Jurisdiction of Juvenile Courts 55

CIVIL SERVICE

10. Merit System Preference Rating for Veterans 56

CLAIMS AGAINST THE STATE

11. Venue for Certain Suits and Actions 57

CONSUMER PROTECTION

12. Consumer Credit and Protection 58
<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>13.</td>
<td>West Virginia Corporation Act</td>
<td>167</td>
</tr>
<tr>
<td>14.</td>
<td>Financial Institutions as Members of Business Development</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Corporations and Loans to Corporations by Members</td>
<td>322</td>
</tr>
<tr>
<td>15.</td>
<td>Authority of County Courts to Establish and Operate</td>
<td>325</td>
</tr>
<tr>
<td></td>
<td>Garbage and Refuse Collection and Disposal Services</td>
<td></td>
</tr>
<tr>
<td>16.</td>
<td>Employment of Personnel, Including a County Administrator,</td>
<td>327</td>
</tr>
<tr>
<td></td>
<td>by County Courts</td>
<td></td>
</tr>
<tr>
<td>17.</td>
<td>Grants by County Courts to Public Service Districts and</td>
<td>329</td>
</tr>
<tr>
<td></td>
<td>Municipalities for Water and Sewer Systems</td>
<td></td>
</tr>
<tr>
<td>18.</td>
<td>Classification of Counties for Determination of Salaries of</td>
<td>329</td>
</tr>
<tr>
<td></td>
<td>County Commissioners and Other Elected County Officials</td>
<td></td>
</tr>
<tr>
<td>19.</td>
<td>Purchases by County Courts in Open Market on Competitive Bids</td>
<td>333</td>
</tr>
<tr>
<td>20.</td>
<td>Appointment of Investigator of Crime by Prosecuting Attorneys</td>
<td>334</td>
</tr>
<tr>
<td>21.</td>
<td>Mileage Allowance for County Officials, Their Deputies</td>
<td>336</td>
</tr>
<tr>
<td></td>
<td>and Employees, and Fees and Mileage Allowance for</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Constables in Criminal Cases</td>
<td></td>
</tr>
<tr>
<td>22.</td>
<td>Employment of Prisoners Convicted of Misdemeanor</td>
<td>338</td>
</tr>
<tr>
<td></td>
<td>by County Courts</td>
<td></td>
</tr>
<tr>
<td>23.</td>
<td>Mileage and Expenses of Judges</td>
<td>338</td>
</tr>
<tr>
<td>24.</td>
<td>County Magistrates</td>
<td>339</td>
</tr>
<tr>
<td>25.</td>
<td>Terms of Court, Twenty-seventh Judicial Circuit</td>
<td>348</td>
</tr>
<tr>
<td></td>
<td>(Wyoming County)</td>
<td></td>
</tr>
<tr>
<td>26.</td>
<td>Opening Day of Terms of Court of Record and Days Court May Fail to</td>
<td>349</td>
</tr>
<tr>
<td></td>
<td>Sit</td>
<td></td>
</tr>
<tr>
<td>27.</td>
<td>Fees of Court Reporters for Transcripts and Copies</td>
<td>350</td>
</tr>
<tr>
<td>28.</td>
<td>Common Pleas Court of Cabell County</td>
<td>351</td>
</tr>
<tr>
<td>29.</td>
<td>Domestic Relations Court of Cabell County</td>
<td>353</td>
</tr>
<tr>
<td>30.</td>
<td>Hancock County Common Pleas Court</td>
<td>356</td>
</tr>
<tr>
<td>31.</td>
<td>Salary of Judge of the Intermediate Court of Kanawha County</td>
<td>359</td>
</tr>
<tr>
<td>32.</td>
<td>Intermediate Court of McDowell County</td>
<td>360</td>
</tr>
<tr>
<td>33.</td>
<td>Jurisdiction of Intermediate Court of Raleigh County,</td>
<td>362</td>
</tr>
<tr>
<td></td>
<td>Terms of Court and Salary of the Judge</td>
<td></td>
</tr>
<tr>
<td>34.</td>
<td>Court of Common Pleas of Wood County</td>
<td>368</td>
</tr>
<tr>
<td>35.</td>
<td>Preparation, Distribution or Exhibition of Obscene</td>
<td>377</td>
</tr>
<tr>
<td></td>
<td>Matters to Minors</td>
<td></td>
</tr>
<tr>
<td>36.</td>
<td>Transfer of Property with Right of Survivorship</td>
<td>381</td>
</tr>
<tr>
<td></td>
<td>Between Husband and Wife</td>
<td></td>
</tr>
<tr>
<td>37.</td>
<td>Precinct Boundary Changes for 1974 Elections</td>
<td>381</td>
</tr>
<tr>
<td>38.</td>
<td>State Election Commission and Secretary of State as</td>
<td>382</td>
</tr>
<tr>
<td></td>
<td>Chief Election Official</td>
<td></td>
</tr>
</tbody>
</table>
# Table of Contents

## Elections—(Continued)

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>39. Nomination of Candidates in Primary Elections</td>
<td>387</td>
</tr>
<tr>
<td>40. Election of Delegates to Conference on Democratic Party Organization and Policy</td>
<td>388</td>
</tr>
</tbody>
</table>

## Fiduciaries

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>41. Appointment of Nonresident as Executor or Administrator of an Estate of a Resident Decedent</td>
<td>390</td>
</tr>
</tbody>
</table>

## Governor

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>42. Emergency Fuel Power Act</td>
<td>394</td>
</tr>
</tbody>
</table>

## Health

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>43. Compensation and Expenses of Members of State Board of Health</td>
<td>399</td>
</tr>
<tr>
<td>44. County and Municipal Boards of Health</td>
<td>401</td>
</tr>
<tr>
<td>45. Emergency Medical Services</td>
<td>404</td>
</tr>
<tr>
<td>46. Sexual Sterilization</td>
<td>414</td>
</tr>
</tbody>
</table>

## Industrial Development

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>47. Industrial Development and Commercial Development Bond Act</td>
<td>416</td>
</tr>
</tbody>
</table>

## Industrial Home for Girls

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>48. Management of Industrial Home for Girls</td>
<td>429</td>
</tr>
</tbody>
</table>

## Insurance

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>49. Borrowing Money by Insurers and Rate of Interest Thereon</td>
<td>430</td>
</tr>
<tr>
<td>50. Standard Valuation Law for Life Policies</td>
<td>432</td>
</tr>
<tr>
<td>52. Payment of Commissions on Insurance</td>
<td>459</td>
</tr>
<tr>
<td>53. Individual Accident and Sickness Insurance Standards</td>
<td>461</td>
</tr>
<tr>
<td>54. Investments by Hospital Service and Medical Service Corporations</td>
<td>467</td>
</tr>
<tr>
<td>55. Insurance Holding Company Systems</td>
<td>469</td>
</tr>
</tbody>
</table>

## Judicial Council

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>56. Membership of the West Virginia Judicial Council</td>
<td>486</td>
</tr>
</tbody>
</table>

## Labor

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>57. Minimum Wage and Maximum Hours Standards for Employees</td>
<td>486</td>
</tr>
<tr>
<td>58. Mobile Home Safety Act</td>
<td>493</td>
</tr>
</tbody>
</table>

## Legal Capacity

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>59. Legal Capacity as Applicable to Child Support Under Court Decree Prior to 18-Year-Old Legal Capacity Legislation</td>
<td>499</td>
</tr>
</tbody>
</table>

## Legislature

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>60. Repealing Statute Relating to Legislative Findings Regarding Apportionment of Membership of the House of Delegates</td>
<td>501</td>
</tr>
<tr>
<td>61. Extending Life of Blennerhassett Historical Commission</td>
<td>501</td>
</tr>
<tr>
<td>62. Maintenance of Private Employee Status by Persons While Serving as Members of the Legislature</td>
<td>503</td>
</tr>
</tbody>
</table>
# Table of Contents

## Liens

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>63.</td>
<td>Personal Property and Homestead Exemptions</td>
<td>504</td>
</tr>
</tbody>
</table>

## Life Estates

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>64.</td>
<td>Valuation of Life Estates</td>
<td>510</td>
</tr>
</tbody>
</table>

## Mentally Ill Persons

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>65.</td>
<td>Sterilization of Mental Defectives</td>
<td>521</td>
</tr>
<tr>
<td>66.</td>
<td>Procedures for Hospitalization of Mentally Ill Persons</td>
<td>524</td>
</tr>
</tbody>
</table>

## Mines and Minerals

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>67.</td>
<td>Requiring Certification of Surface Miners and Creating a Board of Miner Training, Education and Certification</td>
<td>555</td>
</tr>
<tr>
<td>68.</td>
<td>Interstate Mining Compact</td>
<td>569</td>
</tr>
<tr>
<td>69.</td>
<td>Approval and Permits for Opening or Reopening Deep Mines</td>
<td>578</td>
</tr>
</tbody>
</table>

## Motor Vehicles

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>70.</td>
<td>Use of Temporary Facsimile Registration Plates on Motor Vehicles</td>
<td>580</td>
</tr>
<tr>
<td>71.</td>
<td>Exemptions from Registration Fees</td>
<td>581</td>
</tr>
<tr>
<td>72.</td>
<td>Driver's Licensing Advisory Board</td>
<td>582</td>
</tr>
<tr>
<td>73.</td>
<td>Blood Test for Alcohol in Drivers and Adult Pedestrians Killed in Motor Vehicle Accidents</td>
<td>584</td>
</tr>
<tr>
<td>74.</td>
<td>Slow Moving Vehicle Emblem</td>
<td>587</td>
</tr>
<tr>
<td>75.</td>
<td>Vehicle Spot Lamps and Other Auxiliary Lamps</td>
<td>588</td>
</tr>
<tr>
<td>76.</td>
<td>Compliance of Owners and Drivers with Inspection Laws</td>
<td>589</td>
</tr>
</tbody>
</table>

## Municipalities

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>77.</td>
<td>Special Municipal Elections Not Otherwise Provided for</td>
<td>590</td>
</tr>
<tr>
<td>78.</td>
<td>Sale or Lease of Municipal Public Utility</td>
<td>592</td>
</tr>
<tr>
<td>79.</td>
<td>Removal, Discharge, Suspension or Reduction in Rank or Pay of Members of Paid Police and Fire Departments</td>
<td>594</td>
</tr>
<tr>
<td>80.</td>
<td>Authority of Municipalities to Appropriate Funds for Health Institutions and Facilities</td>
<td>599</td>
</tr>
</tbody>
</table>

## Natural Resources

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>81.</td>
<td>Unlawful Methods of Hunting and Fishing</td>
<td>601</td>
</tr>
<tr>
<td>82.</td>
<td>Hunting Bear and Tagging and Reporting Bear Killed</td>
<td>607</td>
</tr>
<tr>
<td>83.</td>
<td>Outfitters and Guides for Hunters, Fishermen and Others</td>
<td>611</td>
</tr>
<tr>
<td>84.</td>
<td>Categories of Persons Not Required to Obtain Licenses or Permits to Hunt, Trap or Fish</td>
<td>614</td>
</tr>
<tr>
<td>85.</td>
<td>When Licenses to Hunt or Fish Not Required</td>
<td>616</td>
</tr>
<tr>
<td>86.</td>
<td>Class N Special Deer Hunting License</td>
<td>619</td>
</tr>
<tr>
<td>87.</td>
<td>Class O Resident Trout Fishing License</td>
<td>620</td>
</tr>
<tr>
<td>88.</td>
<td>Coal Refuse Disposal Control</td>
<td>621</td>
</tr>
<tr>
<td>89.</td>
<td>Penalties for Violation of Natural Resources Law Generally</td>
<td>627</td>
</tr>
<tr>
<td>90.</td>
<td>Motorboat Identification Numbers, Fees and Reciprocal Provisions</td>
<td>628</td>
</tr>
</tbody>
</table>

## Notaries Public

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>91.</td>
<td>Appointment of Commissioners to Accept Signatures, Etc., Outside the State</td>
<td>633</td>
</tr>
</tbody>
</table>
# Table of Contents

## Penitentiary

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>92. Duties and Bond of Warden and Voting Residence</td>
<td>635</td>
</tr>
<tr>
<td>93. Assistants and Employees of Warden of Penitentiary, Duties of Guards and Right to Carry Weapons</td>
<td>636</td>
</tr>
<tr>
<td>94. Transfer of Portions of Prison Farm to the City of Moundsville and the County of Marshall</td>
<td>637</td>
</tr>
</tbody>
</table>

## Pre-Need Burial Contracts

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>95. Pre-Need Burial Contracts</td>
<td>638</td>
</tr>
</tbody>
</table>

## Professions and Occupations

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>96. Compensation of Members of Boards of Examination and Registration</td>
<td>640</td>
</tr>
<tr>
<td>97. Licensing of Persons to Practice Medicine and Surgery</td>
<td>641</td>
</tr>
</tbody>
</table>

## Public Buildings and Facilities

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>98. Requirements As to Accessibility of Public Buildings, Sidewalks, Curbs and Facilities for Use by Physically Handicapped</td>
<td>644</td>
</tr>
</tbody>
</table>

## Public Employees Retirement System

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>99. Composition of Board of Trustees</td>
<td>648</td>
</tr>
<tr>
<td>100. Terms of Office of Trustees of Public Employees Retirement System</td>
<td>649</td>
</tr>
<tr>
<td>101. Refund of Accumulated Contributions</td>
<td>651</td>
</tr>
<tr>
<td>102. Reemployment of a Member of the Public Employees Retirement System After Retirement</td>
<td>652</td>
</tr>
<tr>
<td>103. Repealing Statute Relating to Payment of Annuities When a Member with Reciprocal Service Credit Retires from the Public Employees Retirement or the State Teachers Retirement Systems</td>
<td>653</td>
</tr>
</tbody>
</table>

## Public Offices

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>104. Uniform System of Accounting and Reporting for Local Governmental Offices and Agencies</td>
<td>654</td>
</tr>
</tbody>
</table>

## Public Safety

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>105. Pay and Allowances of National Guardsmen</td>
<td>656</td>
</tr>
<tr>
<td>106. Salaries of Members of the Department of Public Safety</td>
<td>657</td>
</tr>
<tr>
<td>107. Arrest Fees of Department of, to Be Paid into General Revenue Fund</td>
<td>659</td>
</tr>
</tbody>
</table>

## Public Service Commission

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>108. Jurisdiction and Authority of the Public Service Commission Over Urban Mass Transportation Systems</td>
<td>666</td>
</tr>
<tr>
<td>109. Procedure for Changing Public Utility Rates</td>
<td>668</td>
</tr>
<tr>
<td>110. Special Utility License Fees Payable to the Public Service Commission</td>
<td>671</td>
</tr>
</tbody>
</table>

## Railroads

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>111. Blocking of Crossings by Trains</td>
<td>673</td>
</tr>
</tbody>
</table>

## Roads and Highways

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>112. Verified Statement of Vendors Doing Business with the Department of Highways</td>
<td>675</td>
</tr>
</tbody>
</table>
# Table of Contents

## Savings and Loan Associations

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>113. Loans and Investments by Building and Loan Associations</td>
<td>676</td>
</tr>
</tbody>
</table>

## Schools

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>114. Acquisition and Operation of Parking Facilities at State Institutions of Higher Education</td>
<td>678</td>
</tr>
<tr>
<td>115. Authority of State Board of Education to Contract for Programs, Services and Facilities</td>
<td>680</td>
</tr>
<tr>
<td>116. Authority of County Boards of Education Generally</td>
<td>681</td>
</tr>
<tr>
<td>117. Membership in the Teachers Retirement System, Cessation of Membership, and Payments for Membership Rights</td>
<td>685</td>
</tr>
<tr>
<td>118. Teachers Retirement Withdrawal and Death Benefits</td>
<td>688</td>
</tr>
<tr>
<td>119. Vocational Rehabilitation Services</td>
<td>690</td>
</tr>
<tr>
<td>120. Issuance and Sale of Revenue Bonds for Capital Improvements at Marshall University</td>
<td>692</td>
</tr>
<tr>
<td>121. Continuing Contract Status for Employees of Schools for the Deaf and Blind</td>
<td>698</td>
</tr>
<tr>
<td>122. Educational Benefits for Children of Deceased Veterans of Vietnam War</td>
<td>700</td>
</tr>
<tr>
<td>123. Education of Exceptional Children</td>
<td>702</td>
</tr>
<tr>
<td>124. State Aid for Students Attending Greenbrier College of Osteopathic Medicine</td>
<td>707</td>
</tr>
<tr>
<td>125. Authority of Board of Regents to Contract for Programs, Services and Facilities</td>
<td>708</td>
</tr>
<tr>
<td>126. Participation of Board of Regents in Reciprocal Regional and Higher Educational Agreements</td>
<td>709</td>
</tr>
<tr>
<td>127. Issuance and Sale of School Building Bonds</td>
<td>710</td>
</tr>
</tbody>
</table>

## Securities

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>128. Uniform Securities Act</td>
<td>719</td>
</tr>
</tbody>
</table>

## Surplus Property

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>129. Authority and Duties of State Agency for Surplus Property</td>
<td>771</td>
</tr>
</tbody>
</table>

## Taxation

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>130. Collection of Penalties and Forfeitures for Failure to List Property for Taxation</td>
<td>773</td>
</tr>
<tr>
<td>131. Real Property Tax Exemption for Elderly Homeowners</td>
<td>776</td>
</tr>
<tr>
<td>132. Business Franchise Registration Certificate Tax Definitions</td>
<td>778</td>
</tr>
<tr>
<td>133. Classifying, Manufacturing, Compounding or Preparing Products for Purposes of Business and Occupation Tax</td>
<td>779</td>
</tr>
<tr>
<td>134. Exemptions from Business and Occupation Tax</td>
<td>781</td>
</tr>
<tr>
<td>135. Assessment of Gasoline and Special Fuel Excise Tax When Tax Has Not Been Paid or a Deficient or Erroneous Return Is Made</td>
<td>782</td>
</tr>
<tr>
<td>136. Sales and Services Exempted from Consumers Sales Tax</td>
<td>783</td>
</tr>
<tr>
<td>137. Administration and Enforcement of the Cigarette Tax Law</td>
<td>785</td>
</tr>
<tr>
<td>138. Meaning of Terms in Personal Income Tax Law</td>
<td>793</td>
</tr>
<tr>
<td>139. West Virginia Adjusted Gross Income of Resident Individuals</td>
<td>794</td>
</tr>
<tr>
<td>140. Meaning of Terms in Corporation Net Income Tax Laws</td>
<td>797</td>
</tr>
</tbody>
</table>
# Table of Contents

## Unemployment Compensation

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>141. Salary of Commissioner of Employment Security and Members of Board of Review, and Unemployment Compensation Benefits</td>
<td>800</td>
</tr>
<tr>
<td>142. Establishment of a Training Program for Veteran Medical Personnel</td>
<td>806</td>
</tr>
</tbody>
</table>

## Uniform Commercial Code

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
</table>

## Vietnam Veterans Bonus

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>144. Payment of Vietnam Veterans Bonus</td>
<td>864</td>
</tr>
</tbody>
</table>

## Workmen's Compensation

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>145. Workmen's Compensation Coverage and Benefits</td>
<td>871</td>
</tr>
<tr>
<td>146. Mode and Time of Payment of Benefits</td>
<td>913</td>
</tr>
</tbody>
</table>

## Local Laws

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>147. Cabell County Youth Center</td>
<td>913</td>
</tr>
<tr>
<td>148. Huntington Park Commission</td>
<td>919</td>
</tr>
<tr>
<td>149. Prickett's Fort State Park Commission</td>
<td>931</td>
</tr>
<tr>
<td>150. Putnam County Emergency Clinic and Hospital</td>
<td>932</td>
</tr>
<tr>
<td>151. Authority of County Court of Roane County to Sell Certain Real Property</td>
<td>933</td>
</tr>
<tr>
<td>152. Authorizing the City of Welch to Lease Certain Real Property</td>
<td>935</td>
</tr>
</tbody>
</table>

## Resolutions

(Only resolutions of general interest, adopted during the session, are listed.)

### Concurrent

<table>
<thead>
<tr>
<th>Resolution</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>HCR 5. Production of Hydroelectric Power at the Tygart Dam in Taylor County</td>
<td>937</td>
</tr>
<tr>
<td>HCR 19. Requesting Expansion of Training Curriculum for Nurses to Include the Area of Geriatric Care</td>
<td>938</td>
</tr>
<tr>
<td>HCR 22. Creating a Commission on the Establishment and Rearrangement of Judicial Circuits</td>
<td>939</td>
</tr>
<tr>
<td>HCR 24. Inclusion of Provisions in Contracts Entered into by the State Concerning Nonperformance Resulting from Emergencies or Material Shortages</td>
<td>941</td>
</tr>
<tr>
<td>HCR 37. Requesting National Railroad Passenger Corporation to Institute Passenger Train Service Between Cumberland, Md., and St. Louis, Mo.</td>
<td>942</td>
</tr>
<tr>
<td>HCR 65. Requesting the Governor to Designate May 1 of each year as Law Day U.S.A.</td>
<td>942</td>
</tr>
<tr>
<td>SCR 19. Requesting the Board of Regents to Provide Adequate Greenhouse Space at West Virginia University</td>
<td>943</td>
</tr>
<tr>
<td>SCR 27. Authorizing the West Virginia Water Festival to Have an Appropriate Medal or Artifact Designed and Produced</td>
<td>944</td>
</tr>
<tr>
<td>SCR 33. Commending the United Mine Workers of America and Urging its Executive Board to Select a National Headquarters Site in West Virginia</td>
<td>945</td>
</tr>
<tr>
<td>Authorizing and Continuing Studies by the Joint Committee on Government and Finance</td>
<td>946</td>
</tr>
</tbody>
</table>
TABLE OF CONTENTS

RESOLUTIONS—(Continued)  Page

JOINT  
SJR 6. Proposing an Amendment to the Constitution of the State,  
    Designated the "Judicial Reorganization Amendment" 946  
HJR 12. Proposing an Amendment to the Constitution of the State,  
    Designated the "Modern Schools Amendment" 962

First Extraordinary Session, 1974  

COURTS AND THEIR OFFICERS  Page
1. Administrative Office for the Supreme Court of Appeals 965

MUNICIPALITIES  
2. Police Court or Municipal Judge for Municipalities 966

NATURAL RESOURCES  
3. Categories of Persons Not Required to Obtain Licenses  
    or Permits to Hunt, Trap or Fish 967  
Authorizing Studies by the Joint Committee on Government and Finance 970
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

<table>
<thead>
<tr>
<th>District</th>
<th>Name</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>First</td>
<td>* Chester R. Hubbard (R)</td>
<td>Wheeling</td>
</tr>
<tr>
<td></td>
<td>Samuel N. Kusic (R)</td>
<td>Weirton</td>
</tr>
<tr>
<td>Second</td>
<td>+ William L. Gilligan (R)</td>
<td>Sistersville</td>
</tr>
<tr>
<td></td>
<td>Roy A. Rogerson (R)</td>
<td>Moundville</td>
</tr>
<tr>
<td>Third</td>
<td>* Russell G. Beall (D)</td>
<td>Parkersburg</td>
</tr>
<tr>
<td></td>
<td>J. Frank Deem (R)</td>
<td>St. Marys</td>
</tr>
<tr>
<td>Fourth</td>
<td>+ Robert F. Hatfield (D)</td>
<td>Hurricane</td>
</tr>
<tr>
<td></td>
<td>Orton A. Jones (R)</td>
<td>Spencer</td>
</tr>
<tr>
<td>Fifth</td>
<td>H. Darrel Darby (D)</td>
<td>Huntington</td>
</tr>
<tr>
<td></td>
<td>* Robert R. Nelson (D)</td>
<td>Huntington</td>
</tr>
<tr>
<td>Sixth</td>
<td>John Pat Fanning (D)</td>
<td>Inger</td>
</tr>
<tr>
<td></td>
<td>* Lafe P. Ward (D)</td>
<td>Williamson</td>
</tr>
<tr>
<td>Seventh</td>
<td>' David E. Wallace (D)</td>
<td>Madison</td>
</tr>
<tr>
<td></td>
<td>Todd C. Willis (D)</td>
<td>Logan</td>
</tr>
<tr>
<td>Eighth</td>
<td>Mario J. Palumbo (D)</td>
<td>Charleston</td>
</tr>
<tr>
<td></td>
<td>* John T. Poffenbarger (R)</td>
<td>Dunbar</td>
</tr>
<tr>
<td>Ninth</td>
<td>Warren R. McGraw (D)</td>
<td>Pineville</td>
</tr>
<tr>
<td></td>
<td>* Alan L. Susman (D)</td>
<td>Beckley</td>
</tr>
<tr>
<td>Tenth</td>
<td>* J. C. Dillon, Jr. (D)</td>
<td>Hinton</td>
</tr>
<tr>
<td></td>
<td>Odell H. Huffman (D)</td>
<td>Princeton</td>
</tr>
<tr>
<td>Eleventh</td>
<td>Patrick R. Hamilton (D)</td>
<td>Oak Hill</td>
</tr>
<tr>
<td></td>
<td>* Ralph D. Williams (D)</td>
<td>Rainelle</td>
</tr>
<tr>
<td>Twelfth</td>
<td>* Carl B. Gainer (D)</td>
<td>Richwood</td>
</tr>
<tr>
<td></td>
<td>Richard H. Benson (D)</td>
<td>Elkins</td>
</tr>
<tr>
<td>Thirteenth</td>
<td>W. Walter Neely (D)</td>
<td>Clarksburg</td>
</tr>
<tr>
<td></td>
<td>William R. Sharpe, Jr. (D)</td>
<td>Weston</td>
</tr>
<tr>
<td>Fourteenth</td>
<td>James L. Davis (D)</td>
<td>Fairmont</td>
</tr>
<tr>
<td></td>
<td>* William A. Moreland (D)</td>
<td>Morgantown</td>
</tr>
<tr>
<td>Fifteenth</td>
<td>* C. N. Harman (R)</td>
<td>Grafton</td>
</tr>
<tr>
<td></td>
<td>J. D. Hinkle, Jr. (R)</td>
<td>Buckhannon</td>
</tr>
<tr>
<td>Sixteenth</td>
<td>* Louise Leonard (R)</td>
<td>Harpers Ferry</td>
</tr>
<tr>
<td></td>
<td>William J. Oates, Jr. (D)</td>
<td>Romney</td>
</tr>
<tr>
<td>Seventeenth</td>
<td>William T. Brotherton, Jr. (D)</td>
<td>Charleston</td>
</tr>
<tr>
<td></td>
<td>* Si Galperin, Jr. (D)</td>
<td>Charleston</td>
</tr>
</tbody>
</table>

*(+)* Elected in 1972 for unexpired term.
*(•)* Elected in 1970. All others elected in 1972.

(D) Democrats
(R) Republicans

<table>
<thead>
<tr>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>24</td>
</tr>
<tr>
<td>10</td>
</tr>
</tbody>
</table>

[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

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

1 Appointed January 30, 1974, to fill the vacancy caused by the resignation of Mino R. D'Aurora.
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  
Mingo  | Robert D. Harman (R)  | Keyser  
        | Joe W. Hatfield (D)  | Gilbert  
        | R. Doyle Van Meter, II (D)  | Williamson  
        | Robert W. Dinsmore (D)  | Morgantown  
        | Terry T. Jones (R)  | Morgantown  
        | Robert B. Stone (R)  | Morgantown  
Monongalia  | W. Marion Shiflet (D)  | Union  
        | Larry A. Tucker (D)  | Summersville  
Ohio  | James W. Teets (R)  | Terra Alta  
        | Raymond Peak (D)  | Hurricane  
        | Lewis N. McManus (D)  | Beckley  
        | Mary Martha Merritt (D)  | Beckley  
        | Ted T. Stacy (D)  | Beckley  
        | Mrs. W. W. Withrow (D)  | Beckley  
Preston  | Earl H. Stalnaker (D)  | Elkins  
Roane  | Orton R. Karickhoff (R)  | Spencer  
        | *C. D. Hylton, III (R)  | Hinton  
Summers  | Samuel A. Morasco (D)  | Grafton  
        | Mary Martha Merritt (D)  | Buckhannon  
        | Charles R. Shafer (R)  | Huntington  
Taylor  | Walter Rollins (D)  | Webster Springs  
Upshur  | C. D. Hylton, III (R)  | New Martinsville  
        | James A. Ballouz (D)  | Parkersburg  
        | J. C. Butcher (R)  | Parkersburg  
        | Calvin A. Calendine (R)  | Parkersburg  
        | Gene A. Haynes (R)  | Parkersburg  
        | James M. McCutcheon (R)  | Mullens  
        | Charles R. Cline (D)  | Pineville  
Wyoming  | A. L. Sommerville, Jr. (D)  | Martinsburg  
        | Joseph M. Ballouz (D)  | Martinsburg  
Wood  | W. Marion Shiflet (D)  | Dorcas  
        | Larry W. Terry (R)  | Moorefield  
        | Larkin B. Ours (R)  | Lewisburg  
        | Thomas J. Hawse (D)  | Rainelle  
        | Frank B. Jolliffe (D)  | Salem  
        | Sarah Lee Neal (D)  | Harrisville  
        | Harry E. Moats (R)  | Glenville  
Wyoming  | C. E. Allen (D)  | Berkeley  
        | Charles R. Cline (D)  | Morgan  
        | Wallace L. Files (R)  | Grant  
        | Luke E. Terry (R)  | Tucker  
        | Larkin B. Ours (R)  | Hardy  
        | Thomas J. Hawse (D)  | Pendleton  
        | Frank B. Jolliffe (D)  | Greenbrier  
        | Sarah Lee Neal (D)  | Pocahontas  
        | Larry D. Swann (R)  | Tyler  
        | Harry E. Moats (R)  | Ritchie  
        | Billy Brown Burke (D)  | Calhoun  
        |  | Gilmer  
        |  | Wirt  

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.
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.
SENATE COMMITTEES

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, Polan, Shiflet, Stacy, Tonkovich, Van Meter, Calendine, Edwards, Everson, Greer, Harmon, 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.

[xviii]
INDUSTRY AND LABOR
Kopp (Chairman), Rutledge (Vice Chairman), Allen, Carey, Christian, Colombo, Gilliam, Given, Hatfield, McKenzie, Moore, Morasco, Polan, Prestera, 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, Prestera, Scott, Singleton, 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, Singleton, 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, Prestera, 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.
ENROLLED BILLS
Christian (Chairman), McKenzie, Neal, Smirl and Swann.

GOVERNMENT AND FINANCE
McManus (ex officio Chairman), Lohr, Myles, Pauley, Sommerville, 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.
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 ferti-
lizer to be registered; requiring labels and inspections; fees
therefor; requiring tonnage reports; requiring inspection, sam-
pling and analysis; plant food deficiency; prohibiting misbrand-
ing and adulteration; requiring certain publications; rules and
regulations; short weight; cancellations of registrations and hear-
ings thereon; "stop sale" orders; seizure, condemnation and
sale; exchanges between manufacturers; disposition of registra-
tion; 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.


(a) "Brand" means a term, design or trademark used in connection with one or several grades of commercial fertilizer.

(b) "Bulk fertilizer" means a commercial fertilizer distributed in a nonpackaged form.

(c) "Commercial fertilizer" means any substance containing one or more recognized plant nutrients which is used for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth, except unmanipulated animal and vegetable manures, marl, lime, limestone, wood ashes and gypsum, and other products exempted by regulation of the commissioner.

(d) "Commissioner" means the commissioner of agriculture of the state of West Virginia or his duty authorized agent.

(e) "Department" means the department of agriculture of the state of West Virginia.

(f) "Distributor" means any person who imports, consigns, manufactures, produces, compounds, mixes or blends commercial fertilizer, or who offers for sale, sells, barters or otherwise supplies commercial fertilizer in this state.
(g) "Fertilizer material" means a commercial fertilizer which either:
(1) Contains important quantities of no more than one of the primary plant nutrients (nitrogen, phosphoric acid and potash), or
(2) Has approximately eighty-five percent of its plant nutrient content present in the form of a single chemical compound, or
(3) Is derived from a plant or animal residue or by-product or a natural material deposit which has been processed in such a way that its content of primary plant nutrients has not been materially changed except by purification and concentration.

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

(i) "Guaranteed analysis" means the minimum percentage of plant nutrients claimed in the following order and form:
(1) Total nitrogen (N) __________ percent
Available phosphoric acid (P₂O₅) ______ percent
Soluble potash (K₂O) ______ percent
(2) For unacidulated mineral phosphatic materials and basic slag, bone, tankage and other organic phosphate materials, the total phosphoric acid or degree of fineness may also be guaranteed.
(3) Guarantees for plant nutrients other than nitrogen, phosphorus and potassium may be permitted or required by regulation of the commissioner. The guarantees for such other nutrients shall be expressed in the form of the element. The sources of such other nutrients (oxides, salt, chelates, etc.) may be required to be stated on the application for registration and may be included as a parenthetical statement on the label. Other beneficial substances or compounds, determinable by laboratory methods, also may be guaranteed by permission.
of the commissioner. When any plant nutrients or other sub-
stances or compounds are guaranteed, they shall be subject
to inspection and analysis in accord with the methods and
regulations prescribed by the commissioner.

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

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

<table>
<thead>
<tr>
<th>Component</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total nitrogen (N)</td>
<td>______ percent</td>
</tr>
<tr>
<td>Available phosphorus (P)</td>
<td>______ percent</td>
</tr>
<tr>
<td>Soluble potassium (K)</td>
<td>______ percent</td>
</tr>
</tbody>
</table>

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

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

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

(l) "Labeling" means all written, printed or graphic matter,
upon or accompanying any commercial fertilizer, or adver-
tisements, brochures, posters, television and radio announce-
ments used in promoting the sale of such commercial
fertilizers.
(m) "Mixed fertilizer" means a commercial fertilizer containing any combination or mixture of fertilizer materials.

(n) "Official sample" means any sample of commercial fertilizer taken by the commissioner or his agent and designated as "official" by the commissioner.

(o) "Percent" means the percentage by weight.

(p) "Person" means an individual, partnership, association, firm or corporation.

(q) "Registrant" means the person who registers commercial fertilizer under the provisions of this article.

(r) "Specialty fertilizer" means a commercial fertilizer distributed primarily for nonfarm use, such as home gardens, lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses and nurseries.

(s) "Ton" means a net weight of two thousand pounds avoirdupois.


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

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

The application shall include the following information:

(1) The net weight;

(2) The brand and grade;

(3) The guaranteed analysis; and

(4) The name and address of the registrant.

(b) A distributor shall not be required to register any
commercial fertilizer which is already registered under this article by another person, providing the label does not differ in any respect.

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


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

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


(a) There shall be paid to the commissioner for all commercial fertilizers distributed in this state an inspection fee at the rate of twenty cents per ton: Provided, That sales to manufacturers or exchanges between them are hereby exempted. Fees so collected shall be used for the payment of the costs of inspection, sampling and analysis, and other expenses necessary for the administration of this article.

On individual packages of commercial fertilizer containing ten pounds or less, there shall be paid in lieu of the twenty cents per ton inspection fee, an inspection fee of ten dollars for each brand and grade sold or distributed. Where a person sells commercial fertilizer in packages over ten pounds the inspection fee of ten dollars shall apply only to that por-
tion sold in packages of ten pounds or less, and that portion sold in packages over ten pounds shall be subject to the same inspection fee of twenty cents per ton as provided in this article.

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

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

If the tonnage report is not filed and the payment of inspection fee is not made within thirty days after the end of the quarter, a collection fee amounting to ten percent of the amount shall be assessed against the registrant, and the amount of fees due shall constitute a debt and become the basis of a judgment against the registrant.

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


The person transacting, distributing or selling commercial fertilizer to a nonregistrant shall mail the commissioner a report showing the county of the consignee, the amounts (tons) of each grade of commercial fertilizer, and the form in which the fertilizer was distributed (bags, bulk, liquid, etc.). This information shall be reported by one of the following methods: (a) Submitting a summary report approved by the commissioner on or before the fifteenth day of each month covering shipments made during the preceding month;
or (b) submitting a copy of the invoice within five business
days after shipment. No information furnished the commis-
sioner under this section shall be disclosed in such a way
as to divulge the operation of any person.


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

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

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

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


(a) Penalty for nitrogen, available phosphoric acid or phos-
phorus and potash or potassium.—If the analysis shall show
that a commercial fertilizer is deficient in one or more of its
guaranteed primary plant foods (NPK) beyond the “investiga-
tional allowances” as established by regulation, or if the over-
all index value of the fertilizer is below the level established
by regulation, a penalty of three times the commercial value
of such deficiency shall be assessed.
(b) **Penalty for other deficiencies.**—Deficiencies beyond the investigational allowances as established by regulation in any other constituent, which the registrant is required to or may guarantee, shall be evaluated and penalties prescribed therefor by the commissioner.

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

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


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


No person shall distribute misbranded fertilizer. A commercial fertilizer shall be deemed to be misbranded:

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

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

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

(d) If it purports to be or is represented as a commercial fertilizer, or is represented as containing a plant nutrient or commercial fertilizer unless such plant nutrient or commercial fertilizer conforms to the definition of identity, if any, prescribed by regulation of the commissioner; in the adopting of
§19-15-10. Adulteration.

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

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

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

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


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


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


If any commercial fertilizer in the possession of the consumer is found by the commissioner to be short in weight, the registrant of said commercial fertilizer shall within thirty days
Ch. 1] Agriculture

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.


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 promulgated 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.


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.


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


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

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

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

(d) It shall be the duty of each prosecuting attorney to
whom any violation is reported to cause appropriate proceed-
ings to be instituted and prosecuted in a court of competent
jurisdiction without delay.
(e) The commissioner is hereby authorized to apply for and
the court to grant a temporary or permanent injunction re-
straining any person from violating or continuing to violate
any of the provisions of this article or any rule or regulation
promulgated under the article notwithstanding the existence of
other remedies at law. Said injunction to be issued without
bond.

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

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

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

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


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

2. (1) To make and adopt all necessary bylaws, rules and regulations for its organization and operations not inconsistent with law;

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

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

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

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

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

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

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

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

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

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

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

(12) To expend its funds in the execution of the powers
and authority herein given.
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 the use and benefit of the various counties and municipalities of this state, there is hereby levied a tax upon all purchases of intoxicating liquor from state stores or other agencies of the alcohol beverage control commissioner, outside the corporate limits of any municipality. The tax shall be three percent of the purchase price and shall be added to and collected with the purchase price by the commissioner: Provided, That no such tax shall be collected on the intoxicating liquors sold by or purchased from holders of a license issued under the provisions of article seven of this chapter.

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

The commissioner by appropriate rules and regulations shall provide for the collection of such tax, separation or proration of the same and distribution thereof to the respective counties and municipalities for which the same shall be collected. Such rules and regulations shall provide that all such taxes shall be deposited with the state treasurer and distributed quarterly by the treasurer upon warrants of the auditor payable to the counties and municipalities.

CHAPTER 4

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

[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
APPROPRIATIONS

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.

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.
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 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 of chapter thirty-one-a of this code, insofar as the same relates to the inspection, examination, supervision, regulation and control of banking institutions, including but not limited to all of the penalty provisions contained in said chapter thirty-one-a, shall apply to industrial banks and industrial loan companies organized pursuant to this article to the extent that the provisions of this article and the provisions of said chapter thirty-one-a are not inconsistent. To the extent of any inconsistencies between the provisions of this article and provisions of chapter thirty-one-a of this code, the provisions of this article shall prevail to the extent of such inconsistencies.

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

§31-7-3. Definitions.

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

3 (a) "Board" shall mean the West Virginia board of banking and financial institutions;
(b) "Commissioner" or "commissioner of banking" shall mean the commissioner of banking of West Virginia and shall also include the department of banking of West Virginia;

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

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

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

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

(a) In the case of an industrial loan company, any number of persons, not fewer than thirteen, citizens of this state, may become an industrial loan company on the terms and conditions and subject to the liabilities prescribed in this article. The name of any industrial loan company formed under this article shall not contain the words "savings" or "savings and loan" and shall not be that of any other existing corporation of this state: Provided, That any such corporation heretofore organized which uses the words "savings and loan" as a part of its corporate name shall be authorized to continue to use
such words. The capital stock of any such corporation shall not be less than twenty-five thousand dollars, and shall consist of shares of common stock. The voting power and control of the corporation during its life shall be vested in the common stock only if more than one class of stock is to be issued. Such common stock, with which it will commence business, shall be paid in before such corporation shall be authorized to engage in business, except such business as is incidental and necessarily preliminary to its organization.

(b) In the case of an industrial bank, any number of persons, not fewer than thirteen, citizens of this state, may become an industrial bank on the terms and conditions and subject to the liabilities prescribed by this article and the provisions of article four, chapter thirty-one-a of this code subject to such exceptions contained in this article. The name of any industrial bank formed under the provisions of this subsection (b), section four, shall be, "Industrial Financing Corporation," and shall include no other words except a trading area, community, city, county or other local identity approved by the board. The capital stock requirements of any such industrial bank shall be the same as those prescribed in subsections (a) and (c) of section three, article four, chapter thirty-one-a of this code. The voting power and control of any industrial bank shall be vested in the common stock only and such corporations shall issue but one class of stock. Such common stock with which it will commence business shall be paid in before such corporation shall be authorized to engage in business as an industrial bank except such business as is incidental and necessarily preliminary to its organization.

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

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

The incorporators shall file with the board such agreement in duplicate and, when filed with the board, shall be accompanied by the statutory corporation charter fees, and an examination and investigation fee of one thousand dollars payable
to the board. If, at the time of such filing, the corporation has already qualified and is conducting business as an industrial loan company, then an examination and investigation fee of five hundred dollars shall be payable to the board. When transmitting the agreement to the board, the incorporators shall designate by name and give the address of the attorney, agent or other responsible party with whom the board may communicate, on whom the board may call for further information, and to whom the board may officially report as to action on the agreement so filed with him. The agreement shall constitute and may be considered and treated by the board as an application for the board's approval to incorporate and organize an industrial bank in this state.

The provisions of section seven, article four, chapter thirty-one-a of this code shall apply to any application for a charter 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.

In addition to any of the requirements contained in chapter thirty-one-a of this code, written application for authority to establish an industrial bank shall be filed with the board by an existing industrial loan company or by a newly formed corporation desiring to become an industrial bank and such application shall include:

(a) The name, residence and occupation of each incorporator and stock subscriber and the amount of stock held or subscribed for by each, together with a statement under oath of each stock subscriber or stockholder that he subscribes for or holds such stock in good faith in his own right and not as agent or attorney or trustee for any undisclosed person, or, if such agency, attorney relationship or trusteeship exists, then the name, residence and occupation of the beneficial owners or prospective holders of such stock shall be included.

(b) The proposed name of such industrial bank.

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

(d) The address where the proposed industrial bank is to be located.
The names of the persons who are to serve as officers and directors of the proposed industrial bank and the official position proposed to be held by each.

Such additional information as may be prescribed by the board or the commissioner.

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

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

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

(1) The character, reputation, financial standing and motives of the organizers, incorporators and subscribers in organizing the proposed industrial bank;

(2) The need for the facilities and services which the proposed industrial bank will offer in the community where it is to be located, giving particular consideration to the adequacy of existing banking services and facilities and financial institutions;

(3) The present and future ability of the community to support the proposed industrial bank and all other existing banking and other financial institution facilities and services in the community;

(4) The character, financial responsibility, banking experience and business qualifications of the proposed officers; and

(5) The character, financial responsibility, business experience and standing of the proposed stockholders and directors.

(b) The board shall approve or disapprove the application, in the exercise of its reasonable discretion, but shall not approve such application unless it finds:
(1) Public convenience and advantage will be promoted by the establishment of the proposed industrial bank;

(2) Local conditions assure reasonable promise of successful operation for the proposed industrial bank and other financial institutions and other banking institutions already established in the community;

(3) The proposed capital structure is adequate;

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

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

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

(c) In the course of its examination and investigation, the board may call upon the attorney, agent or other responsible person representing the incorporators and upon the incorporators for additional information and disclosures it deems necessary in taking appropriate action on and making proper disposition of the application.

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

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

In addition to any other requirements set forth in this article, or which may be set forth in chapter thirty-one-a of this code, any proposed industrial bank shall qualify for federal deposit insurance and be, in fact, insured by the federal deposit insur-
BANKS AND BANKING [Ch. 6

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

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

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

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

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

(4) Make any loan or discount on the security of its own
capital stock unless such security or purchase shall be neces-
sary to prevent loss upon a debt previously contracted in good
faith. Stock so purchased or acquired shall be sold at public
or private sale or otherwise disposed of within ninety days
from the time of its purchase or acquisition;
(5) Have deposited with it deposits in an aggregate sum in excess of ten times the aggregate amount of its paid-up capital and surplus;

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

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

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

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

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

(11) Receive checking accounts or demand deposits.

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

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

(1) Lend money to any person, firm or corporation, secured by the obligation of such person, firm or corporation,
or otherwise; and, in addition, to receive and require uniform periodical installments for the repayment of the loan;

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

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

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

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

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

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

(A) Such as shall be necessary for the convenient trans-
action of its business, including with its office other apart-
ments or offices to rent as a source of income, which invest-
ment shall not exceed twenty-five percent of its paid-in capital stock and surplus;
(B) Such as is mortgaged to it in good faith by way of security for loans made by or money due to such industrial loan company;

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

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

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

(b) An industrial loan company shall not:

(1) Accept or receive deposits;

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

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

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

(5) Make any loan or discount on the security of its own capital stock (controlling and voting stock, if there be more than one class), unless such security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith. Stock so purchased or acquired shall be sold at public or private sale or otherwise disposed of within ninety days from the time of its purchase or acquisition;
(6) Have outstanding at any time its evidences or certificates of indebtedness, in an aggregate sum in excess of ten times the aggregate amount of its paid-up capital (voting and controlling stock) and surplus;

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

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

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

§31-7-12. Cash reserves.

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

(b) Every industrial loan company organized pursuant to the provisions of this article, shall at all times maintain a
cash reserve equal to five percent of its issued and outstanding evidences or certificates of indebtedness and the commissioner may prescribe by rule or regulation the form or nature of such reserves.

§31-7-13. Supervision and control.

(a) Every industrial loan company shall be subject to the inspection, examination, supervision, jurisdiction and control of the commissioner and the board in the same manner and to the same extent as is the case of banking institutions organized under the laws of this state under the provisions of chapter thirty-one-a of this code insofar as the same are applicable thereto. Where forty percent or more of the common stock of any industrial loan company is owned or is held in trust for the benefit of or by any other single firm, corporation, partnership or association, such other firm, corporation, partnership or association shall also be subject to the same jurisdiction and powers of inspection, examination, supervision and control of the commissioner and of the board in the same manner and to the same extent as if such other firm, corporation, partnership or association were an industrial loan company.

(b) Every industrial bank shall be subject to the inspection, examination, supervision, jurisdiction and control of the commissioner and of the board in the manner provided in chapter thirty-one-a of this code and to the same extent as is the case of other banking institutions organized under the laws of this state and in addition, shall be subject to all of the provisions, regulations and requirements of the federal deposit insurance corporation including the right of inspection, examination, supervision and control as may be required by the federal deposit insurance corporation.

§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.

(a) No industrial loan company or industrial bank shall:

(1) Install or maintain any branch industrial loan company or branch industrial bank; or
(2) Engage in business at any place other than at its principal office in this state: Provided, That at any time any such industrial bank may operate one and only one off-premises walk-in or drive-in industrial banking facility, on or in conjunction with or entirely separate from a parking lot for the customers of such industrial bank, for the purpose of receiving deposits, cashing checks, making change, selling and issuing money orders and travelers checks and receiving payments on installment accounts, and for no other purposes, provided such off-premises banking facility is located within two thousand feet of the banking house premises of the industrial bank operating such off-premises facility measured between the nearest points of the banking house premises and the premises on which such off-premises banking facility is located.

(b) It shall be unlawful for any individual, partnership, society, association, firm, institution, trust, syndicate, public or private corporation, or any other legal entity, or combination of entities acting in concert, to directly or indirectly own, control or hold with power to vote, twenty-five percent or more of the voting shares of more than seven industrial banks, or to control in any manner the election of a majority of the directors of more than seven industrial banks, and the provisions of this subsection shall govern and control irrespective of any other provision of this code restricting or limiting the ownership or control of voting shares of industrial banks or the control of the election of directors thereof, whether such other provision was enacted before or after the enactment of this article.

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

§31-7-15. Subrogation.

The provisions of section 1821 (g), chapter sixteen, Title 12 of the United States Code shall specifically apply to and shall be a condition upon each deposit in an industrial bank to the same extent as if such provisions were set forth in 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 meet annually in the month of February, a majority of the outstanding voting stock to constitute a quorum; and it shall be the duty of the secretary to prepare and submit to the stockholders a clear and concise statement of the financial condition of the corporation as of the close of business on the last day of the year next preceding. At such meeting the stockholders shall elect a board of directors of not less than five nor more than twenty-five, a majority of which shall be bona fide residents of the state of West Virginia. Special meetings may be called by order of the board of directors or by request in writing of ten per centum of the stockholders.

2 In all elections of directors of the corporation each stockholder shall have the right to cast one vote for each share of stock owned by him and entitled to vote, and he may cast the same in person or by proxy, for as many persons as there are directors to be elected, or he may cumulate such votes and give one candidate as many votes as the number of directors to be elected multiplied by the number of his shares of stock shall equal; or he may distribute them on the same principle among as many candidates and in such manner as he may desire, and the directors shall not be elected in any other manner, and on any other question to be determined by a vote of shares at any meeting of stockholders each stockholder shall be entitled to one vote for each share of stock owned by him and entitled to vote, and he may exercise this right in person or by proxy, but if by proxy, in no instance can it be voted in any meeting other than which it was first intended.

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

§31-7-17. Directors; officers.

1 The affairs of every industrial bank and industrial loan company shall be managed by a board of not less than five nor more than twenty-five directors who shall meet at least once each month, a majority of whom shall at all times be
bona fide residents of this state, and shall own and hold
in his own name at least five hundred dollars par value in
unpledged shares of the capital stock or voting stock of such
industrial bank or industrial loan company.

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

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

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

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

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

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

The president, manager or treasurer of every industrial bank
or of every industrial loan company shall at all times cause to
be kept a true and accurate list of the names of stockholders
of record, with the amount of stock held by each, which list
shall at all times during business hours be open to the inspec-
tion of any stockholder, or to the inspection of the commis-
sioner or his duly authorized representative or to the autho-
rized personnel or representatives of the federal deposit insur-
ance corporation.
§31-7-20. Dividends.

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

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

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

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

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

Whenever any industrial loan company shall determine by its board of directors, with the consent of three fourths of the holders of its controlling and voting stock, to discontinue its business and settle its affairs, it shall be lawful for such board of directors to file with the commissioner of banking of this state a certificate in writing, signed and acknowledged by such stockholders, expressing such consent, and likewise the certificate of the board of directors under the corporate seal, setting forth such intention, and that they thereby surrender to the state their corporate privileges and powers and authority to do business as an industrial loan company. Thereupon such corporation shall be deemed and taken to be dissolved, except for the purpose of distributing its assets and otherwise settling its affairs, as provided in article one of this chapter.

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

No industrial loan company shall make any loan to its
president, its vice president, its manager, or to any of its directors, or to any of its clerks, tellers, bookkeepers, agents, servants or other persons in its employ, until the proposition to make such loan, stating the amount, terms and security, if any, offered therefor shall have been submitted in writing by the person desiring the same to a meeting of the board of directors of such company or of the executive or discount committee of such board, if any, and accepted and approved by the vote of a majority of those present constituting a quorum. The president, vice president, director, manager, clerk, teller, bookkeeper, or agent of any industrial loan company who knowingly violates this section, or who aids or abets any officer, clerk or agent in any such violation, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars or imprisoned in the county jail not more than one year, or both.

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

(a) No industrial loan company shall hereafter advertise for the purpose of soliciting the sale or offer for sale of its secured or unsecured evidences or certificates of indebtedness irrespective of the advertising media used unless such advertisement shall contain a statement that such corporation is not insured by any agency of the federal government and that such evidences or certificates of indebtedness are not insured by any agency of the federal government unless such insurance does in fact exist and, if so, the amount of such insurance shall be stated; nor shall any such advertisement refer to such evidences or certificates of indebtedness as "savings accounts," "deposits" or "savings deposits" and the use of such terms in any such advertisement is hereby prohibited.

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

(b) No industrial bank shall advertise itself as a bank nor shall any of its advertisements, irrespective of the media used, contain the word or term "bank," "banker," "banking com-
pany," "banking association," "bankers association," "savings 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.

(a) No industrial loan company in advertising for the purpose of soliciting the sale or offer for sale or for any other purpose related to the sale of its secured or unsecured evidences or certificates of indebtedness or for any other purpose irrespective of the media used or in any statements made in any manner to any prospective purchaser of such evidences or certificates shall state that the payment required by the terms of such evidences or certificates of indebtedness is guaranteed unless such payment is so guaranteed by a source or from resources which are independent of and separate from the resources and assets of such company and if so guaranteed the source, terms and conditions of such guarantee shall be stated upon the face of every such evidence or certificate of indebtedness in the manner and form prescribed by the commissioner and such source, terms and conditions shall be first approved in writing by the commissioner.

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

§31-7-26. Rules and regulations.

The commissioner and the board may, from time to time, adopt and promulgate such rules and regulations as they deem appropriate to carry into effect the provisions of this article in accordance with the provisions of chapter thirty-
one-a of this code. All such rules and regulations shall be so adopted and promulgated in the manner prescribed in chapter twenty-nine-a of this code and the provisions of said chapter twenty-nine-a shall apply to the adoption and promulgation of such rules and regulations as if such provisions 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.

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

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

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

Any corporation now organized, existing and doing any business in this state on a plan which would come within the scope of the regulatory provisions of this article, and which was originally chartered with the approval of the commissioner
of banking under the laws of this state providing for the
organization of building and loan associations, shall fully
comply with, and be subject to, all the regulatory provisions
hereof and shall be subject to the supervision and control of
the commissioner as herein provided; but nothing herein
shall affect or modify the corporate existence of any such
existing corporation, and any such existing corporation shall
be authorized and allowed to sell the full amount of its
present authorized capital stock on the terms and conditions
heretofore approved by the commissioner.

§31-7-29. Severability and constitutionality.
If any provisions of this article or the application thereof to
any person or circumstance is held to be unconstitutional or
otherwise invalid, the remainder of this article and the applica-
tion of such provision to other persons or circumstances shall
not be affected thereby, and it shall be conclusively presumed
that the Legislature would have enacted the remainder of this
article without such invalid or unconstitutional provisions.

CHAPTER 31A. BANKS AND BANKING.

Article
4. Banking Institutions and Services Generally.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

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

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

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

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

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

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

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

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

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

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

(j) The words "financial institutions" mean banks, building and loan associations, industrial banks, industrial loan companies, small loan companies, credit unions and all other similar institutions, whether persons, firms or corporations, which are by law under the jurisdiction and supervision of the commissioner of banking;
(k) The word "officer" when referring to any financial institution, means any person designated as such in the bylaws and includes, whether or not so designated, any executive officer, the chairman of the board of directors, the chairman of the executive committee, and any trust officer, assistant vice president, assistant treasurer, assistant secretary, assistant trust officer, assistant cashier, assistant comptroller, or any other person who performs the duties appropriate to those offices, and the term "executive officer" as herein used, when referring to banking institutions, means an officer of a bank whose duties involve regular, active and substantial participation in the daily operations of such institution and who, by virtue of his position, has both a voice in the formulation of the policy of the bank and responsibility for implementation of the policy, such responsibility of and functions performed by the individual, and not his title or office, being determinative of whether he is an "executive officer";

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

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

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

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

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

(a) All the powers, rights and privileges of any state banking institution;

(b) To act as trustee, assignee, special commissioner, general or special receiver, guardian, executor, administrator, committee, agent, curator, or in any other fiduciary capacity, and to take, assume, accept and execute trusts of every description not inconsistent with the Constitution and laws of the United States of America or of this state; and to receive, hold, manage and apply any sinking fund on the terms and for the purposes specified in the instrument creating such fund;

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

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

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

(f) To act as trustee or agent in any collateral trust and in order to secure the payment of any obligations of any person, firm, private corporation, public corporation, public body or public agency to receive and hold in trust any items of personal property (including without limitation notes, bonds, debentures, obligations and certificates for shares of stock) with the right in case of default to sell and dispose of such personal property and to collect, settle and adjust any obligations for the payment of money, and at any sale of such personal property held
by it, to purchase the same for the benefit of all or any of the
holders of the obligations, to secure the payment of which such
items of personal property were pledged and delivered to the
trustee or agent. Any such sale may be made without any pro-
ceedings in any court, and at such times and upon such terms
as may be specified in the instrument or instruments creating
the trust, or, in the absence of any specification of terms, at
such time and upon such terms as the trustee shall deem rea-
sonable; and

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

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

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

Each state banking institution, except industrial banks
created and organized pursuant to the provisions of article
seven, chapter thirty-one of this code shall at all times main-
tain on hand as a reserve in lawful money of the United
States of America an amount equal to at least seven percent
of the aggregate of all of its deposits which are subject to
withdrawal on demand and three percent of its time deposits.
Whenever the commissioner of banking shall determine that
the maintenance of sound banking practices or the prevention
of injurious credit expansion or contraction makes such
action advisable, he may by rule or regulation from time to
time change such requirements as to reserves against demand
or time deposits, or both, but the reserves so prescribed shall
in no event be less than those specified in this section nor
more than twice those specified. Whenever such reserve shall
fall below that required, the institution shall not thereafter
make any new loan or investment until the required reserve
shall be restored. For the purpose of computing such reserve, all deposits requiring notice of thirty days or more for withdrawal and time certificates of deposit and Christmas savings shall be deemed time deposits, and all checking accounts, certified checks, cashier's checks, demand certificates of deposit and balances due other banks shall be deemed demand deposits. But in lieu of lawful money on hand, four fifths of such reserve may consist of balances payable on demand from any national or state bank doing business in this state or solvent banking institutions in other states. The reserve balances required herein shall be computed on the basis of average daily net deposit balances and average daily currency and coin during biweekly periods. The required reserve balance of each bank shall be computed at the close of business each day based upon its net deposit balances and currency and coin at the opening of business on the same day. The biweekly period shall end at the close of business on days to be fixed by the commissioner in his promulgated rules and regulations. When, however, the reserve computation period ends with a nonbusiness day, or two or more consecutive nonbusiness days, such nonbusiness day or days may, at the option of the banking institution, and whether or not it had a deficiency in reserve balances in such computation period, be included in the next biweekly computation period.

The commissioner shall, by rule and regulation, require regular reports from such banking institutions, which reports shall be submitted at such times and contain such information as will enable the commissioner to adequately supervise the maintenance of reserves under this section. Penalties for any deficiencies in the required reserves of any banking institution shall be assessed monthly by the commissioner on the basis of average daily deficiencies during each of the computation periods ending in the preceding calendar month. Such penalties shall be assessed at a rate of two percent per annum above the lowest rate applicable to borrowings by member banks from the federal reserve bank of the district in which such deficient institution is located on the first day of the calendar month in which the deficiencies occurred. Such penalties shall be paid by the commissioner into the treasury of the state of West Virginia and credited to the general fund.
Ch. 7] BANKS AND BANKING 51

Compliance on the part of any such banking institution which is a member of the federal reserve system with the reserve requirements of the Federal Reserve Act, as amended, shall be full compliance with the provisions hereof. No such member bank shall be required to carry or maintain a reserve other than such as required under terms of the Federal 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 loan association, industrial loan company or small loan company to conduct its business in a facility that is a mobile unit not permanently attached to the real estate upon which it is located, except that such mobile units may be used as temporary banking quarters pending construction of a permanent bank building on the same or adjacent property thereto if a charter for said bank has previously been approved.
CHAPTER 8

(Ch. 8. 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.

Debt may be incurred and bonds issued under this article for the purpose of acquiring, constructing and erecting, enlarging, extending, reconstructing or improving any building, work, utility or undertaking, or for furnishing, equipping and acquiring or procuring the necessary apparatus for any building, work, improvement or department, or for establishing and maintaining a library or museum for the public use, or a building or structure for educational purposes, or acquiring a recreation park for the public use, or for acquiring, constructing, furnishing, equipping and maintaining civic arenas, auditoriums, exhibition halls and theaters, or for other similar corporate purpose, for which the political division is authorized to levy taxes or expend public money. But no bonds shall be issued for the purpose of providing funds for the current expenses of any body or political division. Interest accruing during the construction period, that is to say, the time when an improvement is under construction and six months thereafter, shall be deemed a part of the cost of the improvement, and shall not be deemed current expenses. All engineering and inspection costs, including a proper proportion of the
compensation, salaries and expenses of the engineering staff
of the political division properly chargeable to any work or
improvements, as determined by the governing body, or the
estimated amount of such costs, shall be deemed part of the
cost of an improvement. All costs and estimated costs of the
issuance of bonds shall be deemed a part of the cost of the
work or improvement, or of the property, or of the carrying
out of the purposes for which such bonds are to be issued.
The power to acquire or construct any building, work or
improvement as herein provided shall be deemed to include
the power to acquire the necessary lands, sites and rights-of-
way therefor.

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

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

No political division authorized by this article to issue
bonds, except county boards of education, shall by any bond
issue, become indebted to an amount, including all other in-
debtedness, exceeding two and one-half percent of the value
of the taxable property therein, as shown by the last assessment
thereof, for state and county purposes, next prior to the issuing of such bonds: Provided, That any county for the erection and equipment of a courthouse and/or jail for such county, with funds borrowed from the government of the United States or any governmental agency, federal or state, and any municipal corporation of three hundred inhabitants or more, for the purpose of grading, paving, sewering, and otherwise improving or reimproving its streets and alleys, or for establishing and maintaining a library or museum for the public use, or a building or structure for educational purposes, or acquiring a recreation park for the public use, or for acquiring, constructing, furnishing, equipping and maintaining civic arenas, auditoriums, exhibition halls and theaters, may become indebted and issue bonds in an additional sum not exceeding two and one-half percent of the value of the taxable property therein, ascertained as aforesaid: Provided, however, That no county board of education authorized by this article to issue bonds, shall, by any bond issue, become indebted, in any manner, or for any purpose, to an amount, including all other indebtedness, in the aggregate, exceeding five percent on the value of the taxable property therein, in the county school district to be ascertained by the last assessment for state and county taxes, previous to the incurring of such indebtedness, in the manner provided by the “School Bond Amendment,” as ratified.

The term “sewering” as used herein shall be treated in a comprehensive sense, so as to include all mains, laterals, connections, traps, incinerating and disposal plants, and other necessary and convenient accessories to a modern sanitary and efficient sewerage system and shall include storm sewers.

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


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.
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.

For positions in any department or agency in which positions are filled under civil service or any job classification system, a preference of five points in addition to the regular numerical score received on examination shall be awarded to all veterans having qualified for appointment by making a minimum passing grade; and to all veterans awarded the purple heart, or having a compensable service-connected disability, as established by any proper veterans' bureau or department of the federal government, an additional five points shall be allowed.

For the purpose of this article, “veteran” shall mean any person who has served in the armed forces of the United States during the Spanish American War, World War I, World War II, the Korean Conflict or the Southeast Asian Conflict, and who has been honorably discharged from such service.
Such awards shall be made for the benefit and preference in appointment of all veterans who have heretofore or who shall hereafter take such examinations, but shall not operate to the detriment of any person heretofore appointed to a position 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.

(a) The following proceedings shall be brought and prosecuted only in the circuit court of Kanawha county:

1. Any suit in which the governor, any other state officer, or a state agency is made a party defendant, except as garnishee or suggestee.

2. Any suit attempting to enjoin or otherwise suspend or affect a judgment or decree on behalf of the state obtained in any circuit court.

(b) Any proceeding for injunctive or mandamus relief involving 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 of chapter forty-seven of this code and elsewhere by law, a banking institution may charge and collect a reasonable amount to cover the expenses incurred in procuring reports and information respecting loans and the value of and title to property offered as security therefor, and a charge of three dollars may be made for any loan or forbearance of money or other thing where the interest at the rate of six
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 tuarial 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 substanc-
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.
4. Supervised Lenders.
5. Civil Liability and Criminal Penalties.
7. Administration.
8. Operative Date and Provisions for Transition.

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

§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.


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


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

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

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

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

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

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

(c) If not included in the cash price:

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

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

(iii) Additional charges permitted by this chapter.

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

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

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

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

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

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

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

(e) Appraisal fees; and

(f) Credit reports.

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

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

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

(11) "Consumer" means a natural person who incurs debt pursuant to a consumer credit sale or a consumer loan.
(12) (a) Except as provided in paragraph (b), "consumer credit sale" is a sale of goods, services or an interest in land in which:

(i) Credit is granted either by a seller who regularly engages as a seller in credit transactions of the same kind or pursuant to a seller credit card;

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

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

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

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

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

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

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

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

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

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

(14) "Consumer loan" is a loan made by a person regularly engaged in the business of making loans in which:

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

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

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

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

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

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

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

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

(19) "Home solicitation sale" means a consumer credit sale in excess of twenty-five dollars in which the buyer receives a solicitation of the sale at a place other than the seller's business establishment at a fixed location and the buyer's agreement or offer to purchase is there given to the seller or a person acting for the seller. The term does not include a sale made pursuant to a preexisting open-end credit account with the seller in existence for at least three months prior to the transaction, a sale made pursuant to prior negotiations between the parties at the seller's business establishment at a fixed location, a sale of motor vehicles, mobile homes or farm equipment or a sale which may be rescinded under the Federal Truth in Lending Act (being Title I of the Federal Consumer Credit Protection Act). A sale which would be a home solicitation sale if credit were extended by the seller is a home solicitation sale although the goods or services are paid for in whole
or in part by a consumer loan in which the creditor is subject to claims and defenses arising from the sale (§46A-2-103).

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

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

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

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

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

(22) "Loan" includes:

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

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

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

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

(23) (a) "Loan finance charge" means the sum of (i) all charges payable directly or indirectly by the debtor and imposed directly or indirectly by the lender as an incident to the extension of credit, including any of the following types of charges which are applicable: Interest or any amount payable under a point, discount, or other system of
charges, however denominated, premium or other charge for any guarantee or insurance protecting the lender against the consumer's default or other credit loss; and (ii) charges incurred for investigating the collateral or creditworthiness of the consumer or for commissions or brokerage for obtaining the credit, irrespective of the person to whom the charges are paid or payable, unless the lender had no notice of the charges when the loan was made. The term does not include charges as a result of default, additional charges, delinquency charges or deferral charges.

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

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

(25) “Official fees” means:

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

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

(26) “Organization” means a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative or association.

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

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

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

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

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

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

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

(a) The net amount paid to, receivable by or paid or payable for the account of the debtor;

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

(c) To the extent that payment is deferred:

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

(ii) Additional charges permitted by this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

(45) "Supervised loan" means a consumer loan made by other than a supervised financial organization, including a loan made pursuant to a revolving loan account, where the principal does not exceed one thousand two hundred dollars and in which the rate of the loan finance charge exceeds eight percent per year as determined according to 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 creditors, except lessors and those excluded, making consumer credit sales and consumer loans, and sales and loans made subject to the provisions of this chapter by agree-
ment, and except as otherwise provided by this chapter displaces any existing limitations and provisions regulating maximum interest and charges, minimum charges, additional charges, delinquency charges, deferral charges, allocation of charges and methods of computing rebates upon prepayment, refinancing or consolidation with respect to consumer credit sales and consumer loans, and the debtors' remedies and penalties provided by this chapter displace all existing provisions relating to remedies, penalties and forfeitures for usury and usurious contracts as to transactions covered by this chapter: Provided, That this chapter shall not displace those provisions of subdivision (6), subsection (a), section eleven, article seven, chapter thirty-one of this code relating to additional charges which may be imposed and collected by industrial loan companies.

(2) Except as provided in subsection (1) of this section or elsewhere in this chapter, this chapter does not displace powers or limitation on powers which supervised financial organizations and supervised lenders are authorized to exercise under the laws of the United States or other laws of this state in effect after the operative date of this chapter.

(3) This chapter also prescribes in articles six and seven protective measures for consumers in transactions not necessarily involving consumer credit.

§46A-1-104. Application.

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

§46A-1-105. Exclusions.

This chapter does not apply to:

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

(2) The sale of insurance by an insurer, except as otherwise provided in this chapter;
Transactions under public utility or common carrier tariffs if a subdivision or agency of this state or of the United States regulates the charges for the services involved, the charges for delayed payment, and any discount allowed for early payment; or

(4) Licensed pawnbrokers and secondary mortgage lenders licensed under the provisions of article seventeen, chapter thirty-one of this code.

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

The parties to any sale or loan, other than a consumer credit sale or consumer loan, may agree in writing signed by the parties that the sale or loan is subject to the provisions of this chapter applying to consumer credit sales or consumer loans. If the parties so agree, the sale or loan is subject to this chapter.


Except as otherwise provided in this chapter, a consumer may not waive or agree to forgo rights or benefits 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-2-110. Referral sales or leases.

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

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


§46A-2-114. Receipts; statements of account; evidence of payment.

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


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

§46A-2-118. No garnishment before judgment.
§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-2-126. 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-2-137. 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 negotiable instruments, other than a currently dated check, evidencing an obligation arising from a consumer credit sale or consumer lease, other than a sale or lease primarily for an agricultural purpose, made on the date this chapter becomes operative or within a period of one year thereafter;

8 (a) Notwithstanding any term or agreement to the contrary or the provisions of section three hundred five, article three, chapter forty-six of this code, a holder in due course of any such negotiable instrument shall take and hold such instrument subject to all claims and defenses arising from that specific consumer credit sale or consumer lease which the buyer or lessee has against the seller or lessor but the holder's liability shall not exceed the amount owing to the holder at the time the holder receives notice of the claims or defenses, if such claims and defenses are asserted by the buyer or lessee by written
notice given to the holder within a period of one hundred eighty days after the holder has delivered or mailed to the buyer or lessee a written notice of negotiation complying with the requirements of subdivision (b) of this subsection (1).

(b) The notice of negotiation from the holder to the buyer or lessee contemplated in subdivision (a) of this subsection (1) shall be in writing, identify the negotiable instrument, briefly describe the goods or services, state the name and address of the holder, state the initial deferred balance of such negotiable instrument payable by the buyer or lessee and the number, amount and due dates of installments, the amount currently payable by the buyer or lessee, and inform the buyer or lessee in a conspicuous manner that he has one hundred eighty days from a specified date (which date shall be the date the notice was delivered or mailed to the buyer or lessee) within which to notify the holder in writing of any claims and defenses he may have against the seller or lessor arising from that specific consumer credit sale or consumer lease; and that if written notification of any such claims and defenses is not given to the holder within such one hundred eighty day period, the holder will have the right to enforce the instrument free of any such claims and defenses the buyer or lessee may have against the seller or lessor. Such notice of negotiation, if given by mail, is given when it is mailed to the buyer’s or lessee’s last-known address by registered or certified mail, return receipt requested.

(c) In order to preserve all of his claims and defenses against a holder under subdivision (a) of this subsection (1), the buyer or lessee must, after receiving the written notice of negotiation provided for in subdivision (b) of this subsection (1), and before the expiration of a period of one hundred eighty days, notify such holder in writing as to any claims and defenses he has against the seller or lessor arising from that specific consumer credit sale or consumer lease. The notice by the buyer or lessee need not take any particular form and shall be sufficient if it indicates the claims and defenses which
the buyer or lessee has against the seller or lessor in a manner sufficient to apprise the holder of the nature of such claims and defenses. Such notice, if given by mail, is given when it is mailed to the holder's last-known address by registered or certified mail, return receipt requested. All claims and defenses of the buyer or lessee against the seller or lessor arising out of a consumer credit sale or consumer lease shall be valid against the holder unless the notice of negotiation is given pursuant to this subsection (1).

(d) In a consumer credit sale or consumer lease when goods or services cannot be delivered or completed immediately after the sale or lease or when the rendition of future services constitutes a material part of the sale or lease agreement, the notice of negotiation contemplated in subdivision (a) of this subsection (1) shall not be given to the buyer or lessee until the seller or lessor has furnished a certificate to the buyer or lessee which indicates that delivery of such goods has been made or such services completed and such certificate has been duly executed by the buyer or lessee and, in the case of future services, until the buyer or lessee shall forward to the holder a written reaffirmation of the completion of such future services which are the subject of such sale or lease. Such reaffirmation shall not be made until execution by the buyer or lessee of the certificate of completion. Such reaffirmation shall be forwarded directly by United States mail to the holder by the buyer or lessee. If the seller or lessor directly or indirectly obtains such reaffirmation, it shall be void and have no force or legal effect. A completion certificate need not take any particular form, but shall indicate the names and addresses of the parties to the consumer credit sale or consumer lease, the goods delivered or the services completed and the date on which actual delivery was made or actual performance was completed.

(e) Whenever any such negotiable instrument, and an instrument, contract or other writing (other than a negotiable instrument) executed in connection with such negotiable instrument, are negotiated and assigned to the
same person, either the notices contemplated and pro-
vided for in this subsection (1) or the notices contempl-
ated and provided for in section one hundred two of
this article need be given, and it shall not be necessary
for notices to be given pursuant to both this subsection
(1) and said section one hundred two.

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

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

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

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

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

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

(b) Payments received upon a revolving charge account are deemed to have been first applied to the payment of sales finance charges in the order of their entry to the account and then to the payment of debts in the order in which the entries of the debts are made to the account.

(7) A claim or defense which a buyer or lessee may assert against a holder in due course of a negotiable instrument under the provisions of this section may be asserted only as a matter of defense to or setoff against a claim by the holder: Provided, That if a buyer or lessee shall have a claim or defense which could be asserted under the provisions of this section as a matter of defense to or setoff against a claim by the holder in due course of a negotiable instrument were such holder to assert such claim against the buyer or lessee, then such buyer or lessee shall have the right to institute and maintain an action or proceeding seeking to obtain the cancellation in whole or in part of the indebtedness evidenced by such negotiable instrument or the release in whole or in part of any lien upon real or personal property securing the payment thereof: Provided, however, That any claim or defense founded in fraud, lack or failure of consideration or a violation of the provisions of this chapter as specified in section one hundred one, article five of this chapter, may be asserted by a buyer or lessee at any time, subject to the provisions of this code relating to limitation of actions.

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

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

(1) The following limitations shall be applicable to instruments, contracts or other writings, other than nego-
tiable instruments, evidencing an obligation arising from
a consumer credit sale or consumer lease, other than a
sale or lease primarily for an agricultural purpose, made
on the date this chapter becomes operative or within
a period of one year thereafter:

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

(b) The notice of assignment from the assignee to
the buyer or lessee contemplated in subdivision (a) of
this subsection (1) shall be in writing, identify the in-
strument, contract or other writing, briefly describe the
goods or services, state the name and address of the
assignee, state the initial deferred balance of such in-
strument, contract or other writing payable by the buyer
or lessee and the number, amount and due dates of in-
stallments, the amount currently payable by the buyer
or lessee, and inform the buyer or lessee in a conspicuous
manner that he has one hundred eighty days from a
specified date (which date shall be the date the notice
was delivered or mailed to the buyer or lessee) within
which to notify the assignee in writing of any claims and
defenses he may have against the seller or lessor arising
from that specific consumer credit sale or consumer lease;
and that if written notification of any such claims and
defenses is not given to the assignee within such one
hundred eighty day period, the assignee will have the
right to enforce the instrument, contract or other writing
free of any claims and defenses the buyer or lessee may
have against the particular seller or lessor. Such
notice of assignment, if given by mail, is given when
it is mailed to the buyer's or lessee's last-known
address by registered or certified mail, return receipt
requested.

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

(d) In a consumer credit sale or consumer lease when
goods or services cannot be delivered or completed im-
mEDIATELY after the sale or lease or when the rendition of
future services constitutes a material part of the sale
or lease agreement, the notice of assignment contem-
plated in subdivision (a) of this subsection (1) shall not
be given to the buyer or lessee until the seller or lessor
has furnished a certificate to the buyer or lessee which
indicates that delivery of such goods has been made or
such services completed and such certificate has been
duly executed by the buyer or lessee and, in the case of future services, until the buyer or lessee shall forward to the assignee a written reaffirmation of the completion of such future services which are the subject of such sale or lease. Such reaffirmation shall not be made until execution by the buyer or lessee of the certificate of completion. Such reaffirmation shall be forwarded directly by United States mail to the assignee by the buyer or lessee. If the seller or lessor directly or indirectly obtains such reaffirmation, it shall be void and have no force or legal effect. A completion certificate need not take any particular form, but shall indicate the names and addresses of the parties to the consumer credit sale or consumer lease, the goods delivered or the services completed and the date on which actual delivery was made or actual performance was completed.

(e) Whenever any such instrument, contract or other writing (other than a negotiable instrument), and a negotiable instrument executed in connection with such other instrument, contract or writing, are assigned and negotiated to the same person, either the notices contemplated and provided for in this subsection (1) or the notices contemplated and provided for in section one hundred one of this article need be given, and it shall not be necessary for notices to be given pursuant to both this subsection (1) and said section one hundred one.

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

(3) Nothing contained in this section shall be construed as affecting any buyer’s or lessee’s right of action, claim or defense which is otherwise provided for in this code or at common law.

(4) Nothing contained in this section shall be construed in any manner as affecting any assignment of any such instrument, contract or other writing, made prior to the operative date of this chapter.

(5) The following provisions shall be applicable to
instruments, contracts or other writings, other than negotiable instruments, evidencing an obligation arising from a consumer credit sale or consumer lease, other than a sale or lease primarily for an agricultural purpose, made after the expiration of one year after the operative date of this chapter: Notwithstanding any term or agreement to the contrary or the provisions of article two, chapter forty-six of this code or section two hundred six, article nine of said chapter forty-six, an assignee of any such instrument, contract or other writing shall take and hold such instrument, contract or other writing subject to all claims and defenses of the buyer or lessee against the seller or lessor arising from that specific consumer credit sale or consumer lease of goods or services, but the total of all claims and defenses which may be asserted against the assignee under this subsection or subsection (7) of this section shall not exceed the amount owing to the assignee at the time of such assignment, except (i) as to any claim or defense founded in fraud and (ii) for any excess charges and penalties recoverable under section one hundred one, article five of this chapter.

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

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

(b) Payments received upon a revolving charge account are deemed to have been first applied to the payment of sales finance charges in the order of their entry to the account and then to the payment of debts in the order in which the entries of the debts are made to the account.
§46A-2-103. Lender subject to claims and defenses arising from sales.

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

(a) A lender, other than the issuer of a lender credit card, who, with respect to a particular transaction, makes a consumer loan for the purpose of enabling a borrower to buy goods or services, other than primarily for an agricultural purpose, is subject to all claims and defenses of the borrower against the seller arising from that specific sale of goods or services if such lender participates in or is
connected with the sales transaction, and if such claims
and defenses are asserted by the borrower by written
notice given to the lender within a period of one hundred
eighty days after the lender has delivered or mailed to the
borrower a written notice complying with the require-
ments of subdivision (b) of this subsection (1). Without
limiting the generality of the foregoing, a lender is deemed
to be connected with such sales transaction if:

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

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

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

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

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

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

(vii) The lender was the issuer of a credit card other
than a lender credit card which may be used by the bor-
rower in the sale transaction as a result of a prior agree-
ment between the issuer and the seller.

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

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

(2) The following provisions shall be applicable to the
claims and defenses of borrowers, arising from consumer
sales, with respect to consumer loans made after the expiration of one year after the date this chapter becomes operative: A lender, other than the issuer of a lender credit card, who, with respect to a particular transaction, makes a consumer loan for the purpose of enabling a borrower to buy goods or services, other than primarily for an agricultural purpose, is subject to all claims and defenses of the borrower against the seller arising from that specific sale of goods or services if the lender participates in or is connected with the sales transaction as provided in subdivision (a), subsection (1) of this section, without regard to the provisions therein as to notices.

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

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

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

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

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

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

(6) A claim or defense which a borrower may assert against a lender under the provisions of this section may be asserted only as a defense to or setoff against a claim by the
lender: Provided, That if a borrower shall have a claim or defense which could be asserted under the provisions of this section as a matter of defense to or setoff against a claim by the lender were such lender to assert such claim against the borrower, then the borrower shall have the right to institute and maintain an action or proceeding seeking to obtain the cancellation in whole or in part of the indebtedness evidenced by a negotiable instrument or other instrument or the release in whole or in part of any lien upon real or personal property securing the payment thereof: Provided, however, That any claim or defense founded in fraud, lack or failure of consideration or a violation of the provisions of this chapter as specified in section one hundred one, article five of this chapter, may be asserted by a borrower at any time, subject to the provisions of this code relating to limitation of actions.

(7) Nothing contained in this section shall be construed in any manner as affecting any loan made prior to the operative date of this chapter.

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

§46A-2-104. Notice to cosigners.

No person, other than the spouse of a consumer, shall be held liable as surety, cosigner, comaker, endorser or guarantor or be charged with personal liability for payment in a consumer credit sale or consumer loan unless that person, in addition to and before signing any instrument evidencing the transaction, signs and receives a separate notice which clearly explains his liability in the event of default by the consumer and also receives a copy of the disclosure required by the “Federal Consumer Credit Protection Act.” Such notice shall be sufficient if it appears under the conspicuous caption “NOTICE” and contains substantially the following language typewritten or printed in at least twelve point bold upper case type: “You are about to sign a ___________________________ as ____________________________under the terms and provisions of
which instrument you are liable for the full payment thereof together with the finance charges or interest which may accrue thereon.”

§46A-2-105. Balloon payments.

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

(2) With respect to a consumer credit sale or consumer loan whenever any scheduled payment is at least twice as large as the smallest of all earlier scheduled payments other than any down payment, any writing purporting to contain the agreement of the parties shall contain the following language typewritten or printed in a conspicuous manner. THIS CONTRACT IS NOT PAYABLE IN INSTALLMENTS OF EQUAL AMOUNTS: Followed, if there is only one installment which is at least twice as large as the smallest of all earlier scheduled payments other than any down payment, by: AN INSTALLMENT OF $. ............... WILL BE DUE ON______ or, if there is more than one such installment, by: LARGER INSTALLMENTS WILL BE DUE AS FOLLOWS: (The amount of every such installment and its due date shall be inserted).

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

(4) Notwithstanding the foregoing provisions of this section, the commissioner may, by rules and regulations, if necessary to further protect consumers, otherwise regulate or control agreements to be entered into in a consumer credit sale or consumer loan transaction which
provide for a balloon payment or prohibit parties from entering into any agreement in a consumer credit sale or consumer loan transaction which provides for a balloon 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 for five days for failure to make a scheduled payment or otherwise perform pursuant to a consumer credit sale or consumer loan other than with respect to a covenant to provide insurance for or otherwise to protect and preserve the property covered by a security interest, the creditor may give him notice of such fact in the manner provided for herein. Actual delivery of such notice to a consumer or delivery or mailing of same to the last-known address of the consumer is sufficient for the purpose of this section. If given by mail, notice is given when it is deposited in a mailbox properly addressed and postage prepaid. Notice shall be in writing and shall conspicuously state the name, address and telephone number of the creditor to whom payment or other performance is owed, a brief description of the transaction, the consumer's right to cure such default and the amount of payment and other required performance and date by which it must be paid or accomplished in order to cure the default. Except as hereinafter in this section provided, after a default, other than with respect to a covenant to provide insurance for or otherwise to protect and preserve the property covered by a security interest, a creditor may not accelerate maturity of the unpaid balance of the obligation, commence any action or demand or take possession of collateral on account of default until ten days after notice has been given to the consumer of his right to cure such default. Until such period expires, the consumer shall have the right to cure any default by tendering the amount of all unpaid sums due at the time of the tender, without acceleration, plus any unpaid delinquency or deferral charges and by tendering any other performance necessary to cure such default. Any such cure shall restore a consumer to all his rights under the
agreement the same as if there had been no default. A consumer who has been in default three or more times on the same obligation and who has been given notice of such fact three or more times shall not have the right to cure a default under this section even though previous defaults have been cured and his creditor's right to proceed against him and his collateral shall not be impaired or limited in any way by this section. There shall be no acceleration of the maturity of all or part of any amount owing in a consumer credit sale or consumer loan, except where nonperformance specified in the agreement as constituting default has occurred.


(1) With respect to a consumer credit sale, a seller or issuer of a seller credit card may take a security interest in the property sold. In addition, a seller or issuer of a seller credit card may take a security interest in goods upon which services are performed or in which goods sold are installed or to which they are annexed, or in land to which the goods are affixed or which is maintained, repaired or improved as a result of the sale of the goods or services, if in the case of a security interest in land the debt secured is one thousand five hundred dollars or more, or, in the case of a security interest in goods the debt secured is three hundred dollars or more. The seller or issuer of a seller credit card may also take a security interest in any property of the buyer to secure the debt arising from a consumer credit sale primarily for an agricultural purpose. Except as provided with respect to cross-collateral in connection with consolidated debts, a seller or issuer of a seller credit card may not otherwise take a security interest in property of the buyer to secure the debt arising from a consumer credit sale.

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

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


1 In addition to contracting for a security interest pursuant to the provisions on security in sales or leases, a seller or issuer of a seller credit card in a consumer credit sale may secure the debt arising from the sale by contracting for a security interest in other property if as a result of a prior sale the seller or issuer of a seller credit card has an existing security interest in the other property and such debts are consolidated. The seller or issuer of a seller credit card may also contract for a security interest in the property sold in the subsequent sale as security for the previous debt if such debts are consolidated.


1 (1) If debts arising from two or more consumer credit sales, other than sales primarily for an agricultural purpose or pursuant to a revolving charge account, are secured by cross-collateral and consolidated into one debt payable on a single schedule of payments, and the debt is secured by security interests taken with respect to one or more of the sales, payments received by the seller after the taking of the cross-collateral and the consolidation are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been first applied to the payment of the debts arising from the sales first made. To the extent debts are paid according to this section, security interests in items of property terminate as the debts originally incurred with respect to each item are paid.
16 (2) Payments received by the seller upon a revolving charge account are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been applied first to the payment of sales finance charges in the order of their entry to the account and then to the payment of debts in the order in which the entries to the account showing the debts were made.

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

§46A-2-110. Referral sales or leases.

1 With respect to a consumer credit sale or consumer lease, the seller or lessor may not give or offer to give a rebate or discount or otherwise pay or offer to pay value to the buyer or lessee as an inducement for a sale or lease in consideration of his giving to the seller or lessor the names of prospective purchasers or lessees, or otherwise aiding the seller or lessor in making a sale or lease to another person, if the earning of the rebate, discount or other value is contingent upon the occurrence of an event subsequent to the time the buyer or lessee agrees to buy or lease. If a buyer or lessee is induced by a violation of this section to enter into a consumer credit sale or consumer lease, the agreement is unenforceable by the seller or lessor and the buyer or lessee, at his option, may rescind the agreement or retain the goods delivered and the benefit of any services performed, without any obligation to pay for them.

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

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

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

4 (2) Amount of any payment required at the inception of the lease;
§46A-2-112. Restriction on liability in consumer lease.

The obligation of a lessee upon expiration of a consumer lease, other than one primarily for an agricultural purpose, may not exceed twice the average payment allocable to a monthly period under the lease. This limitation does not apply to charges for damages to the leased property or for other default.


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

§46A-2-114. Receipts; statements of account; evidence of payment.

(1) The creditor shall deliver or mail to the consumer,
without request, a written receipt for each payment by
coin or currency on an obligation pursuant to a consumer
credit sale or consumer loan. A periodic statement show-
ing a payment received complies with this subsection.

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

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

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

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


(1) The maximum part of the aggregate disposable
earnings of an individual for any workweek which may
be subjected to any one or more assignments of earnings
for the payment of a debt or debts arising from one or
more consumer credit sales or one or more consumer
loans, or one or more sales as defined in section one hun-
dred two, article six of this chapter, may not exceed twenty-five percent of his disposable earnings for that week.

(2) As used in this section:

(a) "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of amounts required by law to be withheld; and

(b) "Assignment of earnings" includes all forms of assignments, deductions, transfers, or sales of earnings to another, either as payment or as security, and whether stated to be revocable or nonrevocable, and includes any deductions authorized under the provisions of section three, article five, chapter twenty-one of this code, except deductions for union or club dues, pension plans, payroll savings plans, charities, stock purchase plans and hospitalization and medical insurance.

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

(4) The priority of multiple assignments of earnings shall be according to the date and time of each such assignment.

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

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

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

Prior to entry of judgment in an action against the debtor for debt arising from a consumer credit sale or a consumer loan, the creditor may not attach unpaid earnings of the debtor by garnishment or like proceedings. The provisions of this section shall not be construed as in any
way impliedly authorizing garnishment before judgment in any other type of transaction.


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

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

(3) If the seller repossesses or voluntarily accepts a surrender of goods which were not the subject of the sale but in which he has a security interest to secure a debt arising from a sale of goods or services or a combined sale of goods and services and the balance owed on such debt was at the time of such repossession or surrender one thousand dollars or less, the buyer is not personally liable to the seller for the unpaid balance of the debt arising from the sale, and the seller's duty to dispose of the collateral is governed by the provisions on disposition of collateral (§46-9-505) of the "Uniform Commercial Code."

(4) If the lender takes possession or voluntarily accepts a surrender of goods in which he has a security interest to secure a debt arising from a consumer loan in which the lender may be subject to claims and defenses arising from sales (§46A-2-103) and the balance owed on the net proceeds of the loan paid to or for the benefit of the borrower was at the time of such repossession or surrender one thousand dollars or less, the borrower is not personally liable to the lender for the unpaid balance of the debt arising from the loan and the lender's duty to
dispose of the collateral is governed by the provisions on
disposition of collateral (§46-9-505) of the "Uniform Com-
mercial Code."

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

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

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

(a) He may not take possession of the collateral, and
(b) The collateral is not subject to levy or sale on exe-
cution or similar proceedings pursuant to the judgment.

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

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

(2) If a court finds as a matter of fact that an exten-
sion of credit was made at a rate in excess of that per-
mitted for such transaction by the provisions of this chap-
ter and that the creditor then had a reputation for the use
or threat of use of violence or other criminal means to
cause harm to the person, reputation or property of any
person to collect extensions of credit or to punish the non-
repayment thereof, there is prima facie evidence that the
extension of credit was unenforceable under subsection
(1).

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

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

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

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

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

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

§46A-2-122. Definitions.

For the purposes of this section and sections one hun-
dred twenty-three, one hundred twenty-four, one hundred
twenty-five, one hundred twenty-six, one hundred twenty-
seven, one hundred twenty-eight and one hundred twenty-
nine of this article, the following terms shall have the following meanings:

(a) "Claim" means any obligation or alleged obligation arising out of or from a consumer transaction.

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

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

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

Unless a licensed attorney in this state, no debt collector shall engage in conduct deemed the practice of law. Without limiting the general application of the foregoing, the following conduct is deemed the practice of law:

(a) The performance of legal services, furnishing of legal advice or false representation, direct or by implication, that any person is an attorney;

(b) Any communication with consumers in the name of an attorney or upon stationery or other written matter bearing an attorney's name; and

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

§46A-2-124. Threats or coercion.

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

(a) The use, or express or implicit threat of use, of
violence or other criminal means, to cause harm to the
person, reputation or property of any person;

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

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

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

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

(1) Arrest of any person; or

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

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


No debt collector shall unreasonably oppress or abuse
any person in connection with the collection of or attempt
to collect any claim alleged to be due and owing by that
person or another. Without limiting the general applica-
tion of the foregoing, the following conduct is deemed
to violate this section:
The use of profane or obscene language or language that is intended to unreasonably abuse the hearer or reader;

(b) The placement of telephone calls without disclosure of the caller's identity and with the intent to annoy, harass or threaten any person at the called number;

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

(d) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously, or at unusual times or at times known to be inconvenient, with intent to annoy, abuse, oppress or threaten any person at the called number.

§46A-2-126. Unreasonable publication.

No debt collector shall unreasonably publicize information relating to any alleged indebtedness or consumer. Without limiting the general application of the foregoing, the following conduct is deemed to violate this section:

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

(b) The disclosure, publication, or communication of information relating to a consumer's indebtedness to any relative or family member of the consumer if such person is not residing with the consumer, except through proper legal action or process or at the express and unsolicited request of the relative or family member;

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

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- 1 tions.
2 No debt collector shall use any fraudulent, deceptive 3 or misleading representation or means to collect or at- 4 tempt to collect claims or to obtain information con- 5 cerning consumers. Without limiting the general appli- 6 cation of the foregoing, the following conduct is deemed 7 to violate this section:

(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;

(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;

(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;

(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;

(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;
CONSUMER PROTECTION

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

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

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

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

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

No debt collector shall use unfair or unconscionable means to collect or attempt to collect any claim. Without limiting the general application of the foregoing, the following conduct is deemed to violate this section:

(a) The seeking or obtaining of any written statement or acknowledgment in any form that specifies that a consumer's obligation is one incurred for necessaries of life where the original obligation was not in fact incurred for such necessaries;

(b) The seeking or obtaining of any written statement or acknowledgment in any form containing an affirmation of any obligation by a consumer who has been declared bankrupt, without clearly disclosing the nature and consequences of such affirmation and the fact that the consumer is not legally obligated to make such affirmation;

(c) The collection or the attempt to collect from the consumer all or any part of the debt collector's fee or charge for services rendered;
(d) The collection of or the attempt to collect any interest or other charge, fee or expense incidental to the principal obligation unless such interest or incidental fee, charge or expense is expressly authorized by the agreement creating the obligation and by statute; and

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

§46A-2-129. Postal violations.

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

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

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

(a) "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of amounts required by law to be withheld; and

(b) "Garnishment" means any legal or equitable procedure through which the earnings of an individual are required to be withheld for payment of a debt.

(2) The maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment to enforce payment of a judgment arising from a consumer credit sale or consumer loan may not exceed the lesser of

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

(b) The amount by which his disposable earnings for that week exceed thirty times the federal minimum hourly wage prescribed by section 6 (a) (1) of the "Fair Labor
Standards Act of 1938," U.S.C. Title 29, §206(a)(1), in effect at the time the earnings are payable.

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

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

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

No employer shall discharge or take any other form of reprisal against an employee for the reason that a creditor of the employee has subjected or attempted to subject unpaid earnings of the employee to garnishment or like proceedings directed to the employer for the purpose of paying a judgment arising from a consumer credit sale or consumer loan.

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

In addition to any other right to revoke an offer, a buyer shall have the right to cancel a home solicitation sale until midnight of the third business day after the day on which he has signed an agreement or offer to purchase. Cancellation shall become effective when the buyer gives written notice of his intention to cancel to the seller at the address stated in the agreement or offer to purchase. Notice of such cancellation, if given by mail, is given when it is deposited in a mailbox properly addressed and postage prepaid. Such notice of cancellation given by the buyer need
not take any particular form and shall be sufficient if it indicates by any form of written expression the intention of the buyer not to be bound by the home solicitation sale. Notwithstanding any above-mentioned provision, a buyer may not cancel a home solicitation sale where he has re-quested and the seller has provided goods or services with-out delay because of a bona fide emergency and either the seller has in good faith made a substantial beginning of performance of the agreement before the buyer has given notice of cancellation, or in the case of goods, such goods cannot be returned to the seller in substantially as good condition as when they were received by the buyer.

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

In every home solicitation sale in this state, except where a buyer has requested a seller to provide goods or services without delay because of an emergency, the seller shall present to the buyer a written agreement or offer to purchase which designates as the date of the transaction the day on which the buyer has signed it and which contains a statement of the buyer's rights as hereinafter pro-vided for. No such written agreement or offer to purchase shall be effective until after it has been signed by the buy-er and he has written the date of such signature in his own handwriting. The statement must appear under the conspicuous caption: "BUYER'S RIGHT TO CANCEL" and read as follows: "If this agreement was solicited at a place other than the seller's business establishment at a fixed location and you decide you do not want these goods or services, you may cancel this agreement by mailing a notice to the seller. The notice must say that you do not want the goods or services and must be mailed before midnight of the third business day after you sign this agreement. The notice must be mailed to: (Name and mailing address of seller)." Until the seller has fully com-plied with this section, the buyer may cancel the home solicitation sale, by notifying the seller of his intention to cancel in any manner. Any written agreement or offer to purchase which contains the form and content of notice of cancellation required by the federal trade commission
and which provides information substantially similar to that required by this section shall be deemed to comply fully with this section.

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

Within ten days after a home solicitation sale has been cancelled or an offer to purchase has been revoked, the seller shall tender to the buyer any payment made by the buyer to him and any note or other evidence of indebtedness taken in the transaction. A provision permitting the seller to keep all or part of any payment, note or other evidence of indebtedness is in violation of this section and unenforceable. If any down payment included goods traded in, the seller shall return the goods in substantially as good a condition as when he received them. If a seller has failed to tender goods as required by this section, the buyer may elect to recover an amount equal to the trade-in allowance on such goods as stated in the agreement. Until a seller has complied with all the obligations imposed by this section, a buyer may keep any goods delivered to him by the seller and he is hereby given a lien on such goods for the purpose of making any recovery to which he is entitled by this section.

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

Within a reasonable time after a home solicitation sale has been cancelled or an offer to purchase has been revoked, the seller may demand and receive any goods delivered by him to the buyer as the result of the home solicitation sale. The buyer shall not be obligated to tender such goods to the seller at any place other than the buyer’s residence. If the seller fails to demand possession of goods within such reasonable time, such goods shall become the buyer’s property without any obligation to pay for them. For the purposes of this section, twenty days shall be presumed to be a reasonable time. The buyer shall take reasonable care of such goods in his possession before cancellation or revocation and for a reasonable time thereafter, during which time the goods are otherwise at the seller’s risk. Where the seller has performed
any service pursuant to a home solicitation sale prior to
its cancellation or prior to giving the statement required
in section one hundred thirty-three of this article, he shall
not be entitled to any compensation for such performance.


Any consumer residing in this state may set apart and
hold personal property to be exempt from execution or
other judicial process resulting from consumer credit
transactions, except for the purchase money due on such
property, in such amounts as follows: Clothing and other
wearing apparel of the consumer, his spouse and any
dependents of such consumer, not to exceed the fair mar-
et value of two hundred dollars; furniture, appliances,
furnishings and fixtures regularly used for family pur-
poses in the consumer's residence, to the extent of the
fair market value of one thousand dollars; children's
books, pictures, toys and other such personal property of
children; all medical health equipment used for health
purposes by the consumer, his spouse and any dependent
of such consumer; tools of trade, including any income-
producing property used in the consumer's principal oc-
cupation, to the extent of the fair market value of one
thousand dollars; and any policy of life or endowment in-
urance which is payable to the spouse or children of the
insured consumer or to a trustee for their benefit, ex-
cept the cash value of any accrued dividends thereon.

When a consumer claims personal property as exempt
under the provisions of this section, he shall deliver a list
containing all the personal property owned or claimed
by him and all items of such property he claims as exempt
hereunder, with the value of each separate item listed
according to his best knowledge, to the officer holding
the execution or other such process. Such list shall be
sworn to by affidavit. If the value of the property named
in such list exceeds the amounts specified in this section,
the consumer shall state at the foot thereof what part
of such property he claims as exempt. If such value does
not exceed the amounts specified in this section, the claim
of exemption shall be held to extend to the whole thereof
without stating more and, if no appraisement is demanded,
the property so claimed shall be set aside as exempt.
Where the consumer owning exempt property is absent
or incapable of acting or neglects or declines to act here-
under, the claim of exemption may be made, the list de-
livered and the affidavit made by his spouse with the
same effect as if the owner had done so. Upon receipt of
such a list, the officer to whom it is given shall immedi-
ately exhibit such list to the creditor or his agent or at-
torney. The rights granted and procedures provided for in
article eight, chapter thirty-eight of this code shall apply
to any proceeding under this section, except that the pro-
visions of sections one and three of such article shall not
apply.

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

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

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 a sale of real estate subject to the provisions of section one hundred two of this article or a sale pursuant to a revolving charge account, a seller may contract for and receive a sales finance charge not exceeding eighteen percent per year on that part of the unpaid balances of the amount financed which is fifteen hundred dollars or less and twelve percent per year on that part of the unpaid balances of the amount financed which is in excess of fifteen hundred dollars, calculated according to the actuarial method.

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

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

(b) The effect of prepayment, refinancing or consolidation is governed by the provisions on rebate upon prepayment, refinancing or consolidation, contained in section one hundred eleven of this article.

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

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

(a) When applied to the median amount within each range, it does not exceed the maximum permitted by subsection (1), and

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

(5) Notwithstanding subsection (1), the seller may contract for and receive a minimum sales finance charge
of not more than five dollars when the amount financed does not exceed seventy-five dollars, or seven dollars and fifty cents when the amount financed exceeds seventy-five dollars.

(6) Notwithstanding any provision of this section to the contrary, with respect to a consumer credit sale involving a motor vehicle:

(a) A seller may contract for and receive a sales finance charge not exceeding twelve percent per year on the unpaid balance calculated according to the actuarial method when such sale is made less than one year after the year of the model year designation of such motor vehicle or such motor vehicle is purchased new;

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

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

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

With respect to a consumer credit sale of real estate, other than goods which become fixtures, where title is retained or there is created or retained by agreement a purchase money lien against that real estate, the seller may contract for and receive a sales finance charge not exceeding the interest permitted by section five, article six, chapter forty-seven of this code.

In addition to the sales finance charge permitted by this section with respect to such sale, a seller may also contract for and receive additional charges, delinquency charges, and deferral charges and compute rebates upon prepay-
ment, refinancing or consolidation as defined and autho-
ized by this chapter.

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

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

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

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

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

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

(3) If the billing cycle is monthly, the sales finance
charge may not exceed one and one-half percent on the
first seven hundred fifty dollars of unpaid balance and
one percent on the unpaid balance in excess of seven
hundred fifty dollars. If the billing cycle is not monthly, the maximum charge is that percentage which bears the same relation to the applicable monthly percentage as the number of days in the billing cycle bears to thirty. A billing cycle is monthly if the billing statement dates are on the same day each month or do not vary by more than four days therefrom.

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

§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) With respect to a consumer loan, other than a consumer loan made pursuant to a revolving loan account, (a) a bank, as defined in section two, article one, chapter thirty-one-a of this code, may contract for and receive a loan finance charge not exceeding the charge or interest permitted by the provisions of section thirty, article four, chapter thirty-one-a or by the provisions of section five or section five-a, article six, chapter forty-seven of this code, (b) an industrial loan company, as defined in section three, article seven, chapter thirty-one of this code, may contract for and receive a loan finance charge not exceeding the aggregate of the interest and charges permitted by subdivisions (5) and (6), subsection (a), section eleven, article seven, chapter thirty-one of this code or by the provisions of section five, article six, chapter forty-seven of this code, (c) a building and loan association, as defined in section two, article six, chapter thirty-one of this code, may contract for and receive a loan finance charge not exceeding the charge or interest permitted by the provisions of section seventeen, article six, chapter thirty-one of this code,
or by the provisions of section five, article six, chapter forty-seven of this code, (d) a credit union, as defined in section one, article ten, chapter thirty-one of this code, may contract for and receive a loan finance charge not exceeding the charge or interest permitted by the provisions of section sixteen, article ten, chapter thirty-one of this code, or by the provisions of section five, article six, chapter forty-seven of this code, and (e) any other lender, other than a supervised lender, may contract for and receive a loan finance charge not exceeding the charge or interest permitted by the provisions of section five or section five-a, article six, chapter forty-seven of this code.

(2) If the loan is precomputed:

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

(b) The effect of prepayment, refinancing or consolidation is governed by the provisions on rebate upon prepayment, refinancing or consolidation contained in section one hundred eleven of this article.

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

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

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

Nothing contained in this chapter or other law of this state shall be taken or construed as limiting the permissi-
ble interest rates or loan finance charges upon loans evidenced by notes, bonds or other obligations secured by mortgages or deeds of trust insured or guaranteed by the federal housing commissioner or United States administrator of veterans' affairs or by any other officer, department, agency or instrumentality of the United States or evidenced by notes, bonds, debentures and other obligations and securities issued by, insured by, or guaranteed by the federal housing commissioner, Federal National Mortgage Association, Government National Mortgage Association, Small Business Administration or other federal officer, department, agency or instrumentality.

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

(1) With respect to a consumer loan made pursuant to a revolving loan account, a supervised financial organization permitted to establish revolving loan accounts may contract for and receive a loan finance charge not exceeding that permitted in this section.

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

(a) The average daily balance of the debt,

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

(c) The median amount within a specified range within which the average daily balance of the debt or the balance of the debt at the beginning of the first day of the billing cycle, less all payments on and credits to such debt during such billing cycle and excluding all additional borrowings during such billing cycle, is included. A charge may be made pursuant to this subdivision only if the lender, subject to classifications and differentiations he may reasonably establish, makes the same charge on all balances within the specified range and if the percentage when applied to the median amount within the range does not produce a charge exceeding the charge resulting from applying that
 percentage to the lowest amount within the range by more
than eight percent of the charge on the median amount.

(3) If the billing cycle is monthly, the loan finance
charge may not exceed one and one-half percent on the first
seven hundred fifty dollars of unpaid principal balance and
one percent on the unpaid principal balance in excess of
seven hundred fifty dollars. If the billing cycle is not
monthly, the maximum charge is that percentage which
bears the same relation to the applicable monthly percent-
age as the number of days in the billing cycle bears to
thirty. A billing cycle is monthly if the billing statement
dates are on the same day each month or do not vary by
more than four days therefrom.

(4) Notwithstanding subsection (3), if there is an un-
paid balance on the date as of which the loan finance
charge is applied the lender may contract for and receive a
charge not exceeding fifty cents if the billing cycle is
monthly or longer, or the pro rata part of fifty cents which
bears the same relation to fifty cents as the number of days
in the billing cycle bears to thirty if the billing cycle is
shorter than monthly, but no charge may be made pursu-
ant to this subsection if the lender has made an annual
charge for the same period as permitted by the provisions
on additional charges.

§46A-3-107. Sales finance charges and loan finance charges on
refinancing.

With respect to a consumer credit sale or con-
sumer loan, refinancing or consolidation, the seller or
lender may by agreement with the consumer refinance
the unpaid balance owed to such seller or lender
and may contract for and receive the applicable sales fi-
nance charge or loan finance charge, as the case may be,
based on the amount financed of a sale or principal of a
loan resulting from the refinancing at a rate not exceeding
that permitted by the provisions on sales finance charge
for consumer credit sales or loan finance charge for con-
sumer loans, as the case may be. For the purpose of deter-
mining the sales finance charge or loan finance charge per-
mitted, the amount financed or principal resulting from
the refinancing comprises the following:
(1) If the transaction was not precomputed, the total of the unpaid balance and the accrued charges on the date of refinancing or, if the transaction was precomputed, the amount which the consumer would have been required to pay upon refinancing pursuant to the provisions on rebate upon refinancing on the date of refinancing except that for the purpose of computing this amount no minimum sales finance charge or minimum loan finance charge shall be allowed;

(2) Appropriate additional charges, payment of which is deferred; and

(3) Accumulated unpaid delinquency or deferral charges.

§46A-3-108. Sales finance charges and loan finance charges on consolidation.

(1) If a consumer owes an unpaid balance to a creditor with respect to a consumer credit sale or consumer loan, refinancing or consolidation, and becomes obligated on another consumer credit sale or consumer loan, refinancing or consolidation, with the same creditor, the parties may agree to a consolidation resulting in a single schedule of payments. If the previous consumer credit sale or consumer loan was not precomputed, the parties may agree to add the unpaid amount of the amount financed or principal and accrued charges on the date of consolidation to the amount financed or principal with respect to the subsequent consumer credit sale or consumer loan. If the previous consumer credit sale or consumer loan, refinancing or consolidation, was precomputed, the parties may agree to refinance the unpaid balance pursuant to the provisions on refinancing and to consolidate the amount financed or principal resulting from the refinancing by adding it, together with any accumulated delinquency or deferral charges, to the amount financed or principal, with respect to the subsequent consumer credit sale or consumer loan. In either case the creditor may contract for and receive a finance charge based on the aggregate amount financed or principal resulting from the consolidation, as specified in subsection (2) of this section.
(2) If the debts consolidated arise exclusively from consumer credit sales owed to such creditor, the transaction is a consolidation with respect to a consumer credit sale and the amount of the sales finance charge is governed by the provisions on sales finance charges for consumer credit sales other than certain sales of real estate or sales made pursuant to revolving charge accounts (§46A-3-101). If the debts consolidated arise exclusively from consumer loans owed to such creditor, the transaction is a consolidation with respect to a consumer loan and the amount of the loan finance charge is governed by the provisions on loan finance charges for consumer loans. If the debts consolidated include both a debt arising from a consumer credit sale or sales owed to such creditor and a debt arising from a consumer loan or loans owed to such creditor, then the creditor may contract for and receive a finance charge not in excess of that permitted for a consumer credit sale based on that portion of the consolidation attributable to such consumer credit sale or sales and may contract for and receive a finance charge not in excess of that permitted for a consumer loan based on that portion of the consolidation attributable to a consumer loan or loans.

(3) If a consumer owes an unpaid balance to a creditor with respect to a consumer credit transaction arising out of a consumer credit sale, and becomes obligated on another consumer credit transaction arising out of another consumer credit sale made by the same seller, the parties may agree to the consolidation resulting in a single schedule of payments either pursuant to subsection (2) or by adding together the unpaid balances with respect to the two sales.

(4) If a consumer credit sale subject to the provisions of section one hundred two of this article is consolidated with any other consumer credit sale or consumer loan owed to the same creditor, the sales finance charge or loan finance charge on the aggregate amount financed or principal resulting from the consolidation shall be at the lower rate.

§46A-3-109. Additional charges; insurance.

(1) In addition to the sales finance charge or loan
finance charge permitted by this chapter, a creditor may contract for and receive the following additional charges in connection with a consumer credit sale or a consumer loan:

(a) Official fees and taxes;

(b) Charges for insurance as described in subsection (2): Provided, That nothing contained in this section with respect to insurance shall be construed as in any way limiting the power and jurisdiction of the insurance commissioner of this state in the premises;

(c) Annual charges, payable in advance, for the privilege of using a lender credit card or similar arrangement which entitles the user to purchase goods or services from at least one hundred persons not related to the issuer of the lender credit card or similar arrangement, under an arrangement pursuant to which the debts resulting from the purchases are payable to the issuer;

(d) Charges for other benefits, including insurance, conferred on the consumer, if the benefits are of value to him and if the charges are reasonable in relation to the benefits, are of a type which is not for credit, and are excluded as permissible additional charges from the sales finance charge or loan finance charge by rule adopted by the commissioner: Provided, however, That as to insurance, the policy as distinguished from a certificate of coverage thereunder must be issued by an individual licensed under the laws of this state to sell such insurance and the determination of whether the charges therefor are reasonable in relation to the benefits shall be determined by the insurance commissioner of this state; and

(e) Reasonable closing costs with respect to a debt secured by an interest in land.

(2) A creditor may take, obtain or provide reasonable insurance on the life and earning capacity of any consumer obligated on the consumer credit sale or consumer loan, reasonable insurance on any real or personal property offered as security subject to the provisions of this subsection, and vendor's or creditor's single interest in-
insurance with respect to which the insurer has no right of
subrogation. Only one policy of life insurance and/or one
policy of health and accident insurance and/or one policy
of accident insurance on any one consumer may be in force
with respect to any one contract or agreement at any one
time, but one policy may cover both a consumer and his
spouse.

(a) The amount, terms and conditions of property in-
surance shall have a reasonable relation to the existing
hazards or risk of loss, damage or destruction and be rea-
sonable in relation to the character and value of the prop-
erty insured or to be insured; and the term of such insur-
ance shall be reasonable in relation to the terms of credit:

And provided further, That nothing shall be deemed to
prohibit the consumer from obtaining, at his option, greater
coverages for longer periods of time if he so desires;

(b) Life insurance shall be in an initial amount not to
exceed the total amount repayable under the consumer
credit agreement, and where a consumer credit sale or
consumer loan is repayable in installments, such insurance
shall at no time exceed the scheduled or actual amount of
unpaid indebtedness, whichever is greater. Life insurance
authorized by this subdivision shall provide that the bene-
fits shall be paid to the creditor or reduce or extinguish the
unpaid indebtedness: Provided, That if a separate charge
is made for such insurance and the amount of insurance
exceeds the unpaid indebtedness, where not prohibited,
then such excess shall be payable to the estate of the con-
sumer. The initial term of such life insurance in connec-
tion with a consumer credit sale, other than a sale pur-
suivant to a revolving charge account, or in connection with
a consumer loan, other than a loan pursuant to a revolv-
ing loan account, shall not exceed the scheduled term of
the consumer credit agreement by more than fifteen days.
The aggregate amount of periodic benefits payable by
credit accident and health insurance in the event of dis-
ability, as defined in the policy, shall not exceed the un-
paid amount of such indebtedness; periodic benefits pay-
able in connection with a consumer credit sale pursuant to
a revolving charge account or of a consumer loan pursuant
to a revolving loan account may be based upon the authorized credit limit;

(c) When the insurance is obtained or provided by or through a creditor, the creditor may collect from the consumer or include as part of the cash price of a consumer credit sale or as part of the principal of a consumer loan, or deduct from the proceeds of any consumer loan the premium, or in the case of group insurance, the identifiable charge. The premium or identifiable charge for such insurance required or obtained by a creditor may equal, but shall not exceed the premium rate filed by the insuror with the insurance commissioner. In any case when the creditor collects the entire premium for such insurance in advance, such premium shall be remitted by such creditor to the insurer or the insurance agent, as specified by the insurer, within ten days from or after the end of the month in which such collection was made;

(d) With respect to insurance against loss of or damage to property, or against liability, the creditor shall furnish a clear and specific statement in writing to the debtor, setting forth the cost of the insurance if obtained from or through the creditor, and stating that the debtor may choose the person through whom the insurance is to be obtained; and

(e) With respect to consumer credit insurance providing life, accident or health coverage, no creditor shall require a consumer to purchase such insurance or to purchase such insurance from such creditor or any particular agent, broker or insurance company as a condition precedent to extending credit to or on behalf of such consumer.

§46A-3-110. Right to prepay.

Except for a consumer credit sale subject to the provisions of section one hundred two of this article or a non-precomputed consumer loan secured by an interest in land and subject to the provisions on rebate upon prepayment, the consumer may prepay in full the unpaid balance of a consumer credit sale or a consumer loan, refinancing or 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 precomputed all payments on account shall be applied to installments in the order in which they fall due, except as provided in subsection (3), section one hundred twelve of this article. When the total amount is payable in substantially equal consecutive monthly installments, the portion of the sales finance charge or loan finance charge attributable to any particular monthly installment period shall be that proportion of the sales finance charge or loan finance charge originally contracted for, as the balance scheduled to be outstanding on the last day of the monthly installment period before deducting the payment, if any, scheduled to be made on that day bears to the sum of all the monthly installment balances under the original schedule of payments. (This method of allocation is the sum of the digits method, commonly referred to as the "Rule of 78.")

2 (2) Upon prepayment in full of a precomputed consumer credit sale or consumer loan by cash, a new loan, refinancing, consolidation or otherwise, the creditor shall rebate to the consumer that portion of the sales finance charge or loan finance charge attributable to the prepaid monthly installment periods: Provided, That upon prepayment in full of a precomputed consumer credit sale or consumer loan payable in monthly installments, by cash, a new loan, refinancing, consolidation or otherwise, on other than an installment due date, for the purpose of determining the rebate to which the consumer is entitled, the rebate shall be calculated as of the nearest installment due date. For the purpose of determining the installment due date nearest the date of any prepayment in full, refinancing or consolidation, any prepayment, refinancing or consolidation of an obligation payable in monthly installments made on or before the fifteenth day following an installment due date shall be deemed to have been made as of such installment due date, and any prepayment, refinancing or consolidation made on or after the sixteenth
day shall be deemed to have been made on the next succeeding installment due date. Notwithstanding any other provision herein contained, the creditor may collect or retain the minimum charge within the limits stated in this chapter if the sales finance charge or loan finance charge earned at the time of prepayment, refinancing or consolidation, is less than any minimum charge authorized by this chapter. No rebate of less than one dollar need be made.

(3) The commissioner shall prescribe by rule the method or procedure for the allocation of charges and the calculation of rebates consistent with the other provisions of this chapter where the precomputed consumer credit sale or consumer loan is payable in unequal or irregular or in other than substantially equal consecutive monthly installments.

(4) If the maturity of a precomputed consumer credit sale or consumer loan is accelerated for any reason and judgment is obtained, the debtor is entitled to the same rebate as if the payment had been made on the date judgment is entered, and such judgment shall bear interest until paid at the rate of six percent per annum.

§46A-3-112. Delinquency charges on precomputed consumer credit sales or consumer loans.

(1) With respect to a precomputed consumer credit sale or consumer loan, refinancing or consolidation, the parties may contract for a delinquency charge on any installment not paid in full within ten days after its scheduled due date in an amount not exceeding the greater of:

(a) An amount, not exceeding five dollars, which is five percent of the unpaid amount of the installment, but in any event not less than one dollar; or

(b) An amount equivalent to the deferral charge (§46A-3-114) that would be permitted to defer the unpaid amount of the installment for the period that it is delinquent.

(2) A delinquency charge under subdivision (a) of subsection (1) may be collected only once on an installment however long it remains in default. No delinquency charge
may be collected with respect to a deferred installment unless the installment is not paid in full within ten days after its deferred due date. A delinquency charge may be collected at the time it accrues or at any time thereafter.

(3) No delinquency charge may be collected on an installment which is paid in full within ten days after its scheduled or deferred installment due date, even though an earlier maturing installment or a delinquency or deferral charge on an earlier installment may not have been paid in full. For purposes of this subsection, payments shall be applied first to current installments, then to delinquent installments, and then to delinquency and other charges.

(4) If two installments or parts thereof of a precomputed consumer credit sale or consumer loan are in default for ten days or more, the creditor may elect to convert such sale or loan from a precomputed sale or loan to one in which the sales finance charge or loan finance charge is based on unpaid balances. In such event the creditor shall make a rebate pursuant to the provisions on rebate upon prepayment, refinancing or consolidation as of the maturity date of any installment then delinquent, and thereafter may make a sales finance charge or loan finance charge as authorized by the appropriate provisions on sales finance charges or loan finance charges for consumer credit sales or consumer loans.

The amount of the rebate shall not be reduced by the amount of any permitted minimum charge. If the creditor proceeds under this subsection, any delinquency or deferral charges made with respect to installments due at or after the maturity date of the delinquent installments shall be rebated, and no further delinquency or deferral charges shall be made.

(5) The commissioner shall prescribe by rule the method or procedure for the calculation of delinquency charges consistent with the other provisions of this chapter where the precomputed consumer credit sale or consumer loan is 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 finance charge or loan finance charge on a delinquent installment of a non-precomputed credit sale or consumer loan, refinancing or consolidation, repayable in installments, the parties may contract for a delinquency charge on any installment not paid in full within ten days after its scheduled due date in an amount, not exceeding five dollars, which is five percent of the unpaid amount of the installment, but in any event not less than one dollar.

2. (2) A delinquency charge under subsection (1) may be collected only once on an installment however long it remains in default. A delinquency charge may be collected at the time it accrues or at any time thereafter.

3. (3) No delinquency charge may be collected on an installment which is paid in full within ten days after its scheduled due date, even though an earlier maturing installment or a delinquency or deferral charge on an earlier installment may not have been paid in full. For purposes of this subsection, payments shall be applied first to current installments, then to delinquent installments, and then to delinquency and other charges.

§46A-3-114. Deferral charges.

1. (1) With respect to a precomputed consumer credit sale or consumer loan, refinancing or consolidation, the parties before or after default may agree in writing to a deferral of all or part of one or more unpaid installments, and the seller or lender may make and collect a deferral charge not exceeding the amount of the sales finance charge or loan finance charge attributable to the first of the deferred monthly installment periods multiplied by number of months in the deferral period (the period in which no payment is required or made by reason of a deferral): Provided, That no installment on which a delinquency charge has been collected or partial payment
made shall be deferred unless the amount of the delinquency charge or partial payment is first applied to the deferral charge. If prepayment in full occurs during a deferral period, the portion of the deferral charge attributable to the unexpired full months in the deferral period shall be also rebated.

(2) The seller or lender, in addition to the deferral charge, may make appropriate additional charges, and the amount of these charges which is not paid in cash may be added to the amount deferred for the purpose of calculating the deferral charge.

(3) The parties may agree in writing at the time of a precomputed consumer credit sale or consumer loan, refinancing or consolidation that if an installment is not paid within ten days after its due date as originally scheduled or as deferred, the seller or lender may unilaterally grant a deferral and make charges as provided in this section. No deferral charge may be made for a period after the date on which the seller or lender elects to accelerate the maturity of the agreement.

(4) The commissioner shall prescribe by rule the method or procedure for the calculation of deferral charges consistent with the other provisions of this chapter where the precomputed consumer credit sale or consumer loan is payable in unequal or irregular installments.

§46A-3-115. Advances to perform covenants of consumer.

(1) If the agreement with respect to a consumer credit sale or a consumer loan, refinancing or consolidation contains covenants by the consumer to perform certain duties pertaining to insuring or preserving collateral or payment of taxes, fees or assessments and if the creditor pursuant to the agreement pays for performance of such duties on behalf of the consumer, the creditor may add the amounts so paid to the debt. Within a reasonable time after advancing any sums, he shall state to the consumer in writing the amount of the sums advanced, any charges with respect to this amount, any revised payment scheduled, and, if the duties of the consumer performed by the creditor pertain to insurance, a brief de-
scription of the insurance paid for by the creditor including the type and amount of coverages. No further information need be given.

(2) A sales finance charge or a loan finance charge may be made for sums advanced pursuant to subsection (1) at a rate not exceeding the rate stated to the consumer pursuant to the provisions of the "Federal Consumer Credit Protection Act" with respect to the sale or loan, refinancing or consolidation. With respect to a revolving charge account or revolving loan account the amount of the advance may be added to the unpaid balance of the debt and the creditor may make a sales finance charge or loan finance charge not exceeding that permitted by the appropriate provisions on sales finance charges or loan finance charges.

§46A-3-116. Change in terms of revolving charge accounts or revolving loan accounts.

(1) If a creditor makes a change in the terms of a revolving charge account or revolving loan account without complying with this section, any additional cost or charge to the consumer resulting from the change is an excess charge and subject to the remedies provided in this chapter.

(2) A creditor may change the terms of a revolving charge account or revolving loan account whether or not the change is authorized by prior agreement. Except as provided in subsection (3), the creditor shall give to the consumer written notice of such change not less than fifteen days prior to the effective date of such change.

(3) The notice specified in subsection (2) is not required if:

(a) The consumer after otherwise receiving notice of the change agrees in writing to the change;

(b) The consumer elects to pay an amount designated on a billing statement as including a new charge for a benefit offered to the debtor when the benefit and charge constitute the change in terms and when the billing state-
ment also states the amount payable if the new charge is excluded;

(c) The change involves no significant cost to the consumer;

(d) The consumer has previously consented in writing to the kind of change made and notice of the change is given to the consumer in two billing cycles prior to the effective date of the change; or

(e) The change applies only to purchases made or obligations incurred after a date specified in a notice of the change given in two billing cycles prior to the effective date of the change.

(4) The notice provided for in this section is given to the debtor when mailed to him at the address used by the creditor for mailing periodic billing statements.

(5) Under no circumstances may a change under the provisions of this section be made so as to (a) increase a sales finance charge or loan finance charge above that permitted by the appropriate provisions on sales finance charges or loan finance charges; or (b) apply a higher sales finance charge or loan finance charge to the account balance or debt balance unpaid as of the date the change 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 commissioner authorizing him to make supervised loans, he shall not engage in the business of:

4 (1) Making supervised loans, or

5 (2) Taking assignments of and undertaking direct collection of payments from or enforcement of rights against consumers arising from supervised loans.

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

1 (1) The commissioner shall receive and act on all applications for licenses to make supervised loans under this chapter. Applications shall be under oath, be filed in the manner prescribed by the commissioner, and contain the information the commissioner requires by rule to make an evaluation of the financial responsibility, experience, character and fitness of the applicant, and the findings required of him before he may issue a license. At the time of the filing of the application, the sum of two hundred fifty dollars shall be paid to the commissioner as an investigation fee.

12 (2) No license shall be issued to a supervised financial organization. No license shall be issued to any person unless the commissioner, upon investigation, finds that the financial responsibility, experience, character and fitness of the applicant, and of the members thereof (if the applicant is a co-partnership or association) and of the officers and directors thereof (if the applicant is a corporation), are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly and efficiently, within the purposes of this chapter, and the applicant has available for the operation of the business at the specified location assets of at least two thousand dollars, and that allowing the applicant to engage in business will promote the convenience and advantage of the community in which the business of the applicant is to be conducted.

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
41 (4) Not more than one place of business shall be main-
42 tained under the same license, but the commissioner
43 may issue more than one license to the same licensee
44 upon compliance with all the provisions of this article
45 governing an original issuance of a license, for each such
46 new license. Each license shall remain in full force and
47 effect until surrendered, suspended or revoked.
48
49 (5) Upon giving the commissioner at least fifteen days’
50 prior written notice, a licensee may (a) change the loca-
51 tion of any place of business located within a municipality
52 to any other location within that same municipality, or
53 (b) change the location of any place of business located
54 outside of a municipality to a location no more than five
55 miles from the originally licensed location, but in no
56 case may a licensee move any place of business located
57 outside a municipality to a location within a municipality.
58 A licensee may not move the location of any place of
59 business located within a municipality to any other loca-
60 tion outside of that municipality.
61
62 (6) A licensee may conduct the business of making
63 supervised loans only at or from a place of business for
64 which he holds a license and not under any other name
65 than that stated in the license. A sale or lease in which
66 credit is granted pursuant to a lender credit card does not
67 violate this subsection.
68
69 (7) A license issued under the provisions of this sec-
70 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
to make supervised loans an order to show cause why
his license should not be revoked or suspended for a period
not in excess of six months. The order shall state the
place for a hearing and set a time for the hearing that is
no less than ten days from the date of the order. After
the hearing the commissioner shall revoke or suspend the
license if he finds that:

(a) The licensee has repeatedly and willfully violated
this chapter or any rule or order lawfully made or issued
pursuant to this article; or

(b) Facts or conditions exist which would clearly have
justified the commissioner in refusing to grant a license
had these facts or conditions been known to exist at the
time the application for the license was made.

(2) No revocation or suspension of a license is lawful
unless prior to institution of proceedings by the commis-
sioner notice is given to the licensee of the facts or con-
duct which warrant the intended action, and the licensee
is given an opportunity to show compliance with all law-
ful requirements for retention of the license.

(3) If the commissioner finds that probable cause for
revocation of a license exists and that enforcement of
this article requires immediate suspension of the license
pending investigation, he may, after a hearing upon five
days' written notice, enter an order suspending the license
for not more than thirty days.

(4) Whenever the commissioner revokes or suspend
a license, he shall enter an order to that effect and forth-
with notify the licensee of the revocation or suspension.
Within five days after the entry of the order he shall mail
by registered or certified mail or deliver to the licensee
a copy of the order and the findings supporting the order.

(5) Any person holding a license to make supervised
loans may relinquish the license by notifying the com-
missioner in writing of its relinquishment, but this re-
linquishment shall not affect his liability for acts pre-
viously committed.

(6) No revocation, suspension or relinquishment of a
license shall impair or affect the obligation of any pre-
existing lawful contract between the licensee and any consumer.

(7) The commissioner may reinstate a license, terminate a suspension or grant a new license to a person whose license has been revoked or suspended if no fact or condition then exists which clearly would have justified the commissioner in refusing to grant a license.

§46A-4-104. Records; annual reports.

1 (1) Every licensee shall maintain records in conformity with generally accepted accounting principles and practices in a manner which will enable the commissioner to determine whether the licensee is complying with the provisions of this article. The record-keeping system of a licensee shall be sufficient if he makes the required information reasonably available. The records need not be kept in the place of business where supervised loans are made, if the commissioner is given free access to the records wherever located. The records pertaining to any loan need not be preserved for more than two years after making the final entry relating to the loan, but in the case of a revolving loan account such two-year period is measured from the date of each entry.

2 (2) On or before the fifteenth day of April each year, every licensee shall file with the commissioner a composite annual report in the form prescribed by the commissioner relating to all supervised loans made by him. The commissioner shall consult with comparable officials in other states for the purpose of making the kinds of information required in annual reports uniform among the states. Information contained in annual reports shall be confidential and may be published only in composite form.

§46A-4-105. Examinations and investigations.

1 (1) The commissioner shall examine annually the loans, business and records of every licensee. In addition, for the purpose of discovering violations of this article or securing information lawfully required, the attorney general or the commissioner may at any time investigate
the loans, business and records of any supervised lender. For these purposes he shall have free and reasonable access to the offices, places of business and records of the lender.

(2) If the lender’s records are located outside this state, the lender at his option shall make them available to the commissioner at a convenient location within this state, or pay the reasonable and necessary expenses for the commissioner or his representative to examine them at the place where they are maintained. The commissioner may designate representatives, including comparable officials of the state in which the records are located, to inspect them on his behalf.

(3) For the purposes of this section, the commissioner may administer oaths or affirmations, and upon his own motion or upon request of any party, may subpoena witnesses, compel their attendance, adduce evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of admissible evidence.

(4) Upon failure without lawful excuse to obey a subpoena or to give testimony and upon reasonable notice to all persons affected thereby, the commissioner may apply to any circuit court of this state for an order compelling compliance.

(5) Every licensee shall pay to the commissioner the actual costs of each examination as provided for in this section.

§46A-4-106. Application of administrative procedures act.

Except as otherwise provided, the provisions of chapter twenty-nine-a of this code apply to and govern all administrative action taken by the commissioner pursuant 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 revolving loan account, a supervised lender may contract for and receive a loan finance charge not exceeding that permitted by this section.

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

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

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

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

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

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

8 (b) The effect of prepayment, refinancing or consolidation is governed by the provisions on rebate upon prepayment, refinancing or consolidation contained in section one hundred eleven, article three of this chapter.

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

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

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

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

(6) With respect to a revolving loan account:

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

(i) The average daily balance of the debt,

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

(iii) Subject to subsection (5), the median amount within a specified range within which the average daily balance of the debt or the balance of the debt at the beginning of the first day of the billing cycle, less all payments on and credits to such debt during such billing cycle and excluding all additional borrowings during such billing cycle, is included. For the purpose of this subdivision (a) a billing cycle is monthly if the billing statement dates are on the same day each month or do not vary by more than four days therefrom.
(b) If the billing cycle is not monthly, the maximum loan finance charge which may be made by a supervised lender is that percentage which bears the same relation to an applicable monthly percentage as the number of days in the billing cycle bears to thirty.

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

§46A-4-108. Use of multiple loan agreements.

1 A supervised lender may not use multiple loan agreements with intent to obtain a higher loan finance charge than would otherwise be permitted by the provisions of this article. A supervised lender uses multiple loan agreements if, with intent to obtain a higher loan finance charge than would otherwise be permitted, he allows any person, or husband and wife, to become obligated in any way under more than one loan agreement with the supervised lender for a supervised loan under this article.

10 The excess amount of the loan finance charge provided for in agreements in violation of this section is an excess charge for the purposes of the provisions on effect of violations on rights of parties.

§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.

1 (1) A supervised lender may not contract for an interest in land as security. A security interest taken in violation of this subsection is void.
(2) Notwithstanding the provisions of section one hundred sixteen, article two of this chapter, no supervised lender shall take any assignment of or order for payment of any earnings to secure any loan made by any supervised lender under this article. An assignment or order taken in violation of this subsection is void.

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

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

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

No licensee shall conduct the business of making loans under the provisions of this article within any office, room or place of business in which any other business is solicited or engaged in, or in association or conjunction therewith, except as may be authorized in writing by the commissioner upon his finding that the character of such other business is such that the granting of such authority would not facilitate evasions of this article or of the rules and regulations lawfully made hereunder,
except nothing herein shall prohibit the licensee from purchasing installment sales contracts or the sale or provision of insurance authorized by section one hundred nine, article three of this chapter.

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

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

§46A-4-112. Code references to small loans and small loan companies; authority of the commissioner.

All references in other chapters of this code to small loans, small loan lenders, small loan licensees and to article seven-a, chapter forty-seven of this code, shall, after the operative date of this chapter, and despite the repeal of said statute, be read, construed and understood to mean and to have reference, respectively, to supervised loans, supervised lenders, supervised lender licensees, and to this article four.

All authority vested by this chapter in the commissioner shall be deemed to be in addition to, and not in limitation of, the authority vested in the commissioner of banking by provisions contained in other chapters of this code.

§46A-4-113. Continuation of licensing.

All persons licensed under the provisions of article seven-a, chapter forty-seven of this code, on the operative date of this chapter, are licensed to make supervised loans under the provisions of this article four, and all
provisions of this article shall after the operative date of this chapter apply to the persons so previously licensed, including without limitation the provisions governing notification (§46A-7-115) contained in article seven of this chapter.

The commissioner may, but is not required to, deliver evidence of licensing to the persons so previously licensed.

ARTICLE 5. CIVIL LIABILITY AND CRIMINAL PENALTIES.


§46A-5-103. Willful violations.


(1) If a creditor has violated the provisions of this chapter applying to collection of excess charges (§46A-1-104), security in sales and leases (§46A-2-107), disclosure with respect to consumer leases (§46A-2-111), receipts, statements of account and evidences of payment (§46A-2-114), limitations on default charges (§46A-2-115), assignment of earnings (§46A-2-116), authorizations to confess judgment (§46A-2-117), illegal, fraudulent or unconscionable conduct (§46A-2-121), any prohibited debt collection practice (§§46A-2-123 through 129), or restrictions on interest in land as security, assignment of earnings to supervised lender, security agreement on household furniture for benefit of supervised lender, and renegotiation by supervised lender of loan discharged in bankruptcy (§46A-4-109), the consumer has a cause of action to recover actual damages and in addition a right in an action to recover from the person violating this chapter a penalty in an amount determined by the court not less than one hundred dollars nor more than one thousand dollars. With respect to violations arising from consumer credit sales or consumer loans made pursuant to revolving charge accounts or revolving loan accounts, or from sales as defined in article six of this chapter, no action pursuant to this subsection may be brought more than four years after the violations occurred. With respect to violations
arising from other consumer credit sales or consumer
loans, no action pursuant to this subsection may be
brought more than one year after the due date of the
last scheduled payment of the agreement.

(2) If a creditor has violated the provisions of this
chapter respecting authority to make supervised loans
(§46A-4-101), the loan is void and the consumer is not
obligated to pay either the principal or the loan finance
charge. If he has paid any part of the principal or of the
finance charge, he has a right to recover in an action the
payment from the person violating this chapter or from
an assignee of that person's rights who undertakes direct
collection of payments or enforcement of rights arising
from the debt. With respect to violations arising from
supervised loans made pursuant to revolving loan ac-
counts, no action pursuant to this subsection may be
brought more than four years after the violation occurred.
With respect to violations arising from other supervised
loans, no action pursuant to this subsection may be
brought more than one year after the due date of the
last scheduled payment of the agreement pursuant to
which the charge was paid.

(3) A consumer is not obligated to pay a charge in
excess of that allowed by this chapter, and if he has paid
an excess charge he has a right to a refund. A refund
may be made by reducing the consumer's obligation by
the amount of the excess charge. If the consumer has
paid an amount in excess of the lawful obligation under
the agreement, the consumer may recover in an action
the excess amount from the person who made the excess
charge or from an assignee of that person's rights who
undertakes direct collection of payments from or en-
forcement of rights against the consumer arising
from the debt.

(4) If a creditor has contracted for or received a
charge in excess of that allowed by this chapter, the con-
sumer may, in addition to recovering such excess charge,
also recover from the creditor or the person liable in an
action a penalty in an amount determined by the court
not less than one hundred dollars nor more than one
thousand dollars. With respect to excess charges arising from consumer credit sales or consumer loans made pursuant to revolving charge accounts or revolving loan accounts, no action pursuant to this subsection may be brought more than four years after the time the excess charge was made. With respect to excess charges arising from other consumer credit sales or consumer loans no action pursuant to this subsection may be brought more than one year after the due date of the last scheduled payment of the agreement pursuant to which the charge was made.

(5) Except as otherwise provided, a violation of this chapter does not impair rights on a debt.

(6) If an employer discharges an employee in violation of the provisions prohibiting discharge (§46A-2-131), the employee may within ninety days bring a civil action for recovery of wages lost as a result of the violation and for an order requiring the reinstatement of the employee. Damages recoverable shall not exceed lost wages for six weeks.

(7) A creditor has no liability for a penalty under subsection (1) or subsection (4) if within fifteen days after discovering an error, and prior to the institution of an action under this section or the receipt of written notice of the error, the creditor notifies the person concerned of the error and corrects the error. If the violation consists of a prohibited agreement, giving the consumer a corrected copy of the writing containing the error is sufficient notification and correction. If the violation consists of an excess charge, correction shall be made by an adjustment or refund.

(8) If the creditor establishes by a preponderance of evidence that a violation is unintentional or the result of a bona fide error of fact notwithstanding the maintenance of procedures reasonably adapted to avoid any such violation or error, no liability is imposed under subsections (1), (2) and (4), and the validity of the transaction is not affected.

1 Rights granted by this chapter may be asserted as a defense, set-off or counterclaim to an action against a consumer without regard to any limitation of actions.

§46A-5-103. Willful violations.

1 (1) A supervised lender who willfully makes charges in excess of those permitted by the provisions of article four of this chapter, pertaining to supervised lenders, shall be guilty of a misdemeanor, and, upon conviction, shall be fined not more than five thousand dollars, or imprisoned not more than one year, or both fined and imprisoned.

2 (2) A person who willfully engages in the business of making supervised loans without a license in violation of the provisions of article four of this chapter applying to authority to make supervised loans shall be guilty of a misdemeanor, and, upon conviction, shall be fined not more than five thousand dollars, or imprisoned not more than one year, or both fined and imprisoned.

3 (3) A person who willfully engages in the business of making consumer credit sales or consumer loans, or of taking assignments of rights against consumers arising therefrom and undertakes direct collection of payments or enforcement of these rights, without complying with the provisions of section one hundred fifteen, article seven of this chapter, concerning notification, shall be guilty of a misdemeanor, and, upon conviction, shall be fined not more than one hundred dollars.

4 (4) Any person who willfully violates any of the provisions of sections one hundred twenty-three through one hundred twenty-eight, inclusive, article two of this chapter, by committing any of the specifically described and enumerated acts contained therein, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars, or imprisoned in the county jail not more than one year, or both fined and imprisoned.
ARTICLE 6. GENERAL CONSUMER PROTECTION.

§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
services and includes every word device to disguise any
form of business solicitation by using such terms as “re-
newal,” “invoice,” “bill,” “statement” or “reminder,” to
create an impression of existing obligation when there
is none, or other language to mislead any person in re-
lation to any sought-after commercial transaction.

(b) “Merchantable” means, in addition to the qualities
prescribed in section three hundred fourteen, article two,
chapter forty-six of this code, that the goods conform in all
material respects to applicable state and federal statutes
and regulations establishing standards of quality and
safety of goods and, in the case of goods with me-
chanical, electrical or thermal components, that the goods
are in good working order and will operate properly in
normal usage for a reasonable period of time.

(c) “Sale” includes any sale, offer for sale or attempt
to sell any goods for cash or credit or any services or
offer for services for cash or credit.

(d) “Trade” or “commerce” means the advertising,
offering for sale, sale or distribution of any goods or
services and shall include any trade or commerce, directly
or indirectly, affecting the people of this state.

(e) “Unfair methods of competition and unfair or
deceptive acts or practices” means and includes, but is not
limited to, any one or more of the following:

(1) Passing off goods or services as those of another;
(2) Causing likelihood of confusion or of misunder-
standing as to the source, sponsorship, approval or certi-
fication of goods or services;
(3) Causing likelihood of confusion or of misunder-
standing as to affiliation, connection or association with,
or certification by, another;
(4) Using deceptive representations or designations
of geographic origin in connection with goods or services;
(5) Representing that goods or services have sponsor-
ship, approval, characteristics, ingredients, uses, benefits
or quantities that they do not have, or that a person has
Representing that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used or secondhand;

(7) Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another;

(8) Disparaging the goods, services or business of another by false or misleading representation of fact;

(9) Advertising goods or services with intent not to sell them as advertised;

(10) Advertising goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity;

(11) Making false or misleading statements of fact concerning the reasons for, existence of or amounts of price reductions;

(12) Engaging in any other conduct which similarly creates a likelihood of confusion or of misunderstanding;

(13) The act, use or employment by any person of any deception, fraud, false pretense, false promise or misrepresentation, or the concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any goods or services, whether or not any person has in fact been misled, deceived or damaged thereby; or

(14) Advertising, printing, displaying, publishing, distributing or broadcasting, or causing to be advertised, printed, displayed, published, distributed or broadcast in any manner, any statement or representation with regard to the sale of goods or the extension of consumer credit including the rates, terms or conditions for the sale of such goods or the extension of such credit, which is false, misleading, or deceptive, or which omits to state material information which is necessary to make the statements therein not false, misleading or deceptive.
(f) "Warranty" means express and implied warranties described and defined in sections three hundred thirteen, three hundred fourteen and three hundred fifteen, article two, chapter forty-six of this code and expressions or actions of a merchant which assure the consumer that the goods have described qualities or will perform in a described manner.

§46A-6-103. Rules and regulations.
1 The attorney general of the state of West Virginia may make rules and regulations interpreting and defining the provisions of section one hundred two of this article. Such rules and regulations shall conform as nearly as practicable with the rules, regulations and decisions of the federal trade commission and the federal courts in interpreting the provisions of the "Federal Trade Commission Act," as from time to time amended.

§46A-6-104. Unlawful acts or practices.
1 Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.

§46A-6-105. Exempted transactions.
1 Nothing in this article shall apply to acts done by the publisher, owner, agent or employee of a newspaper, periodical or radio or television station in the publication or dissemination of an advertisement, when the owner, agent or employee did not have knowledge of the false, misleading or deceptive character of the advertisement, did not prepare the advertisement and did not have a direct financial interest in the sale or distribution of the advertised goods or services.

§46A-6-106. Actions by consumers.
1 (1) Any person who purchases or leases goods or services and thereby suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of a method, act or practice prohibited or declared to be unlawful by the provisions of this article, may bring an action in the
circuit court of the county in which the seller or lessor resides or has his principal place of business or is doing business, or as provided for in sections one and two, article one, chapter fifty-six of this code, to recover actual damages or two hundred dollars, whichever is greater. The court may, in its discretion, provide such equitable relief as it deems necessary or proper.

(2) Any permanent injunction, judgment or order of the court under section one hundred eight, article seven of this chapter for a violation of section one hundred four of this article shall be prima facie evidence in an action brought under this section one hundred six that the respondent used or employed a method, act or practice declared unlawful by said section one hundred four of this article.

§46A-6-107. Disclaimer of warranties and remedies prohibited.

Notwithstanding any other provision of law to the contrary with respect to goods which are the subject of or are intended to become the subject of a consumer transaction, no merchant shall:

(1) Exclude, modify or otherwise attempt to limit any warranty, express or implied, including the warranties of merchantability and fitness for a particular purpose; or

(2) Exclude, modify or attempt to limit any remedy provided by law, including the measure of damages available, for a breach of warranty, express or implied.

Any such exclusion, modification or attempted limitation shall be void.

§46A-6-108. Breach of warranty; privity abolished.

Notwithstanding any other provision of law to the contrary, no action by a consumer for breach of warranty or for negligence with respect to goods subject to a consumer transaction shall fail because of a lack of privity between the consumer and the party against whom the claim is made. An action against any person for breach of warranty 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 commis-
sioner; duty to report.
§46A-7-103. Division of administrative powers; investigation and ad-
ministration.
§46A-7-104. Investigatory powers.
§46A-7-105. Application of administrative procedures act.
§46A-7-106. Administrative enforcement orders; judicial review.
§46A-7-108. Injunctions against violations of chapter.
§46A-7-109. Injunctions against unconscionable agreements and fraud-
ulent 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 ap-
pointed by governor; qualifications of members; term; or-
ganization 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 commis-
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;
(d) Make studies appropriate to effectuate the purposes and policies of this chapter and make the results available to the public;

(e) Adopt, amend and repeal such reasonable rules and regulations, in accordance with the provisions of chapter twenty-nine-a of this code, as are necessary and proper to effectuate the purposes of this chapter and to prevent circumvention or evasion thereof; and

(f) Delegate his powers and duties under this chapter to qualified personnel in his office, who shall act under the direction and supervision of the attorney general and for whose acts he shall be responsible.

(2) Except for refund of an excess charge, no liability is imposed under this chapter for an act done or omitted in conformity with a rule of the attorney general or commissioner, notwithstanding that after the act or omission the rule may be amended or repealed or be determined by judicial or other authority to be invalid for any reason. Any form or procedure which has been submitted to the commissioner and the attorney general in writing and approved in writing by them shall not be deemed a violation of the penalty provisions of this chapter notwithstanding that such approval may be subsequently amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(3) On or before December first of each year, the attorney general and commissioner shall jointly or separately submit a report or reports to the governor and to the Legislature on the operation of their offices, on the use of consumer credit and on consumer protection problems in the state, and on the problems of persons of small means obtaining credit from persons regularly engaged in extending sales or loan credit. For the purpose of making such report or reports, the attorney general and commissioner are authorized to conduct research and make appropriate studies. The report or reports shall include a description of the examination and investigation procedures and policies of their offices, a statement of policies followed in deciding whether to investigate or examine the offices of credit suppliers subject to this chapter,
a statement of the number and percentages of offices
which are periodically investigated or examined, a state-
ment of the types of consumer credit and consumer pro-
tection problems of both creditors and consumers which
have come to their attention through their examinations
and investigations and the disposition of them under exist-
ing law, and a general statement of the activities of their
offices and of others to promote the purposes of this chap-
ter.

§46A-7-103. Division of administrative powers; investigation
and administration.

(1) With respect to supervised financial organizations,
the powers of examination and investigation and adminis-
trative enforcement shall be exercised by the official or
agency to whose supervision the organization is subject.
All other powers of the attorney general under this chap-
ter may be exercised by him with respect to a supervised
financial organization. Notwithstanding the first sentence
of this subsection and notwithstanding subsection (3)
of this section, the attorney general may pursue any
investigation, prosecute any suit and take any other pro-
per action relating to the enforcement of any consumer
protection provision in this chapter.

(2) If the attorney general receives a complaint or
other information concerning noncompliance with this
chapter by a supervised financial organization, he shall
inform the official or agency having supervisory authority
over the organization concerned. The attorney general
may request information about supervised financial organ-
izations from the officials or agencies supervising them.

(3) The attorney general and any official or agency
of this state having supervisory authority over a super-
vised financial organization are authorized and directed
to consult and assist one another in maintaining compli-
ance with this chapter. They may jointly pursue investi-
gations, prosecute actions, and take other official actions,
as they deem appropriate, if either of them otherwise is
empowered to take the action.
§46A-7-104. Investigatory powers.

1. (1) If the attorney general has probable cause to believe that a person has engaged in an act which is subject to action by the attorney general, he may, and shall upon request of the commissioner, make an investigation to determine if the act has been committed and, to the extent necessary for this purpose, may administer oaths or affirmations, and, upon his own motion or upon request of any party, may subpoena witnesses, compel their attendance, adduce evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition and location of any books, records, documents or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of admissible evidence.

2. (2) If the person's records are located outside this state, the person at his option shall either make them available to the attorney general at a convenient location within this state or pay the reasonable and necessary expenses for the attorney general or his representative to examine them at the place where they are maintained. The attorney general may designate representatives, including comparable officials of the state in which the records are located, to inspect them on his behalf.

3. (3) Upon failure of a person without lawful excuse to obey a subpoena or to give testimony and upon reasonable notice to all persons affected thereby, the attorney general may apply to the circuit court of the county in which the hearing is to be held for an order compelling compliance.

4. (4) The attorney general shall not make public the name or identity of a person whose acts or conduct he investigates pursuant to this section or the facts disclosed in the investigation, but this subsection does not apply to disclosures in actions or enforcement proceedings pursuant 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.


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
(b) In the case of consumer credit sales, knowledge by the seller at the time of the sale of the inability of the buyer to receive substantial benefits from the property or services sold;

(c) In the case of consumer credit sales, gross disparity between the price of the property or services sold and the value of the property or services measured by the price at which similar property or services are readily obtainable in credit transactions by like buyers;

(d) The fact that the creditor contracted for or received separate charges for insurance with respect to consumer credit sales or consumer loans with the effect of making the sales or loans, considered as a whole, unconscionable; and

(e) The fact that the respondent has knowingly taken advantage of the inability of the debtor reasonably to protect his interests by reason of physical or mental infirmities, ignorance, illiteracy or inability to understand the language of the agreement, or similar factors.

(4) In an action brought pursuant to this chapter, a charge or practice expressly permitted by this chapter is not unconscionable.

§46A-7-110. Temporary relief.

With respect to an action brought to enjoin violations of this chapter or unconscionable agreements or fraudulent or unconscionable conduct, the attorney general may apply to the court for appropriate temporary relief against a respondent, pending final determination of the proceedings. If the court finds after a hearing held upon notice to the respondent that there is reasonable cause to believe that the respondent is engaging in or is likely to engage in conduct sought to be restrained, it may grant any temporary relief or restraining order it deems appropriate.

§46A-7-111. Civil actions by attorney general.

(1) After demand, the attorney general may bring a civil action against a creditor for making or collecting
Ch. 12] CONSUMER PROTECTION

3 charges in excess of those permitted by this chapter. If it is found that an excess charge has been made, the court shall order the respondent to refund to the consumer the amount of the excess charge. If a creditor has made an excess charge in a deliberate violation of or in reckless disregard for this chapter, or if a creditor has refused to refund an excess charge within a reasonable time after demand by the consumer or the attorney general, the court may also order the respondent to pay to the consumer a civil penalty in an amount determined by the court not in excess of the greater of either the amount of the sales finance charge or loan finance charge or ten times the amount of the excess charge. Refunds and penalties to which the consumer is entitled pursuant to this subsection may be set off against the consumer's obligation. If a consumer brings an action against a creditor to recover an excess charge or civil penalty, an action by the attorney general to recover for the same excess charge shall be stayed while the consumer's action is pending and shall be dismissed if the consumer's action is dismissed with prejudice or results in a final judgment granting or denying the consumer's claim. With respect to excess charges arising from consumer credit sales made pursuant to revolving charge accounts or from consumer loans made pursuant to revolving loan accounts, no action pursuant to this subsection may be brought more than four years after the time the excess charge was made. With respect to excess charges arising from other consumer credit sales or consumer loans, no action pursuant to this subsection may be brought more than one year after the due date of the last scheduled payment of the agreement pursuant to which the charge was made. If the creditor establishes by a preponderance of evidence that a violation is unintentional or the result of a bona fide error, no liability to pay a penalty shall be imposed under this subsection.

(2) The attorney general may bring a civil action against a creditor or other person to recover a civil penalty for willfully violating this chapter, and if the court finds that the defendant has engaged in a course of repeated and willful violations of this chapter, it may assess
a civil penalty of no more than five thousand dollars. No
civil penalty pursuant to this subsection may be imposed
for violations of this chapter occurring more than
four years before the action is brought.

§46A-7-112. Jury trial.

1 In an action brought by the attorney general under
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
chapter does not affect remedies available to consumers
under this chapter or under other principles of law or
equity.

§46A-7-114. Venue.

1 The attorney general may bring actions or proceed-
ings under this chapter in the circuit court of any county
in which an act on which the action or proceeding is based
occurred, or in any county in which the respondent or
defendant resides or transacts business.

§46A-7-115. Notification.

1 (1) Every person engaged in this state in making con-
sumer credit sales or consumer loans and every person
having an office or place of business in this state who takes
assignments of and undertakes direct collection of pay-
ments from or enforcement of rights against debtors aris-
ing from such sales or loans shall file notification with the
state tax department within thirty days after commencing
business in this state, and, thereafter, on or before January
thirty-first of each year. A notification shall be deemed to
be in compliance with this section if the information here-
inafter required is given in an application for a business
registration certificate provided for in section four, arti-
cle twelve, chapter eleven of this code. The state tax
commissioner shall make any information required by this
section available to the attorney general or commissioner
upon request. The notification shall state:

(a) Name of the person;
(b) Name in which business is transacted if different from (a);

(c) Address of principal office, which may be outside this state;

(d) Address of all offices or retail stores, if any, in this state at which consumer credit sales or consumer loans are made, or in the case of a person taking assignments of obligations, the offices or places of business within this state at which business is transacted;

(e) If consumer credit sales or consumer loans are made otherwise than at a retail store or office in this state, a brief description of the manner in which they are made;

(f) Address of designated agent upon whom service of process may be made in this state; and

(g) Whether supervised loans are made.

(2) If information in a notification becomes inaccurate after filing, accurate information must be filed within thirty days.

(3) The provisions of this section are not applicable to a seller whose credit sales consist entirely of sales made pursuant to a seller's credit card so long as the issuer of the card has fully complied with the provisions 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.

A consumer affairs advisory council is hereby created. The council shall be composed of nine members who shall be appointed by the governor within thirty days of the date this section becomes operative, which such appointments shall be subject to confirmation by the Senate. The members of the council shall be citizens and residents of this state, who by reason of their training, education or experience are qualified to carry out the functions of the council under this section. Five members shall be repre-
sentatives of the general public and the other four members shall be representatives of consumer financing and retailing business in this state.

The first term of office for three of the representatives of the general public, who shall be designated by the governor, shall run through the thirtieth day of June, one thousand nine hundred seventy-six. The first term of office for the other two representatives of the general public shall run through the thirtieth day of June, one thousand nine hundred seventy-seven. The first term of office for two of the representatives of consumer financing and retailing business in this state, who shall be designated by the governor, shall run through the thirtieth day of June, one thousand nine hundred seventy-six. The first term of office for the other two representatives of consumer financing and retailing business in this state shall run through the thirtieth day of June, one thousand nine hundred seventy-seven. Thereafter, terms of members shall be four years.

At its first meeting, the council shall elect a chairman, from among its members, who shall preside over its meetings until the second Monday in July of the next year. Thereafter, the council shall elect a chairman on the second Monday in July of each year.

All members shall be eligible for reappointment by the governor. A member shall, unless sooner removed, continue to serve until his term expires and his successor has been appointed and has qualified. A vacancy caused by the death, resignation or removal of a member prior to the expiration of his term shall be filled only for the remainder of such term.

It shall be the duty of the council to advise and consult with the attorney general concerning the exercise of his powers, duties and responsibilities under this article, the problems and practices in consumer transactions, any abuses in the use of consumer credit in this state, the problems relating to the collection of debts, the problems and practices of credit reporting agencies and the problems of persons of limited means in consumer trans-
actions and to make recommendations on the need for ad-
itional consumer protection legislation and programs
in this state.

For the purpose of carrying out its duty, five members
of the council shall constitute a quorum so long as at
least one of such members is a representative of consumer
financing and retailing business in this state. The coun-
cil and the attorney general shall meet together at a time
and place designated by the chairman at least two times
each year. Additional meetings may be held when called
by the chairman or when requested by five members of
the council or by the attorney general. Members shall be
entitled to reasonable and necessary expenses actually
incurred while engaged in the performance of their duties
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 transition;
enforceability of prior transactions.

(1) Except as otherwise provided in this section, this
chapter shall become operative at 12:01 A.M. on September
first, one thousand nine hundred seventy-four.

(2) Notwithstanding the provisions of subsection (1)
of this section, in order to allow sufficient time to pre-
pare for the implementation and operation of this chapter
and to act on applications for licenses to make supervised
loans under this chapter prior to the operative date of
such chapter, the provisions of article four of this chap-
ter, relating to supervised lenders, and the provisions of
article seven of this chapter, relating to administration,
shall, to the extent necessary, become operative for such
purposes at 12:01 A.M. on July first, one thousand nine
hundred seventy-four.

(3) Transactions entered into before this chapter be-
comes operative and the rights, duties and interests flow-
ing from them thereafter may be terminated, completed,
consummated or enforced as required or permitted by
any statute, rule of law or other law amended, repealed or modified by this chapter as though the repeal, amendment or modification had not occurred, but this chapter applies to:

(a) Refinancings and consolidations made after this chapter becomes operative of consumer credit sales, consumer leases and consumer loans whenever made;

(b) Consumer credit sales or consumer loans made after this chapter becomes operative pursuant to revolving charge accounts or revolving loan accounts entered into, arranged or contracted for before this chapter becomes operative; and

(c) All consumer credit transactions made before this chapter becomes operative insofar as this chapter limits the remedies of creditors.

§46A-8-102. Severability.

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

Except in cases where it is otherwise specially provided by law, legal interest shall continue to be at the rate of six dollars upon one hundred dollars for a year, and proportionately for a greater or less sum, or for a longer or shorter time, and no person upon any contract other
than a contract in writing shall take for the loan or forbearance of money, or other thing, above the value of such rate: *Provided,* That a charge of one dollar may be made for any loan or forbearance of money or other thing, where the interest at the rate aforesaid would not amount to that sum, and the same shall not be a usurious charge or rate of interest.

Parties may contract in writing for the payment of interest for the loan or forbearance of money at a rate not to exceed eight dollars upon one hundred dollars for a year, and proportionately for a greater or less sum or for a longer or shorter time, including points expressed as a percentage of the loan divided by the number of years of the loan contract. For the purpose of this section the term 'points' is defined as the amount of money, or other consideration, received by the lender, from whatever source, as a consideration for making the loan and not otherwise expressly permitted by statute.

§47-6-5a. Interest charges on loans repayable in installments.

Except in cases where it is otherwise specially provided by law, parties may contract for and charge interest for a secured or unsecured loan, repayable in installments at a rate not in excess of: (a) Six percent per annum upon the principal amount of the loan, for the entire period of the loan, and add such charge to the principal amount of the loan; or (b) six percent per annum upon the face amount of the instruments evidencing the obligation to repay the loan, for the entire period of the loan and deduct such charge in advance but in no case shall the interest on such a discount loan exceed an annual percentage rate of fifteen percent per annum calculated according to the actuarial method: *Provided,* that upon prepayment in full of a precomputed loan, the lender shall rebate that portion of such charge attributable to the prepaid periodic installment periods. When the total amount is payable in substantially equal consecutive monthly installments, the portion of such charge attributable to any particular monthly installment period shall be that proportion of the charge originally
contracted for, as the balance scheduled to be outstanding on the last day of the monthly installment period before deducting the payment, if any, scheduled to be made on that day bears to the sum of all the monthly installment balances under the original schedule of payments. (This method of allocation is the sum of the digits method, commonly referred to as the “Rule of 78.”) If prepayment in full of an obligation payable in monthly installments is made on other than an installment due date, the rebate shall be calculated as of the nearest installment due date. For the purpose of determining the installment due date nearest the date of any prepayment in full, any prepayment in full of an obligation payable in monthly installments made on or before the fifteenth day following an installment due date shall be determined to have been made as of such installment date, and any prepayment in full made on or after the sixteenth day shall be deemed to have been made on the next succeeding installment due date. The commissioner of banking shall prescribe by rule the method or procedure for the allocation of charges and the calculation of rebates consistent with the sum of the digits method where the precomputed loan is payable in unequal or irregular or in other than substantially equal consecutive monthly installments. Any note evidencing any such installment loan may provide that the entire unpaid balance thereof at the option of the holder shall become due and payable upon default in the payment of any stipulated installment without impairing the negotiability of such note if otherwise negotiable. Nothing herein contained shall affect or restrict the right of parties under section five of this article to contract in writing for the payment of interest for the loan or forbearance of money at a rate not to exceed eight dollars upon one hundred dollars a year, and proportionately for a greater or less sum, or for a longer or shorter time, including points expressed as a percentage of the loan divided by the number of years of the loan contract.
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.


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.
§31-1-9. Indemnification of officers, directors, employees and agents.
§31-1-10. Defense of ultra vires.
§31-1-11. Corporate name; requirements; certain names prohibited.
§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.
§31-1-25. Action by directors without a meeting.
§31-1-26. Incorporators.
§31-1-27. Articles of incorporation; contents; matters not required to be set forth; inconsistencies with bylaws; acknowledgment.
§31-1-28. Filing of articles of incorporation; issuance of certificate of incorporation; recordation of certificate in county clerk's office.
§31-1-29. Effect of issuance of certificate of incorporation.
§31-1-30. Organizational meeting; notice, waiver of notice.
§31-1-31. Filing of articles of amendment; recordation; admission in evidence.
§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.
§31-1-35. Procedure for consolidation.
§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.
§31-1-44. Filing of claims in liquidation proceedings.
§31-1-45. Discontinuance of liquidation proceedings.
§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.
§31-1-49. Admission of foreign corporation; acts permitted to be done without certificate of authority.
§31-1-51. Corporate name of foreign corporation; when certificate of authority shall not be issued.
§31-1-52. Change of name by foreign corporation.
§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.
§31-1-55. Effect of certificate of authority.
§31-1-56. Change of principal office of foreign corporation; statement required to be filed.
§31-1-57. Amendment to articles of incorporation of foreign corporation; filing; recordation; penalty for failure to record.
§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.
§31-1-59. Amended certificate of authority; requirements; recordation; penalty for failure to record.
§31-1-60. Procedure for withdrawal of foreign corporation; publication required; application for certificate of withdrawal; contents; filing; issuance of certificate; recordation.
§31-1-61. Certificate as to taxes prerequisite for issuance of dissolution, withdrawal, consolidation or merger, or expiration.
§31-1-63. Issuance of order of revocation; period of appeal.
§31-1-64. Conditions of expiration of corporate existence.
§31-1-65. Application to corporations heretofore authorized to conduct affairs or do or transact business in this state.
§31-1-66. Conducting affairs or doing or transacting business without certificate of authority.
§31-1-67. Powers of secretary of state; rules and regulations.
§31-1-68. Appeal from secretary of state.
§31-1-69. Certificates and certified copies to be received in evidence.
§31-1-70. Forms to be furnished by secretary of state.
§31-1-71. Greater voting requirements.
§31-1-72. Waiver of notice.
§31-1-73. Action by shareholders, members or directors without a meeting.
§31-1-74. Corporate acknowledgments.
§31-1-75. Exemption of intangible property of corporations not conducting affairs or doing business in state from taxes.
§31-1-76. Fees and charges to be collected by secretary of state.

PART III. BUSINESS CORPORATIONS.

§31-1-77. Use of term "corporation."
§31-1-78. Authorized shares.
§31-1-79. Issuance of shares of preferred or special classes in series; manner and procedures of issuance; filing of statement and effect thereof.
§31-1-80. Subscription for shares.
§31-1-81. Consideration for shares.
§31-1-82. Payment for shares.
§31-1-83. Rights of corporation to acquire and dispose of its own shares.
§31-1-84. Stock rights and options.
§31-1-85. Determination of amount of stated capital.
§31-1-86. Expenses of organization, reorganization and financing.
§31-1-87. Certificates representing shares.
§31-1-88. Fractional shares.
§31-1-89. Liability of subscribers and shareholders.
§31-1-90. Shareholders' preemptive rights.
§31-1-91. Closing of transfer books and fixing record date.
§31-1-93. Voting of shares.
§31-1-94. Voting trusts and agreements among shareholders.
§31-1-95. Board of directors; powers; when vote recorded.
§31-1-96. Removal of directors.
§31-1-97. Director conflicts of interest.
§31-1-98. Executive and other committees.
§31-1-99. Dividends.
§31-1-100. Distribution from capital surplus.
§31-1-101. Loans to employees and directors.
§31-1-102. Liability of directors in certain cases.
§31-1-103. Provisions relating to actions by shareholders.
§31-1-104. Officers; removal of officers.
## §31-1-105. Books and records.

## §31-1-106. Right to amend articles of incorporation.

## §31-1-107. Procedure to amend articles of incorporation.

## §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.

## §31-1-114. Cancellation of other reacquired shares; statement of cancellation; contents; filing.

## §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.

## §31-1-121. Sales of assets other than in regular course of business.

## §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.

## §31-1-125. Voluntary dissolution by consent of shareholders.

## §31-1-126. Voluntary dissolution by act of corporation.

## §31-1-127. Filing of statement of intent to dissolve.

## §31-1-128. Effect of statement of intent to dissolve.

## §31-1-129. Procedure after filing of statement of intent to dissolve.

## §31-1-130. Revocation of voluntary dissolution proceedings by consent of shareholders.


## §31-1-132. Filing of statement of revocation of voluntary dissolution proceedings.

## §31-1-133. Effect of statement of revocation of voluntary dissolution proceedings.

## §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.

### Part IV. Nonprofit Corporations.

## §31-1-136. Use of term "corporation."

## §31-1-137. Members.

§31-1-139. Board of directors.
§31-1-140. Removal of directors.
§31-1-141. Committees; authority; limitations of authority.
§31-1-142. Officers; removal of officers.
§31-1-143. Books and records.
§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 “West Virginia Corporation Act.”

§31-1-2. Construction of article.
1 (a) The provisions of Part II of this article shall have general application to all corporations. The provisions of Part III of this article shall relate solely to business corporations. The provisions of Part IV of this article shall relate solely to nonprofit corporations. In the event of any inconsistency between any of the provisions of Part II of this article and the provisions of either Part III or Part IV of this article, the provisions contained in either Part III or Part IV shall prevail to the extent of such inconsistency.

11 (b) In the event of any inconsistency between any of 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 operate
3 as of the effective date hereof, and the provisions thereof shall apply to and govern all corporations
4 then existing or thereafter formed, and all corporate
5 acts thereafter done: Provided, That nothing contained
6 in this article shall be construed to affect the existence
7 of any then existing corporation or to impair the
8 validity of any corporate act done and performed in
9 accordance with the preexisting law. In the event of
10 any inconsistency between any of the provisions of this
11 article and the rights conferred by any special act of
12 the Legislature of the state of Virginia before the forma
13 tion of the state of West Virginia, or the Legislature of the
14 state of West Virginia subsequent to such date, the pro
15 visions of such special act shall prevail to the extent of
16 such inconsistency.

17 The provisions of this article shall apply to commerce
18 with foreign nations and among the several states only in
19sofar as the same may be permitted under the provisions
20 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
the validity of the remaining portions of this article, and, to this end, the provisions of this article are hereby declared to be severable.

PART II. CORPORATIONS GENERALLY.

§31-1-6. Definitions.

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

3 (a) "Articles of incorporation" means the original or restated articles of incorporation or articles of consolidation and all amendments thereto including articles of merger.

5 (b) "Authorized shares" means the shares of all classes which a business corporation is authorized to issue.

7 (c) "Business corporation" means a corporation organized for profit.

9 (d) "Bylaws" means the code or codes of rules adopted for the regulation or management of the affairs of the corporation, irrespective of the name or names by which such rules are designated.

11 (e) "Capital surplus" means the entire surplus of a business corporation other than its earned surplus.

15 (f) "Corporation" or "domestic corporation" means a business corporation or a nonprofit corporation, subject to the provisions of this article, except a foreign corporation.

20 (g) "Director or directors" or "board of directors" shall include those who are vested with the management of the affairs of the corporation, by whatever name they may be called.

24 (h) "Earned surplus" means the portion of the surplus of a business corporation equal to the balance of its net profits, income, gains and losses from the date of incorporation, or from the latest date when a deficit was eliminated by an application of its capital surplus or stated capital or otherwise, after deducting subsequent distributions to shareholders and transfers to stated capital and capital surplus to the extent such distributions
and transfers are made out of earned surplus. Earned surplus shall include also any portions of surplus allocated to earn surplus in mergers, consolidations or acquisitions of all or substantially all of the outstanding shares or of the property and assets of another corporation, domestic or foreign.

(i) "Employee" includes officers but not directors. A director may accept duties which make him also an employee.

(j) "Foreign corporation" means a business corporation or nonprofit corporation organized under laws other than the laws of this state for a purpose or purposes for which a corporation may be organized under this article.

(k) "Insolvent" means inability of a corporation to pay its debts as they become due in the usual course of its business.

(l) "Member" means one having membership in a nonprofit corporation in accordance with the provisions of its articles of incorporation or bylaws and shall include shareholders where such corporation issues shares.

(m) "Net assets" means the amount by which the total assets of a corporation exceed the total debt of the corporation.

(n) "Nonprofit corporation" means a corporation no part of the income or profit of which is distributable to its shareholders, members, directors or officers.

(o) "Shareholder" means one who is a holder of record of shares in a corporation and may include the term "member."

(p) "Shares" means the units into which the proprietary interests in a corporation are divided.

(q) "Stated capital" means, at any particular time, the sum of (1) the par value of all shares of a business corporation having a par value that have been issued, (2) the amount of the consideration received by a business corporation for all shares of such corporation without par value that have been issued, except such part of the
consideration therefor as may have been allocated to capital surplus in a manner permitted by law, and (3) such amounts not included in clauses (1) and (2) of this subdivision as have been transferred to stated capital of such corporation, whether upon the issue of shares as a share dividend or otherwise, minus all reductions from such sums as have been effected in a manner permitted by law. Irrespective of the manner of designation thereof by the laws under which a foreign corporation is organized, the stated capital of a foreign corporation shall be determined on the same basis and in the same manner as the stated capital of a domestic corporation, for the purpose of computing fees, franchise taxes and other charges prescribed by law.

(r) "Subscriber" means one who subscribes for shares in a corporation, whether before or after incorporation.

(s) "Surplus" means the excess of the net assets of a business corporation over its stated capital.

(t) "Treasury shares" means shares of a business corporation which have been issued and have been subsequently acquired by and belong to such corporation, and have not, either by reason of the acquisition or thereafter, been cancelled or restored to the status of authorized but unissued shares. Treasury shares shall be deemed to be issued shares, but not outstanding shares.

§31-1-7. Purposes of incorporation.

(a) Business corporations may be organized under this article for any lawful purpose or purposes.

(b) Nonprofit corporations may be organized under this article for any lawful purpose or purposes, including, without being limited to, any one or more of the following purposes: Charitable; benevolent; eleemosynary; educational; civic; patriotic; political; social; fraternal; literary; cultural; athletic; scientific; agricultural; horticultural; animal husbandry; and professional, commercial, industrial or trade association.

(c) No charters or certificates of incorporation shall be granted or issued to any church or religious denomination.

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
mortgage, deed of trust or pledge of all or any of its property, franchises and income.

(i) To lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested.

(j) To conduct its business and affairs, carry on its operations and have offices and exercise the powers granted by this article, within or without this state.

(k) To elect or appoint officers and agents of the corporation, and define their duties and fix their compensation.

(l) To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of the business and affairs of the corporation.

(m) To make donations for the public welfare or for charitable, scientific or educational purposes.

(n) To transact any lawful business which the board of directors shall find will be in the aid of governmental policy.

(o) To pay pensions and establish pension plans or pension trusts for any or all of its directors, officers and employees, and in the case of business corporations, to establish profit sharing plans, stock bonus plans, stock option plans and other incentive plans for any or all of its directors, officers and employees.

(p) To be a promoter, partner, member, associate, or manager of any partnership, joint partnership, joint venture, trust or other enterprise.

(q) To cease its corporate activities and surrender its corporate franchise in accordance with the provisions of this article.

(r) To have and exercise all powers necessary or convenient to effect its purposes.
§31-1-9. Indemnification of officers, directors, employees and agents.

(a) A corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was of another corporation, partnership, joint partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines, taxes and penalties and interest thereon, and amounts paid in settlement actually and reasonably incurred by him in connection with such action or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interest of the corporation, and, with respect to any criminal action or proceeding, that such person did have reasonable cause to believe that his conduct was unlawful.

(b) A corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or proceeding by or in the right of the corporation to procure judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action.
or proceeding if he acted in good faith and in a manner
he reasonably believed to be in or not opposed to the best
interests of the corporation, except that no indemnifica-
tion shall be made in respect of any claim, issue or mat-
ter, including, but not limited to, taxes or any interest or
penalties thereon, as to which such person shall have been
adjudged to be liable for negligence or misconduct in the
performance of his duty to the corporation unless and only
to the extent that the court in which such action or pro-
ceeding was brought shall determine upon application
that, despite the adjudication of liability but in view of
all circumstances of the case, such person is fairly and
reasonably entitled to indemnity for such expenses which
such court shall deem proper.

(c) To the extent that a director, officer, employee or
agent of a corporation has been successful on the merits or
otherwise in defense of any action or proceeding referred
to in subsection (a) or (b), or in defense of any claim,
issue or matter therein, he shall be indemnified against
expenses (including attorneys' fees) actually and reason-
ably incurred by him in connection therewith.

(d) Any indemnification under subsection (a) or (b)
(unless ordered by a court) shall be made by the corpora-
tion only as authorized in the specific case upon a deter-
mination that indemnification of the director, officer, em-
ployee or agent is proper in the circumstances because he
has met the applicable standard of conduct set forth in
subsection (a) or (b). Such determination shall be made
(1) by the board of directors by a majority vote of a quo-
rum consisting of directors who were not parties to such
action or proceeding, or (2) if such a quorum is not obtain-
able, or even if obtainable a quorum of disinterested direc-
tors so directs, by independent legal counsel in a written
opinion, or (3) by the shareholders or members.

(e) Expenses (including attorneys' fees) incurred in
defending a civil or criminal action or proceeding may be
paid by the corporation in advance of the final disposition
of such action or proceeding as authorized in the manner
provided in subsection (d) upon receipt of an undertaking
by or on behalf of the director, officer, employee or agent
(f) The indemnification provided by this section shall not be deemed exclusive of any other rights to which any shareholder or member may be entitled under any bylaw, agreement, vote of shareholders, members or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

(g) A corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, whether or not the corporation would have the power to indemnify him against such liability under the provisions of this section.

§31-1-10. Defense of ultra vires.

No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:

(a) In a proceeding by a shareholder, member or director against the corporation to enjoin the doing of any act or the continuation of unauthorized acts or the transfer of real or personal property by or to the corporation. If the unauthorized act or transfer sought to be enjoined is being, or is to be, performed or made pursuant to a contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceed-
ing and if it deems the same to be equitable, set aside and
enjoin the performance of such contract, and in so doing
may allow to the corporation or to the other parties to the
contract, as the case may be, compensation for the loss or
damage sustained by either of them which may result
from the action of the court in setting aside and enjoining
the performance of such contract, but anticipated profits
to be derived from the performance of the contract shall
not be awarded by the court as a loss or damage sus-
tained.

(b) In a proceeding by the corporation, whether acting
directly or through a receiver, trustee or other legal
representative, or through shareholders or members in a
representative action, against the incumbent or former
officers or directors of the corporation.

(c) In any proceeding by the state, or by any of its
agencies or departments or by the attorney general, as
provided in this article, or as provided or authorized by
any other provisions of this code, to dissolve the corpora-
tion, or in a proceeding by the attorney general to enjoin
the corporation from performing unauthorized acts or
transacting unauthorized business or in any other pro-
ceeding brought by or in the name of or for the benefit
of the state.

§31-1-11. Corporate name; requirements; certain names pro-
hibited.

(a) Except for corporations in existence prior to the
effective date of this article, the corporate name:

(1) Shall contain the word “corporation,” “company,”
“incorporated” or “limited,” or shall contain an abbre-
viation of one of such words.

(2) Shall not contain any word or phrase which
indicates or implies that it is organized for any purpose
other than one or more of the purposes contained in its
articles of incorporation.

(3) Shall not be the same as, or deceptively similar
to, the name of any domestic corporation, whether stock or
nonstock and whether or not organized for profit, existing
under the laws of this state or of any foreign corporation, whether stock or nonstock and whether or not organized for profit, authorized to conduct affairs or do or transact business in this state, or a name the exclusive right to which is, at the time, reserved in the manner provided in this article, or the name of a corporation which has in effect a registration of its corporate name as provided in this article, except that this provision shall not apply if the applicant files with the secretary of state either (i) the written consent of such other corporation or holder of a reserved or registered name to use the same or deceptively similar name and one or more words are added to make such name distinguishable from such other name, or (ii) a certified copy of a final order of a court of competent jurisdiction establishing the prior right of the applicant to the use of such name in this state.

(4) Shall be transliterated into letters of the English alphabet, if it is not in English.

(b) A corporation with which another corporation, domestic or foreign, is merged, or which is formed by the reorganization or consolidation of one or more domestic or foreign corporations or upon a sale, lease or other disposition to or exchange with, a domestic corporation of all or substantially all the assets of another corporation, domestic or foreign, including its name, may have the same name as that used in this state by any of such corporations if such other corporation was organized under the laws of, or is authorized to conduct affairs or do or transact business in this state.

(c) After the effective date of this section, no corporation shall be chartered in this state under any name which includes the word “engineer,” “engineers,” “engineering” or any combination of same unless the purpose of the corporation is to practice professional engineering as defined in article thirteen, chapter thirty of this code, as amended, and one or more of the incorporators is a registered professional engineer as therein defined.

§31-1-12. Reserved name.

The exclusive right to the use of a corporate name may be reserved by:
(a) Any person intending to organize a corporation under this article.

(b) Any domestic corporation intending to change its name.

c) Any foreign corporation intending to make application for a certificate of authority to conduct affairs or do or transact business in this state.

d) Any foreign corporation authorized to conduct affairs or do or transact business in this state and intending to change its name.

e) Any person intending to organize a foreign corporation and intending to have such corporation make application for a certificate of authority to conduct affairs or do or transact business.

The reservation shall be made by filing with the secretary of state an application to reserve a specified corporate name, executed by the applicant. If the secretary of state finds that the name is available for corporate use, he shall reserve the name for the exclusive use of the applicant for a period of one hundred twenty days.

The right to the exclusive use of a specified corporate name so reserved may be transferred to any other person or corporation by filing in the office of the secretary of state a notice of such transfer, executed by the applicant for whom the name was reserved, and specifying the name and address of the transferee.

§31-1-13. Registered name.

Any corporation organized and existing under the laws of any state or territory of the United States may register its corporate name under this article, provided its corporate name is not the same as, or deceptively similar to, the name of any domestic corporation existing under the laws of this state, or the name of any foreign corporation authorized to conduct affairs or do or transact business in this state, or any corporate name reserved or registered under this article.

Such registration shall be made by:
(a) Filing with the secretary of state (1) an application for registration executed by the corporation by an officer thereof, setting forth the name of the corporation, the state or territory under the laws of which it is incorporated, the date of its incorporation, a statement that it is carrying on or doing business, and a brief statement of the business in which it is engaged, and (2) a certificate setting forth that such corporation is in good standing under the laws of the state or territory wherein it is organized, executed by the secretary of state of such state or territory or by such other official as may have custody of the records pertaining to corporations, and

(b) Paying to the secretary of state a registration fee in the amount of fifty cents for each month, or a fraction thereof, between the date of filing such application and June thirtieth of the fiscal year in which such application is filed.

Such registration shall be effective until the close of the fiscal year in which the application for registration is filed.

§31-1-14. Renewal of registered name.

A corporation which has in effect a registration of its corporate name may renew such registration from year to year by annually filing an application for renewal setting forth the facts required to be set forth in an original application for registration and a certificate of good standing as required for the original registration and by paying a fee of five dollars. A renewal application may be filed between the first day of April and the thirtieth day of June in each year, and shall extend the registration for 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.

The secretary of state of this state is hereby constituted the attorney-in-fact for and on behalf of every corpora-
tion created by virtue of the laws of this state and every
foreign corporation authorized to conduct affairs or do
or transact business herein pursuant to the provisions of
this article, with authority to accept service of notice and
process on behalf of every such corporation and upon
whom service of notice and process may be made in this
state for and upon every such corporation. No act of such
corporation appointing the secretary of state such attor-
eey-in-fact shall be necessary. Immediately after being
served with or accepting any such process or notice, of
which process or notice two copies for each defendant
shall be furnished the secretary of state with the original
notice of process, the secretary of state shall file in his of-
face a copy of such process or notice, with a note thereon
endorsed of the time of service, or acceptance, as the case
may be, and transmit one copy of such process or notice by
registered or certified mail, return receipt requested, to
such corporation at the address last furnished by it, as
required by law. No process or notice shall be served on
the secretary of state or accepted by him less than ten
days before the return day thereof. Such corporation shall
pay the annual fee prescribed in article twelve, chapter
eleven of this code for the services of the secretary of state
as its attorney-in-fact.

Any foreign corporation which shall conduct affairs or
do or transact business in this state without having been
authorized so to do pursuant to the provisions of this
article shall be conclusively presumed to have appointed
the secretary of state as its attorney-in-fact with authority
to accept service of notice and process on behalf of such
corporation and upon whom service of notice and process
may be made in this state for and upon every such cor-
poration in any action or proceeding described in the next
following paragraph of this section. No act of such cor-
poration appointing the secretary of state such attorney-
in-fact shall be necessary. Immediately after being served
with or accepting any such process or notice, of which
process or notice two copies for each defendant shall be
furnished the secretary of state with the original notice or
process, together with a fee of two dollars, the secretary
of state shall file in his office a copy of such process or
notice, with a note thereon endorsed of the time of service
or acceptance, as the case may be, and transmit one copy
of such process or notice by registered or certified mail,
return receipt requested, to such corporation at the address
of its principal office, which address shall be stated in such
process or notice. Such service or acceptance of such
process or notice shall be sufficient if such return receipt
shall be signed by an agent or employee of such corpora-
tion, or the registered or certified mail so sent by the
secretary of state is refused by the addressee and the
registered or certified mail is returned to the secretary
of state, or to his office, showing thereon the stamp of the
United States postal service that delivery thereof has been
refused, and such return receipt or registered or certified
mail is appended to the original process or notice and filed
therewith in the clerk's office of the court from which
such process or notice was issued. No process or notice
shall be served on the secretary of state or accepted by
him less than ten days before the return date thereof. The
court may order such continuances as may be reasonable
to afford each defendant opportunity to defend the action
or proceedings.

For the purpose of this section, a foreign corporation
not authorized to conduct affairs or do or transact business
in this state pursuant to the provisions of this article
shall nevertheless be deemed to be conducting affairs or
doing or transacting business herein (a) if such corpora-
tion makes a contract to be performed, in whole or in part,
by any party thereto, in this state, (b) if such corporation
commits a tort in whole or in part in this state, or (c) if
such corporation manufactures, sells, offers for sale or
supplies any product in a defective condition and such
product causes injury to any person or property within
this state notwithstanding the fact that such corporation
had no agents, servants or employees or contacts within
this state at the time of said injury. The making of such
contract, the committing of such tort or the manufacture
or sale, offer of sale or supply of such defective product as
hereinabove described shall be deemed to be the agree-
ment of such corporation that any notice or process served
upon, or accepted by, the secretary of state pursuant to the next preceding paragraph of this section in any action or proceeding against such corporation arising from, or growing out of, such contract, tort, or manufacture or sale, offer of sale or supply of such defective product shall be of the same legal force and validity as process duly served on such corporation in this state.

§31-1-16. Venue of actions involving foreign corporations.

In all cases arising under this chapter wherein the corporations seeking to exercise the rights conferred by this article, or against which any proceeding is instituted thereunder, do not have or maintain any office, own any property or conduct affairs or do or transact any business in this state, the circuit court of the county in which the seat of government is located shall have original jurisdiction, except in cases in which jurisdiction is expressly conferred upon some other court by this chapter.

§31-1-17. Bylaws.

The initial bylaws of a corporation shall be adopted by its board of directors. The power to alter, amend or repeal the bylaws or adopt new bylaws, subject to repeal or change by action of the shareholders or members, shall be vested in the board of directors unless reserved to the shareholders or members by the articles of incorporation. The bylaws may contain any provisions for the regulation and management of the affairs of the corporation not inconsistent with law or the articles of incorporation.

§31-1-18. Meetings of shareholders or members.

(a) Meetings of shareholders or members may be held at such place, either within or without this state, as may be stated in or fixed in accordance with the bylaws. If no other place is stated or so fixed, meetings shall be held at the place of the principal office of the corporation.

(b) An annual meeting of the shareholders or members shall be held at such time as may be stated in, or fixed in accordance with, the bylaws. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the corporation.
In the case of a business corporation, if the annual meeting is not held within any thirteen-month period, the circuit court of the county wherein the place of the principal office of the corporation is located, or the circuit court of Kanawha county in the case of corporations not having a principal office in this state, may, on the application of any shareholder, summarily order a meeting to be held.

In the case of a business corporation, special meetings of the shareholders may be called by the board of directors, the holders of not less than one tenth of all the shares entitled to vote at the meeting, or such other persons as may be authorized in the articles of incorporation or the bylaws.

In the case of a nonprofit corporation, special meetings of the members may be called by the president or by the board of directors. Special meetings of the members may also be called by such other officers or persons or number or proportion of members as may be provided in the provision fixing the number or proportion of members entitled to call a meeting. In the absence of a provision fixing the number or proportion of members entitled to call a meeting, a special meeting of members may be called by members having one twentieth of the votes entitled to be cast at such meeting.

Written notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten nor more than fifty days before the date of the meeting, either personally or by mail, by or at the direction of the president, the secretary, or the officer or persons calling the meeting, to each shareholder of record or member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the shareholder or member at his address as it appears on the corporate records, with postage thereon prepaid.
§31-1-20. Quorum of shareholders or members.

1 In the case of a business corporation, unless otherwise provided in the articles of incorporation, a majority of the shares entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders, but in no event shall a quorum consist of less than one third of the shares entitled to vote at the meeting.

2 In the case of a nonprofit corporation, the bylaws may provide the number or percentage of members entitled to vote represented in person or by proxy, which shall constitute a quorum at a meeting of members and in the absence of any such provision, members holding one tenth of the votes entitled to be cast on the matter to be voted upon represented in person or by proxy shall constitute a quorum. A majority of the votes entitled to be cast on a matter to be voted upon by the members present or represented by proxy at a meeting at which a quorum is present shall be necessary for the adoption thereof unless a greater proportion is required by this article, the articles of incorporation or the bylaws.

3 If a quorum is present, the affirmative vote of the majority of the shares represented or members present at the meeting and entitled to vote on the subject matter shall be the act of the shareholders or members, unless the vote of a greater number or voting by classes is required by this 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 consist of one or more persons. The number of directors shall be fixed by, or in the manner provided in, the articles of incorporation or the bylaws. The number of directors may be increased or decreased from time to time by amendment to, or in the manner provided in, the articles of incorporation or by the bylaws, but no decrease shall have the effect of shortening the term of any incumbent director. In the absence of a bylaw providing for the number of directors, the number shall be the same as that provided
for in the articles of incorporation. Unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment to the articles of incorporation, a change in the number of directors made by amendment to the bylaws shall be controlling. The names and addresses of the members of the first board of directors may be stated in the articles of incorporation. Such persons, if stated, shall hold office until their successors shall have been elected and qualified. At the first annual meeting of shareholders or members and at each annual meeting thereafter the shareholders or members shall elect directors to hold office until the next succeeding annual meeting, except in case of the classification of directors as permitted by this article. Each director shall hold office for the term for which he is elected and until his successor shall have been elected and qualified.

(b) The directors of any corporation may, by the articles of incorporation or any amendment thereto, or by a vote of the shareholders or members, be divided into one, two or three classes; the term of office of those of the first class to expire at the annual meeting next ensuing; of the second class one year thereafter; of the third class two years thereafter; and at each annual election held after such classification and election, directors shall be chosen for a full term, as the case may be, to succeed those whose terms expire.

§31-1-22. Vacancies in board of directors; manner of filling.

Any vacancy occurring in the board of directors and any directorship to be filled by reason of an increase in the number of directors may be filled by the affirmative vote of a majority of the remaining directors, though less than a quorum of the board of directors, unless the articles of incorporation or the bylaws provide that a vacancy or directorship so created shall be filled in some other manner, in which case such provision shall control.

A director elected or appointed, as the case may be, to fill a vacancy shall be elected or appointed for the unexpired term of his predecessor in office.

Any directorship to be filled by reason of an increase
in the number of directors may be filled by the board of directors for a term of office continuing only until the next election of directors.

§31-1-23. Quorum of directors.

A majority of the number of directors fixed by or in the manner provided in the bylaws, or in the absence of a bylaw fixing or providing for the number of directors, then of the number stated in the articles of incorporation, shall constitute a quorum for the transaction of business unless a greater number is required by the articles of incorporation or the bylaws. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by the articles of incorporation or the bylaws.

§31-1-24. Place and notice of directors’ meetings.

(a) Meetings of the board of directors, regular or special, may be held either within or without this state.

(b) Regular meetings of the board of directors may be held with or without notice as prescribed in the bylaws. Special meetings of the board of directors shall be held upon such notice as is prescribed in the bylaws except that notice shall be required to be given to every director when the meeting is being called for the purpose of amending the bylaws or for the purpose of authorizing the sale of all or substantially all of the assets of the corporation, in which case such notice shall set forth the nature of the business intended to be transacted.

(c) Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Except as provided in subsection (b) of this section, neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting unless required by the bylaws.
§31-1-25. Action by directors without a meeting.

1 Unless otherwise provided by the articles of incorporation or bylaws, any action required by this article to be taken at a meeting of the directors of a corporation, or any action which may be taken at a meeting of the directors or of a committee, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors, or all of the members of the committee, as the case may be. Such consent shall have the same effect as a unanimous vote.

§31-1-26. Incorporators.

1 One or more persons, or a domestic or foreign corporation, may act as incorporator or incorporators of a corporation by signing and delivering in duplicate to the secretary of state articles of incorporation for such corporation.

§31-1-27. Articles of incorporation; contents; matters not required to be set forth; inconsistencies with bylaws; 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 is organized.
5 (4) The address of its initial principal office.
6 (5) The name and address of each incorporator.
7 (b) In the case of a business corporation, in addition to those matters required to be set forth by the provisions of subsection (a) of this section, the articles of incorporation shall set forth:
8 (1) The aggregate number of shares which the corporation shall have authority to issue; if such shares are to consist of one class only, the par value of each of such shares, or a statement that all of such shares are without par value; or, if such shares are to be divided into classes,
the number of shares of each class, and a statement of
the par value of the shares of each such class or that such
shares are to be without par value.

(2) If the shares are to be divided into classes, the
designation of each class and a statement of the prefer-
ences, limitations and relative rights in respect of the
shares of each class.

(3) If the corporation is to issue the shares of any
preferred or special class in series, the designation of
each series and a statement of the variations in the
relative rights and preferences as between series insofar
as the same are to be fixed in the articles of incorporation,
and a statement of any authority to be vested in the board
of directors to establish series and fix and determine the
variations in the relative rights and preferences as be-
tween series.

(4) Any provision, not inconsistent with law, which
the incorporators elect to set forth in the articles of incor-
poration for the regulation of the internal affairs of the
corporation, including any provision restricting the trans-
fer of shares and any provision which under this article
is required or permitted to be set forth in the bylaws.

(c) In the case of a nonprofit corporation, in addition
to those matters required to be set forth by the provisions
of subsection (a) of this section, the articles of incorpora-
tion shall set forth any provisions, not inconsistent with
law, which the incorporators elect to set forth in such
articles of incorporation for the regulation of the internal
affairs of the corporation, including any provisions for
distribution of assets on dissolution or final liquidation.

(d) It shall not be necessary to set forth in the articles
of incorporation any of the corporate powers enumerated
in this article.

(e) Whenever a provision of the articles of incorpora-
tion is inconsistent with a bylaw, the provision of the
articles of incorporation shall be controlling.

(f) The agreement of incorporation shall be acknowled-
ged by the incorporators before a notary public and
transmitted with the proper fees to, and shall be filed 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.

(a) Duplicate originals of the articles of incorporation shall be delivered to the secretary of state. If the secretary of state finds that the articles of incorporation conform to law, he shall, when all fees have been paid as prescribed by law, (i) endorse on each of such duplicate originals the word "Filed," and the month, day and year of the filing thereof; (ii) file one of such duplicate originals in his office; and (iii) issue a certificate of incorporation to which he shall affix the other duplicate original.

The certificate of incorporation, together with the duplicate original of the articles of incorporation affixed thereto by the secretary of state, shall be returned to the incorporators or their representative.

(b) If the corporation has its principal office in this state, it shall cause such certificate, or a duly certified copy thereof, to be recorded in the office of the clerk of the county court of the county in which such principal office is located; if its principal office is not within this state but it conducts affairs or does or transacts business herein, then in the county in which it conducts its affairs or does or transacts its principal business. If its principal office is without the state and it does not conduct affairs or do or transact business within the state, such charter need not be recorded in a county clerk's office. A failure to comply with the foregoing recordation provision within six months from the date of such certificate shall subject the corporation to a fine of not more than one thousand dollars.

§31-1-29. Effect of issuance of certificate of incorporation.

Upon the issuance of the certificate of incorporation, the corporate existence shall begin, and such certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation
has been incorporated under this article, except as against
this state in a proceeding to cancel or revoke the certificate
of incorporation or for involuntary dissolution of the cor-
poration.

§31-1-30. Organizational meeting; notice, waiver of notice.

After the issuance of the certificate of incorporation, an
organizational meeting shall be held, either within or
without this state, at the call of a majority of the directors,
if named in the articles of incorporation, or at the call of a
majority of the shareholders, members or incorporators
named in the articles of incorporation, for the purpose of
adopting bylaws, electing officers and a board of directors,
if not named in the articles of incorporation, and for trans-
acting such other business as may come before the meet-
ing. The shareholders, members, incorporators or direc-
tors calling the meeting shall give at least three days’
notice thereof by mail to each shareholder, member or
incorporator so named in the articles of incorporation,
stating the time and place of the meeting, unless such
notice is waived in accordance with the provisions of this
article.

§31-1-31. Filing of articles of amendment; recordation; admis-
sion in evidence.

Upon adoption of the articles of amendment, in accord-
ance with the provisions of section one hundred seven
or section one hundred forty-seven of this article, which-
ever is applicable, duplicate originals of such articles of
amendment shall be delivered to the secretary of state.
If the secretary of state finds that the articles of amend-
ment conform to law, he shall, when all fees have been
paid as prescribed by law, (i) endorse on each of such
duplicate originals the word “Filed,” and the month, day
and year of such filing thereof; (ii) file one of such dupli-
cate originals in his office; and (iii) issue a certificate of
amendment to which he shall affix the other duplicate
original.

The certificate of amendment, together with the dupli-
cate original of the articles of amendment affixed thereto
by the secretary of state, shall be returned to the corporation or its representative.

The certificate of amendment, or certified copy thereof, shall be recorded in the office of the appropriate county clerk in the same manner as certificates of incorporation are required to be recorded, in accordance with the provisions of subsection (b) of section twenty-eight of this article and received in evidence to the same extent as an original certificate of incorporation or a certified copy of such original.

§31-1-32. Effect of certificate of amendment.

Upon the issuance of the certificate of amendment by the secretary of state, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly.

No amendment shall affect any existing cause of action in favor of or against such corporation, or any pending action to which such corporation shall be a party, or the existing rights of persons other than shareholders or members, and, in the event the corporate name shall be changed by amendment, no action brought by or against such corporation under its former name shall abate for that reason.

§31-1-33. Filing of restated articles of incorporation; recordation; admission in evidence.

Upon adoption of restated articles of incorporation, in accordance with the provisions of section one hundred ten or section one hundred forty-nine of this article, whichever is applicable, duplicate originals of such restated articles of incorporation shall be delivered to the secretary of state. If the secretary of state finds that such restated articles of incorporation conform to law, he shall, when all fees have been paid as prescribed by law, (i) endorse on each of such duplicate originals the word "Filed," and the month, day and year of the filing thereof; (ii) file one of such duplicate originals in his office; and (iii) issue a restated certificate of incorporation, to which he shall affix the other duplicate original.
The restated certificate of incorporation, together with the duplicate original of the restated articles of incorporation affixed thereto by the secretary of state, shall be returned to the corporation or its representative.

Upon the issuance of the restated certificate of incorporation by the secretary of state, the restated articles of incorporation shall become effective and shall supersede the original articles of incorporation and all amendments thereto.

The restated certificate of incorporation or certified copy thereof, shall be recorded in the office of the appropriate county clerk in the same manner as original certificates of incorporation are required to be recorded, in accordance with the provisions of subsection (b) of section twenty-eight of this article and received in evidence to the same extent as an original certificate of incorporation or a certified copy of such original.

§31-1-34. Procedure for merger.

Any two or more domestic corporations, whether stock or nonstock, or whether or not organized for profit, may merge into one of such corporations, irrespective of whether the surviving corporation is a stock or nonstock corporation and irrespective of whether or not it is organized for profit, pursuant to a plan of merger approved in the manner provided in this article.

The board of directors of each corporation shall, by resolution adopted by each such board, approve a plan of merger setting forth:

(a) The names of the corporations proposing to merge, and the name of the corporation into which they propose to merge.

(b) The terms and conditions of the proposed merger.

(c) The manner and basis of converting the shares of each corporation into shares, obligations or other securities of the surviving corporation or of any other corporation or, in whole or in part, into cash or other property.

(d) A statement of any changes in the articles of incorpor-
corporation of the surviving corporation to be effected by such merger.

(e) Such other provisions with respect to the proposed merger as are deemed necessary or desirable.

§31-1-35. Procedure for consolidation.

Any two or more domestic corporations, whether stock or nonstock, or whether or not organized for profit, may consolidate into a new corporation, irrespective of whether the new corporation is a stock or nonstock corporation and irrespective of whether or not it is organized for profit, pursuant to a plan of consolidation approved in the manner provided in this article.

The board of directors of each corporation shall, by resolution adopted by each such board, approve a plan of consolidation setting forth:

(a) The names of the corporations proposing to consolidate, and the name of the new corporation into which they propose to consolidate.

(b) The terms and conditions of the proposed consolidation.

(c) The manner and basis of converting the shares of each corporation into shares, obligations or other securities of the new corporation or of any other corporation or, in whole or in part, into cash or other property.

(d) With respect to the new corporation, all of the statements required to be set forth in articles of incorporation, as required by section twenty-seven of this article for corporations organized under this article.

(e) Such other provisions with respect to the proposed consolidation as are deemed necessary or desirable.

§31-1-36. Articles of merger or consolidation; filing; issuance of certificate; recordation; admission in evidence.

(a) Upon approval, in accordance with the provisions of section one hundred seventeen or section one hundred fifty of this article, whichever is applicable, the articles of merger or articles of consolidation shall be executed in
duplicate by each corporation by its president or a vice
president and by its secretary or an assistant secretary,
and verified by one of the officers of each corporation
signing such articles.

(b) Duplicate originals of the articles of merger or
articles of consolidation shall be delivered to the secre-
tary of state. If the secretary of state finds that such
articles conform to law, he shall, when all fees have been
paid as prescribed by law, (i) endorse on each of such
duplicate originals the word "Filed," and the month, day
and year of the filing thereof; (ii) file one of such dupli-
cate originals in his office; and (iii) issue a certificate of
merger or a certificate of consolidation to which he shall
affix the other duplicate original.

The certificate of merger or certificate of consolidation,
 together with the duplicate original of the articles of
merger or articles of consolidation affixed thereto by the
secretary of state, shall be returned to the surviving or
new corporation, as the case may be, or its representative.

(c) The certificate of merger or certificate of consoli-
dation, or certified copy thereof, shall be recorded in the
office of the appropriate county clerk in the same manner
as original certificates of incorporation are required to be
recorded, in accordance with the provisions of subsection
(b) of section twenty-eight of this article and received
in evidence to the same extent as an original certificate
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.

(a) Upon the issuance of the certificate of merger or
the certificate of consolidation by the secretary of state,
the merger or consolidation shall be effected. When such
merger or consolidation has been effected:

(1) The several corporations parties to the plan of
merger or consolidation shall be a single corporation,
which, in the case of a merger, shall be that corporation
designated in the plan of merger as the surviving corpora-
tion, and, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation.

(2) The separate existence of all corporations parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease.

(3) Such surviving or new corporation shall have all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under this article.

(4) Such surviving or new corporation shall thereupon and thereafter possess all the rights, privileges, immunities and franchises, of a public as well as of a private nature, of each of the merging or consolidating corporations; and all property, real, personal and mixed, and all debts due on whatever account, including subscriptions to shares, if any, and all other choses in action, and all and every other interest of or belonging to or due to each of the corporations so merged or consolidated, shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed; and the title to any real estate, or any interest therein, vested in any of such corporations shall not revert or be in any way impaired by reason of such merger or consolidation.

(5) Such surviving or new corporation shall henceforth be responsible and liable for all the liabilities and obligations of each of the corporations so merged or consolidated; and any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted as if such merger or consolidation had not taken place, or such surviving or new corporations may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such corporation shall be impaired by such merger or consolidation.

(6) In the case of a merger, the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation are stated in the plan of merger; and, in the case of a consolidation, the statements set forth in the articles of consolidation and which are required or
permitted to be set forth in the articles of incorporation of corporations organized under this article shall be deemed to be the original articles of incorporation of the new corporation.

(b) In any merger or consolidation of corporations under the laws of the state of West Virginia, any constituent corporation thereof owning or holding real estate in West Virginia shall further evidence the title thereto in the surviving or new corporation by executing and acknowledging for record a confirmatory deed or deeds to the respective parcels of real estate, which deed or deeds shall be recorded in the office of the clerks of the county courts of the respective counties in which such real estate is situated; and such deed or deeds shall recite as the consideration therefor the said merger or consolidation and shall be deemed confirmatory of the title of such real 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.

(a) One or more domestic corporations, whether stock or nonstock, and whether or not organized for profit, and one or more foreign corporations, whether stock or nonstock, and whether or not organized for profit, may merge or consolidate into one of such corporations, irrespective of whether the surviving or new corporation is a stock or nonstock corporation and irrespective of whether or not it is organized for profit, if such merger or consolidation is permitted by the laws of the state under which each such foreign corporation is organized. Any such merger or consolidation shall be completed in the following manner:

(1) Each domestic corporation shall comply with the provisions of this article with respect to the merger or consolidation, as the case may be, of domestic corporations and each foreign corporation shall comply with the applicable provisions
of the laws of the state under which it is organized.

(2) If the surviving or new corporation, as the case may be, is to be governed by the laws of any state other than this state, it shall comply with the provisions of this article with respect to foreign corporations if it is to conduct its affairs or do or transact business in this state, and in every case it shall file with the secretary of state of this state (i) an agreement that it may be served with process in this state in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to such merger or consolidation and in any proceeding for the enforcement of the rights of a dissenting shareholder or member of any such domestic corporation against the surviving or new corporation; (ii) an irrevocable appointment of the secretary of state of this state as its agent to accept service of process in any such proceeding; and (iii) an agreement that it will promptly pay to the dissenting shareholders or members of any such domestic corporation the amount, if any, to which they shall be entitled under the provisions of this article with respect to the rights of dissenting shareholders.

(b) The effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations, if the surviving or new corporation is to be governed by the laws of this state and the provisions of section thirty-seven of this article shall apply in every such instance. If the surviving or new corporation is to be governed by the laws of any state other than this state, the effect of such merger or consolidation of domestic corporation shall be the same as in the case of the merger or consolidation of domestic corporations except insofar as the laws of such other state provide otherwise.

(c) At any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to the provisions therefor, if any, set forth in the plan of merger or consolidation.

(d) Irrespective of whether such surviving or new
corporation is to be governed by the laws of this state or by the laws of any other state, any constituent corporation thereof owning or holding real estate in West Virginia shall further evidence the title thereto in the surviving or new corporation by executing and acknowledging for record a confirmatory deed or deeds to the respective parcels of real estate, which deed or deeds shall be recorded in the office of the clerks of the county courts of the respective counties in which such real estate is situate; and such deed or deeds shall recite as the consideration therefor the said merger or consolidation and shall be deemed confirmatory of the title of such real estate in the surviving or new corporation.

§31-1-39. Articles of dissolution; contents.

1 (a) If voluntary dissolution proceedings have not been revoked, then when all debts, liabilities and obligations of the corporation have been paid and discharged, or adequate provision has been made therefor, and all of the remaining property and assets of the corporation have been distributed to its shareholders in the case of a business corporation, or, in the case of a nonprofit corporation, when all of the remaining property and assets of the corporation shall have been transferred, conveyed or distributed in accordance with the provisions of sections one hundred fifty-five and one hundred fifty-six of this article, articles of dissolution shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, which statement shall set forth:

(1) The name of the corporation.

(2) That all debts, obligations and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor.

(3) That all the remaining property and assets of the corporation have been distributed among its shareholders in accordance with their respective rights and interests, in the case of a business corporation, or, in the case of a nonprofit corporation, that all the remaining property and
assets of the corporation have been transferred, conveyed 
or distributed in accordance with the provisions of sections 
one hundred fifty-five and one hundred fifty-six of this 
article.

(4) That there are no actions pending against the 
corporation in any court, or that adequate provision has 
been made for the satisfaction of any judgment or order 
which may be entered against it in any pending action.

(b) In the case of a business corporation, such state-
ment, in addition to the matters required to be set forth 
under the provisions of subsection (a) of this section, shall 
contain a statement that the secretary of state has here-
tofore filed a statement of intent to dissolve the corpora-
tion, and the date on which such statement was filed.

(c) In the case of a nonprofit corporation, such state-
ment in addition to the matters required to be set forth, 
under the provisions of subsection (a) of this section, shall 
set forth:

(1) If there are members entitled to vote thereon, a 
statement setting forth the date of the meeting of mem-
ers at which the resolution to dissolve was adopted, that 
a quorum was present at such meeting and that such reso-
lution received the approval of a majority of the votes 
which members present at such meeting or represented 
by proxy were entitled to cast, or a statement that such 
resolution was adopted by a consent in writing signed by 
all members entitled to vote with respect thereto.

(2) If there are no members, or no members entitled to 
vote thereon, a statement of such fact, the date of the 
meeting of the board of directors at which the resolution to 
dissolve was adopted and a statement of the fact that such 
resolution received the vote of a majority of the directors 
in office.

(3) A copy of the plan of distribution, if any, as 
adopted by the corporation, or a statement that no plan 
was so adopted.

§31-1-40. Articles of dissolution, filing, issuance of certificate 
of dissolution by secretary of state; recordation.

(a) Duplicate originals of the articles of dissolution
shall be delivered to the secretary of state. If the secretary of state finds that such articles of dissolution conform to law and if the provisions of section sixty-one have been fully satisfied, he shall, when all fees have been paid as prescribed by law, (i) endorse on each of such duplicate originals the word "Filed," and the month, day and year of the filing thereof; (ii) file one of such duplicate originals in his office; and (iii) issue a certificate of dissolution to which he shall affix the other duplicate original.

(b) In the case of a nonprofit corporation, in addition to the duplicate originals of the articles of dissolution, a copy of the notice required to be published under the provisions of one hundred fifty-four of this article and the publisher's certificate of such publication shall be delivered to the secretary of state. The secretary of state, prior to endorsing, filing and issuing the certificate of dissolution, shall ascertain that the notice and certificate conform to law.

(c) The certificate of dissolution, together with the duplicate original of the articles of dissolution affixed thereto by the secretary of state, shall be returned to the incorporators or to the representatives of the dissolved corporation. If the certificate of incorporation shall have been recorded in the office of the clerk of the county court of any county in this state, the incorporators or their representative shall record the certificate of dissolution in the office of the clerk of the county court in which the certificate of incorporation is recorded, and the clerk shall note on the margin of the record book in which the certificate of incorporation is engrossed the fact of the dissolution of the corporation, and upon such recordation the existence of the corporation shall cease, except for the purpose of actions, other proceedings and appropriate corporate action by shareholders or members, directors 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.

(a) Any of the circuit courts or inferior courts of record with general civil jurisdiction shall have full power
to liquidate the assets and business or affairs of a corpora-
tion in an action by a shareholder or member when it is
established:

(1) That the directors are deadlocked in the man-
agement of the corporate affairs and that irreparable in-
jury to the corporation is being suffered or is threatened
by reason thereof, and either that the shareholders or
members are unable to break the deadlock or there are
no shareholders or members having voting rights; or

(2) That the acts of the directors or those in control
of the corporation are illegal, oppressive or fraudulent;
or

(3) That the shareholders or members entitled to vote
in the election of directors, are deadlocked in voting
power, and have failed for a period which includes at least
two consecutive annual meeting dates, to elect successors
to directors whose terms have expired or would have ex-
pired upon the election of their successors; or

(4) That the corporate assets are being misapplied or
wasted; or,

(5) In addition, in the case of a nonprofit corporation,
that such corporation is unable to carry out its purposes.

(b) Such courts shall also have full power to liquidate
the assets and business or affairs of a corporation in an
action by a creditor:

(1) When the claim of the creditor has been reduced
to judgment and an execution thereon has been returned
unsatisfied and it is established that the corporation is
insolvent; or

(2) When the corporation has admitted in writing that
the claim of the creditor is due and owing and it is estab-
lished that the corporation is insolvent.

(c) Such courts shall also have full power to liquidate
the assets or business or affairs of the corporation:

(1) Upon application by a corporation which has filed
a statement of intent to dissolve, as provided in this
article, to have its liquidation continued under the super-
vision of the court; or
(2) In the case of a business corporation, when an action has been filed pursuant to the provisions of section eighty-six, article twelve, chapter eleven of this code, to dissolve a corporation and it is established that liquidation of its assets and business or affairs should precede the entry of an order of dissolution.

(d) Actions or proceedings brought under subsection (a) or (b), or under subdivision (1) of subsection (c) of this section, shall be brought in the county in which the principal office of the corporation is situated, or if there be no such office in this state, in the county in which any one or more of its shareholders or members reside or are found or in which the property of such corporation, or any part of it, may be.

(e) It shall not be necessary to make shareholders or members parties to any such action or proceedings unless relief is sought against them personally.

§31-1-42. Procedure in liquidation of corporation by court; appointment and powers of receivers.

In proceedings to liquidate the assets and business or affairs of a corporation the court shall have power to issue injunctions, to appoint a receiver or receivers pendant lite, with such powers and duties as the court, from time to time, may direct, and to take such other action as may be requisite to preserve the corporate assets wherever situated, and carry on the business or affairs of the corporation until a full hearing can be had.

After a hearing had upon such notice as the court may direct to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a liquidating receiver or receivers with authority to collect the assets of the corporation, including all amounts owing to the corporation by subscribers, if any. Such liquidating receiver or receivers shall have authority, subject to the order of the court, to sell, convey and dispose of all or any part of the assets of the corporation wherever situated, either at public or private sale. The order appointing such liquidating receiver or receivers shall state their powers and duties. Such powers
Ch. 13] Corporations 213

21 and duties may be increased or diminished at any time
during the proceedings.

23 The court shall have power to allow from time to time,
as expenses of the liquidation, compensation to the re-
ceiver or receivers and to attorneys in the proceeding,
and to direct the payment thereof out of the assets of the
corporation or the proceeds of any sale or disposition of
such assets.

29 A receiver of a corporation appointed under the provi-
sions of this section shall have authority to sue and defend
in all courts in his own name as receiver of such corpora-
tion. The court appointing such receiver shall have ex-
clusive jurisdiction of the corporation and its property,
wherever situated.

§31-1-43. Qualifications of receivers.

1 A receiver appointed pursuant to the provisions of
section forty-two of this article shall in all cases be a
natural person who is a citizen of the United States or a
corporation authorized to act as receiver, which corpora-
tion may be a domestic corporation or a foreign corpora-
tion authorized to conduct affairs or do or transact busi-
ness in this state, and shall in all cases give such bond
as the court may direct with such sureties as the court
may require.

§31-1-44. Filing of claims in liquidation proceedings.

1 In proceedings to liquidate the assets and business or
affairs of a corporation the court may require all creditors
of the corporation to file with the clerk of the court or
with the receiver, in such form as the court may pre-
scribe, proofs under oath of their respective claims. If
the court requires the filing of claims it shall fix a date,
which shall be not less than four months from the date
of the order, as the last day for the filing of claims, and
shall prescribe the notice that shall be given to creditors
and claimants of the date so fixed. Prior to the date so
fixed, the courts may extend the time for filing of claims.
Creditors and claimants failing to file proofs of claim
on or before the date so fixed may be barred, by order
of the court, from participating in the distribution of
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 sec-
retary 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
unknown or who cannot be found, or who is under dis-
ability and for whom there is no person legally competent
to receive such distributive portion, shall be reduced
to cash and deposited with the state treasurer in accor-
dance with the provisions of article eight, chapter thirty-
six of this code, and shall be paid over to such creditor,
shareholder, member or person or to his legal represen-
tative upon proof satisfactory to the state treasurer of
his right thereto, in accordance with the provisions of
said article eight, chapter thirty-six.

§31-1-48. Survival of remedy after dissolution; effect of dis-
solution.

The dissolution of a corporation either (1) by the
issuance of a certificate of dissolution by the secretary
of state, or (2) by an order of court when the court has
not liquidated the assets and business or affairs of the
corporation as provided in this article, or (3) by expira-
tion of its period of duration, shall not take away or
impair any remedy available to or against such corpora-
tion, its shareholders or members, directors and officers,
for any right or claim existing, or any liability incurred,
prior to such dissolution if action or other proceeding
thereon is commenced within two years after the date
of such dissolution. Any such action or proceeding by
or against the corporation may be prosecuted or defended
by the corporation in its corporate name. The share-
holders or members, directors and officers shall have
power to take such corporate or other action as shall
be appropriate to protect such remedy, right or claim.
If such corporation was dissolved by the expiration of
its period of duration, such corporation may amend its
articles of incorporation at any time during such period
of two years so as to extend its period of duration.

The board of directors and the executive officers in
office at the date of such expiration or dissolution, and
their successors in office, shall have the right to fill any
vacancy in any executive office and of the board of direc-
tors by appointment; and they and their successors in
office may cause actions or proceedings to be brought,
conducted, prosecuted or defended, the real and personal
property of the corporation to be conveyed or transferred
under the common seal or otherwise, further assurances
of previous conveyances to be made, and all lawful acts
to be done, in the corporate name, in like manner and
with like effect as before such dissolution or expiration;
but so far only as shall be necessary or proper to do and
perform every act and thing which should have been
or should be done and performed by the corporation,
and for collecting the debts and claims due to the cor-
poration, converting its property and assets into money,
prosecuting, defending and protecting its rights, enfor-
cing all claims in its favor, and paying over and distrib-
uting its property and assets, or the proceeds thereof, to
those entitled thereto.

§31-1-49. Admission of foreign corporation; acts permitted to
be done without certificate of authority.

(a) No foreign corporation shall have the right to
conduct affairs or do or transact business in this state
until it shall have procured a certificate of authority so
to do from the secretary of state. No foreign corporation
shall be entitled to procure a certificate of authority
under this article to conduct affairs or do or transact
any business in this state which would not be permitted
to be conducted, done or transacted by a corporation
organized under this article. A foreign corporation shall
not be denied a certificate of authority by reason of the
fact that the laws of the state or country under which
such corporation is organized governing its organization
and internal affairs differ from the laws of this state,
and nothing in this article contained shall be construed
to authorize this state to regulate the organization or the
internal affairs of such corporation.

(b) Without excluding other activities which may
not constitute conducting affairs or doing or transacting
business in this state, a foreign corporation shall not be
considered to be conducting affairs or doing or transacting
business in this state, for the purposes of this article, by
reason of carrying on in this state any one or more of
the following activities:
(1) Maintaining or defending any legal action or proceeding or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes;

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

(3) Maintaining bank accounts;

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

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

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

(7) Granting funds or other gifts;

(8) Distributing information to its shareholders or members; or

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

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

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

(2) Effecting sales through independent contractors; or

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

1 A foreign corporation which shall have received a certificate of authority under this article shall enjoy the same, but no greater, rights and privileges as a domestic corporation organized for the purposes set forth in the application pursuant to which such certificate of authority is issued, until a certificate of revocation or of withdrawal shall have been issued as provided in this article; and except as in this article otherwise provided, shall be subject to the same duties, restrictions, penalties and liabilities now or hereafter imposed upon a domestic 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 foreign corporation unless the corporate name of such corporation:

4 (1) Shall contain the word "corporation," "company," "incorporated" or "limited," or shall contain an abbreviation of one of such words, or such corporation shall, for use in this state, add at the end of its name one of such words or an abbreviation thereof.

9 (2) Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes in its articles of incorporation, or if the corporate name of such corporation indicates or implies that it is authorized or empowered to conduct the business of banking or insurance unless such corporation is so authorized or empowered under the laws of this state.

17 (3) Shall not be the same as, or deceptively similar to, the name of any corporation existing under the laws of this state, whether stock or nonstock and whether or not organized for profit, or any foreign corporation, authorized to conduct affairs or do or transact business in this state, whether stock or nonstock and whether or not organized for profit, or a corporate name reserved or registered as permitted by the laws of this state.
(4) Shall be transliterated into letters of the English alphabet, if it is not in English.

(b) The provisions of subdivision (3), subsection (a) of this section shall not apply if the foreign corporation applying for a certificate of authority files with the secretary of state any one of the following:

(1) A resolution of its board of directors adopting a fictitious name for use in conducting affairs or doing or transacting business in this state, which fictitious name is not deceptively similar to the name of any domestic corporation or of any foreign corporation authorized to conduct affairs or do or transact business in this state or to any name reserved or registered as provided in this article, or

(2) The written consent of such other corporation or holder of a reserved or registered name to use the same or deceptively similar name and one or more words are added to make such name distinguishable from such other name, or

(3) A certified copy of a final order of a court of competent jurisdiction establishing the prior right of such foreign corporation to the use of such name in this state.

§31-1-52. Change of name by foreign corporation.

Whenever a foreign corporation which is authorized to conduct affairs or do or transact business in this state shall change its name to one under which a certificate of authority would not be granted to it on application therefor, the certificate of authority of such corporation shall be suspended and it shall not thereafter conduct any affairs or do or transact any business in this state until it has changed its name to a name which is available to it under the laws of this state or has otherwise 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.

(a) A foreign corporation, in order to procure a certificate of authority to conduct affairs, or do or trans-
act business in this state, shall make application therefor
to the secretary of state, which application shall set
forth:

(1) The name of the corporation and the state or
country under the laws of which it is incorporated.

(2) If the name of the corporation does not contain
the word “corporation,” “company,” “incorporated” or
“limited,” or does not contain an abbreviation of one of
such words, then the name of the corporation with the
word or abbreviation which it elects to add thereto for
use in this state.

(3) The date of incorporation and the period of dura-
tion of the corporation.

(4) The address of the principal office of the cor-
poration in the state or country under the laws of which
it is incorporated.

(5) The address of the principal office of the cor-
poration in this state if such corporation has or intends
to have a principal office located in this state.

(6) The purpose or purposes of the corporation which
it proposes to pursue in conducting its affairs or doing
or transacting its business in this state.

(7) The names and respective addresses of the direc-
tors and officers of the corporation.

(8) Such additional information as may be neces-
sary or appropriate in order to enable the secretary of
state to determine whether such corporation is entitled
to a certificate of authority to conduct its affairs or do
or transact business in this state and to determine and
assess the fees payable as prescribed by law.

(9) The county wherein the corporation intends to
record its articles of incorporation, amendments or re-
statement of such articles of incorporation, pursuant to
the provisions of subsection (c) of section fifty-four of
this article.

(b) In the case of a business corporation, in addition
to those matters required to be set forth under the provisions of subsection (a) of this section, such application shall set forth:

(1) A statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.

(2) A statement of the aggregate number of issued shares itemized by classes, par value of shares, shares without par value, and series, if any, within a class.

(3) A statement, expressed in dollars, of the amount of stated capital of the corporation, as defined in this article.

(4) An estimate, expressed in dollars, of the value of all property to be owned by the corporation, for the following year, wherever located, and an estimate of the value of the property of the corporation to be located within this state during such year, and an estimate, expressed in dollars, of the gross amount of business which will be done or transacted by the corporation during such year, and an estimate of the gross amount thereof which will be done or transacted by the corporation at or from places of business in this state during such year.

(c) Such application shall be made on forms prescribed and furnished by the secretary of state and shall be executed in duplicate by the corporation by its president or vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such application.

(d) No church, religious sect or denomination incorporated by the laws of any other state or territory of the United States, the District of Columbia or of any foreign country shall be qualified to conduct affairs or do or transact business in this state in a corporate capacity.
§31-1-54. Application for certificate of authority; filing; issuance of certificate; recordation; penalty for failure to record.

(a) Duplicate originals of the application of a foreign corporation for a certificate of authority shall be delivered to the secretary of state, together with a copy of its articles of incorporation and all amendments thereto, or a proper restatement thereto, duly certified by the proper officer of the state or country under the laws of which it is incorporated, and a statement or certificate from such officer that the corporation is in good standing with the state or country under the laws of which it is incorporated.

If the secretary of state finds that such application conforms to law, he shall, when all fees have been paid as prescribed by law, (i) endorse on each of such originals the word “Filed,” and the month, day and year of the filing thereof; (ii) file one of such duplicate originals of the application and the copy of the articles of incorporation and amendments thereto; and (iii) issue a certificate of authority to conduct affairs or to do or transact business in this state, to which he shall affix the other duplicate original application.

(b) The certificate of authority, together with the duplicate original of the application affixed thereto by the secretary of state, shall be returned to the corporation or its representative.

(c) The certificate of authority, together with a copy of the articles of incorporation and all amendments thereto, or a proper restatement thereof, shall be recorded in the office of the county court of the county where the principal office of the corporation in this state is located. If such corporation does not maintain a principal office in this state, such recordation may be completed in any county in which it is conducting its affairs or doing or transacting business. A failure to comply with the provisions of this subsection within six months from the date of issuance of a certificate of authority shall subject such corporation to a fine of not more than one thousand dollars.
§31-1-55. Effect of certificate of authority.

1 Upon the issuance of a certificate of authority by the secretary of state and upon the proper recordation of such certificate in accordance with the provisions of subsection (c) of section fifty-four of this article, the corporation shall be authorized to conduct affairs or do or transact business in this state for those purposes set forth in its application, subject, however, to the right of this state to suspend or to revoke such authority 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 or do or transact business in this state may change the place of its principal office in this state upon filing in the office of the secretary of state a statement setting 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 be changed.
10 (4) That such change was authorized by resolution duly adopted by its board of directors.

12 (b) Such statement shall be executed by the corporation by its president or a vice president, and verified by him and delivered to the secretary of state. If the secretary of state finds that such statement conforms to the provisions of this article, he shall file such statement in his office, and upon such filing the change of address of the principal office shall become effective. If such foreign corporation maintains a principal office in this state and changes the place of such principal office or moves its principal office out of this state, or if such corporation does not maintain a principal office in this state and moves or changes the place of its principal office, the statement required by this section to be filed with the secretary of state shall be filed within ten days after such move, and no such move or change of the
§31-1-57. Amendment to articles of incorporation of foreign corporation; filing; recordation; penalty for failure to record.

(a) Whenever the articles of incorporation of a foreign corporation authorized to conduct affairs or do or transact business in this state are amended, such foreign corporation shall, within thirty days after such amendment becomes effective, file in the office of the secretary of state a copy of such amendment duly authenticated by the proper officer of the state or country under the laws of which it is incorporated; but the filing thereof shall not of itself enlarge or alter the purpose or purposes which such corporation is authorized to pursue in conducting its affairs or in doing or transacting its business in this state, nor authorize such corporation to conduct affairs or do or transact business in this state under any other name than the name set forth in its certificate of authority.

(b) The secretary of state shall issue to such corporation a certificate showing the filing of such amendment and collect a fee of five dollars for such certificate. The certificate so issued by the secretary of state, together with a true copy of the amendment, shall be recorded in the office of the clerk of the county court of the county in which its original certificate of authority was recorded, pursuant to the provisions of subsection (c) of section fifty-four of this article.

A failure to comply with the provisions of this subsection within six months from the date of such amendment shall subject such corporation to a fine of not more 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.

(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.

(b) The secretary of state shall issue to such sur-
18 viving corporation a certificate showing the filing of a
19 copy of the articles of merger and collect a fee of five
20 dollars for such certificate. The certificate so issued by
21 the secretary of state, together with a true copy of the
22 articles of merger, shall be recorded in the office of the
23 clerk of the county court of the county in which its
24 original certificate of authority was recorded, pursuant
25 to the provisions of subsection (c) of section fifty-four
26 of this article.

A failure to comply with the provisions of this sub-
28 section within six months from the date of such merger
29 shall subject such corporation to a fine of not more than
30 one thousand dollars.

§31-1-59. Amended certificate of authority; requirements; re-
31 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-
The requirements in respect to the form and contents of such application, the manner of its execution, the filing of duplicate originals thereof with the secretary of state, the issuance of an amended certificate of authority and the effect thereof, and the recordation requirements for such amended certificate of authority shall be the same as in the case of an original application for a certificate of authority.

A failure to comply with the provisions of this section within six months from the date of such change of corporate name or purposes shall subject such corporation 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 certificate; recordation.

(a) A foreign corporation authorized to conduct affairs or do or transact business in this state may withdraw from this state upon procuring from the secretary of state a certificate of withdrawal. In order to procure such certificate of withdrawal, such foreign corporation shall publish a notice of its intention to withdraw from the state, such notice to be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which its principal office in this state is situated, or if there be no such office in this state, then any county in this state where it conducts its affairs or transacts its business.

(b) After publication of the notice required by the provisions of subsection (a) of this section, such foreign corporation shall make application to the secretary of state for a certificate of withdrawal, which application shall set forth:

(1) The name of the corporation and the state or country under the laws of which it is incorporated.
(2) That the corporation has ceased conducting affairs or has ceased doing or transacting business in this state.

(3) That the corporation surrenders its authority to conduct affairs or do or transact business in this state.

(4) A post-office address to which the secretary of state may mail a copy of any process against the corporation that may be served on him.

(5) Such additional information as may be necessary or appropriate in order to enable the secretary of state to determine and assess any unpaid fees payable by such foreign corporation as may be prescribed by law.

(c) In the case of a business corporation, in addition to those matters required to be set forth under the provisions of subsection (b) of this section, such application shall set forth:

(1) A statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class, as of the date of such application.

(2) A statement of the aggregate number of issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class, as of the date of such application.

(3) A statement, expressed in dollars, of the amount of stated capital of the corporation, as of the date of such application.

(d) The application for a certificate of withdrawal shall be made on forms prescribed and furnished by the secretary of state and shall be executed by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing the application, or, if the corporation is in the hands of a receiver or trustee, shall be executed on behalf of the corporation by such receiver or trustee and verified by him. Such application shall be accom-
58 panied by a copy of the notice required to be published under the provisions of subsection (a) of this section and the publisher's certificate of such publication.

(e) Duplicate originals of such application for a certificate of withdrawal shall be delivered to the secretary of state. If the secretary of state finds that such application conforms to law, he shall, when all fees have been paid, as prescribed by law, (i) endorse on each of such duplicate originals the word "Filed," and the month, day and year of the filing thereof; (ii) file one of such duplicate originals in his office; and (iii) subject to the provisions of section sixty-one of this article, issue a certificate of withdrawal to which he shall affix the other duplicate original.

(f) The certificate of withdrawal, together with the duplicate original of the application for withdrawal affixed thereto by the secretary of state, shall be returned to the corporation or its representative. The corporation or its representative shall record the certificate of withdrawal in the office of the clerk of the county court in which the corporation's certificate of authority is recorded, and the clerk shall note on the margin of the record book in which such certificate of authority is engrossed the fact of the withdrawal of the corporation, and upon the recordation of such certificate of withdrawal, the authority of the corporation to conduct affairs 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 any certificate of dissolution or withdrawal, or certificate of consolidation or merger in the case where the new or surviving corporation will be a foreign corporation which has not qualified to conduct affairs or do or transact business or hold property in this state, nor shall any corporation expire by virtue of its articles of incorporation or amendment thereto, until the receipt by the secretary of state of a notice from the tax commissioner
and department of employment security to the effect
that all taxes due from said corporation under the pro-
visions of chapter eleven of this code, including, but not
limited to, taxes withheld under the provisions of section
seventy-one, article twenty-one of said chapter eleven,
all business and occupation taxes, motor carrier and
transportation privilege taxes, gasoline taxes, consumer
sales taxes and any and all license, franchise or other
excise taxes and corporate net income taxes, and em-
ployment security payments levied or assessed against
the corporation seeking to withdraw, dissolve, consolidate,
merge or expire have been paid or that such payment
has been provided for, or until the secretary of state
receives a notice from the tax commissioner or depart-
ment of employment security, as the case may be, stating
that the corporation in question is not subject to payment
of any such taxes or to the making of any employment
security payments or assessments.


(a) Subject to the provisions of section sixty-eight of
this article, the certificate of authority of a foreign cor-
poration to conduct affairs or do or transact business
in this state may be revoked by the secretary of state
upon the conditions prescribed in this section when:

(1) The corporation has failed, after change of its
principal office to file in the office of the secretary of
state a statement of such change as required by section
fifty-six of this article, or

(2) The corporation has failed to file in the office
of the secretary of state any amendment to its articles
of incorporation as required by the provisions of section
fifty-seven of this article, or

(3) The corporation has failed to file in the office
of the secretary of state any articles of merger, as re-
quired by the provisions of section fifty-eight of this
article, or

(4) A misrepresentation has been made of any ma-
terial matter in any application, report, affidavit or other
document submitted by such corporation pursuant to the provisions of this article.

(b) No certificate of authority of a foreign corporation shall be revoked by the secretary of state unless:

(1) He shall have given the corporation not less than sixty days' notice thereof by registered or certified mail, return receipt requested, addressed to its principal office in this state, or if the corporation has no such principal office in this state, then to its principal office outside this state, and

(2) The corporation shall fail, prior to revocation, to file the required statement of change of principal office or shall fail to file any amendment to its articles of incorporation or shall fail to file any articles of merger or shall fail to correct any such misrepresentation.

§31-1-63. Issuance of order of revocation; period of appeal.

(a) Upon revoking any certificate of authority, the secretary of state shall issue an order of revocation in duplicate, one of which shall be filed in his office and the other shall be mailed by registered or certified mail, return receipt requested, to the corporation at its principal office in this state, or if the corporation has no such principal office in this state, then to its principal office outside this state, and a copy of the notice required by the provisions of subsection (b) of section sixty-two of this article shall be attached thereto.

(b) Such corporation shall have thirty days from the date of receipt of such order of revocation to appeal the action of the secretary of state in accordance with the provisions of section sixty-eight of this article, and if such appeal be not taken within such thirty-day period, then the order of the secretary of state revoking the certificate of authority of such corporation shall be final and the authority of the corporation to conduct affairs or do or transact business in this state shall cease.
§31-1-64. Conditions of expiration of corporate existence.

Irrespective of any provisions of any articles of incorporation or amendment thereto, no corporation shall expire by virtue of its own articles of incorporation or amendment thereto until such time as such corporation has fully complied with all of the provisions of this article relating to the voluntary dissolution of corporations, and the existence of any such corporation shall continue beyond the expiration date established in its charter or amendment thereto for all intents and purposes until such corporation shall have been dissolved in accordance with the provisions of this article.

When any such corporation has fully complied with the provisions of this article relating to the voluntary dissolution of corporations, the secretary of state shall issue a certificate of dissolution which shall be recorded in the same county and in the same manner as would 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.

Subject to the limitations set forth in their respective certificates of authority, foreign corporations which are duly authorized to conduct affairs or do or transact business in this state at the time this article takes effect, for a purpose or purposes for which a corporation might secure such authority under this article, shall be entitled to all the rights and privileges applicable to foreign corporations procuring certificates of authority to conduct affairs or do or transact business in this state under this article, and shall not be required to make reapplication for authority to conduct affairs or do or transact business in this state by reason of the adoption of this article. From the time this article takes effect such corporations shall be subject to all the limitations, restrictions, liabilities and duties prescribed herein for foreign corporations procuring certificates of authority to conduct 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 doing or transacting business in this state without a certificate of authority shall be permitted to maintain any action or proceeding in any court of this state until such corporation shall have obtained a certificate of authority. Nor shall any action or proceeding be maintained in any court of this state by any successor or assignee of such corporation on any right, claim or demand arising out of the conducting of affairs or the doing or transacting of business by such corporation in this state, until a certificate of authority shall have been obtained by such corporation or by a corporation which has acquired all or substantially all of its assets.

14 The failure of a foreign corporation to obtain a certificate of authority to conduct affairs or do or transact business in this state shall not impair the validity of any contract or act of such corporation, and shall not prevent such corporation from defending any action or proceeding in any court of this state.

1 A foreign corporation which conducts affairs or does or transacts business in this state without a certificate of authority shall be liable to this state, for the years or parts thereof during which it conducted affairs or did or transacted business in this state without a certificate of authority, in an amount equal to all fees and taxes which would have been imposed by this article, or by any other provisions of this code, upon such corporation had it duly applied for and received a certificate of authority to conduct affairs or do or transact business in this state as required by this article and thereafter filed all reports, statements or returns required by this article or by any other provisions of this code, plus all penalties 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 authority reasonably necessary to enable him to administer
this article efficiently and to perform the duties therein imposed upon him.

The secretary of state may, from time to time, as he deems necessary, promulgate rules and regulations in accordance with the provisions of chapter twenty-nine-a of this code in order to implement and make effective the powers and duties vested in him by the provisions of this article.

§31-1-68. Appeal from secretary of state.

(a) If the secretary of state shall fail to approve any articles of incorporation, amendment, merger, consolidation or dissolution, or shall fail to issue any certificate of authority to any foreign corporation seeking to conduct affairs or do or transact business in this state, or shall fail to issue any certificate of withdrawal to any foreign corporation, or shall revoke any such certificate of authority, or shall fail to permit the expiration of any corporation, or shall fail to approve any other document required by this article to be approved by the secretary of state before the same shall be filed in his office, he shall, within ten days after the delivery thereof to him, give written notice of his ruling, disapproval or decision to the person or corporation, domestic or foreign, delivering or desiring the same, specifying the reasons therefor. Such notice shall be given by registered or certified mail, return receipt requested, to the principal office of the corporation or to the address where such principal office is proposed to be situated.

(b) Any person or corporation aggrieved by any such ruling, disapproval or decision may appeal to the circuit court of the county in which the principal office of such corporation is situated, or is proposed to be situated, or if such principal office is to be located outside this state, then such appeal will be to the circuit court of Kanawha county. Such appeal shall be taken within thirty days from the date of receipt of the notice of the ruling, disapproval or decision of the secretary of state by filing a petition for a writ of certiorari in the appropriate court, together with a copy of the notice of the secretary of state and such other matters as may be
deemed appropriate. Upon any such appeal, such court
shall either sustain the action of the secretary of state
or direct him to take such action as the court may deem
proper.

Appeals from all final orders and judgments entered
by the court under this section in review of any ruling,
disapproval or decision of the secretary of state may be
taken as in other civil actions.

§31-1-69. Certificates and certified copies to be received in
evidence.

All certificates issued by the secretary of state in
accordance with the provisions of this article, and all
copies of documents filed in his office in accordance with
the provisions of this article when certified by him, shall
be taken and received in all courts, public offices and
official bodies as prima facie evidence of the facts therein
stated. A certificate by the secretary of state under the
great seal of this state, as to the existence or nonexistence
of the facts relating to corporations shall be taken and
received in all courts, public offices, and official bodies
as prima facie evidence of the existence or nonexistence
of the facts therein stated.

§31-1-70. Forms to be furnished by secretary of state.

All reports required by this article to be filed in the
office of the secretary of state shall be made on forms
which shall be prescribed and furnished by the secretary
of state. Forms for all other documents to be filed in
the office of the secretary of state shall be furnished
by the secretary of state on request therefor, but the
use thereof, unless otherwise specifically prescribed in
this article, shall not be mandatory.

§31-1-71. Greater voting requirements.

Whenever, with respect to any action to be taken by
the directors, members or shareholders of a corpora-
tion, the articles of incorporation or bylaws require the
vote or concurrence of a greater proportion of the direc-
tors or members or any class of members or of the
holders of the shares, or of any class or series of shares,
§31-1-72. Waiver of notice.

Whenever any notice is required to be given to any shareholder, member or director of a corporation under the provisions of this article or under the provisions of the articles of incorporation or bylaws of the corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, filed with the records of the meeting, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

Further, notice of the time, place or purpose of any meeting of shareholders, members or directors, whether required by the provisions of this article or by the bylaws of the corporation may be dispensed with if every shareholder or member shall attend either in person or by proxy, or if every director shall attend in person.

§31-1-73. Action by shareholders, members or directors without a meeting.

(a) Whenever the vote of shareholders or members at a meeting thereof is required or permitted to be taken in connection with any corporate action, the meeting and vote of such shareholders or members may be dispensed with if all of the shareholders or members who would have been entitled to vote upon the action, if such meeting were held, shall agree in writing to such corporate action being taken, and such agreement shall have like effect and validity as though the action were duly taken by the unanimous action of all shareholders or members entitled to vote at a meeting of such shareholders or members duly called and legally held.

(b) Whenever the vote of directors at a meeting thereof is required or permitted to be taken in connection with any corporate action, the meeting and vote of such directors may be dispensed with if all the directors shall agree in writing to such corporate action being taken, and such agreement shall have like effect and validity as though the action were duly taken by the unanimous action of all di-
rectors at a meeting of such directors duly called and legally held.

(c) In the event that the action which is agreed to, as provided for in subsection (a) or (b) of this section, is such as would have required the filing of any articles, document or certificate with the secretary of state under any provision of this article, if such action had been voted upon by the shareholders or members or by the directors at a meeting, the articles, document or certificate so filed shall state that written agreement has been executed in lieu of stating that the shareholders, members or directors voted upon the corporate action in question and such articles, document or certificate shall have the same force and effect under all provisions of law as if the action had been taken by the unanimous vote of all shareholders or members entitled to vote, or of all the directors, at a meeting duly called and legally held.

§31-1-74. Corporate acknowledgments.

1. A corporation may acknowledge any instrument required by law to be acknowledged by its attorney appointed under seal, and such appointment may be embodied in the deed or instrument to be acknowledged, or be made by a separate instrument; or such deed or other instrument may be acknowledged by the president or any vice president of such corporation without 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 stocks, bonds, investments, credits or other intangible property owned by any corporation organized under the laws of this state which conducts no affairs or which 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,
all fees required to be charged and collected by the secretary of state by the provisions of this article shall be charged and collected in accordance with the provisions of section two, article one, chapter fifty-nine of this code.

PART III. BUSINESS CORPORATIONS.

§31-1-77. Use of term “corporation.”

As used in Part III of this article, the term “corporation” shall refer exclusively to business corporations.

§31-1-78. Authorized shares.

Each corporation shall have power to create and issue the number of shares stated in its articles of incorporation. Such shares may be divided into one or more classes, any or all of which classes may consist of shares with par value or shares without par value, with such designations, preferences, limitations and relative rights as shall be stated in the articles of incorporation. The articles of incorporation may limit or deny the voting rights of or provide special voting rights for the shares of any class to the extent not inconsistent with the provisions of this article.

Without limiting the authority herein contained, a corporation, when so provided in its articles of incorporation, may issue shares of preferred or special classes:

(a) Subject to the right of the corporation to redeem any of such shares at the price fixed by the articles of incorporation for the redemption thereof.

(b) Entitling the holders thereof to cumulative, non-cumulative or partially cumulative dividends.

(c) Having preference over any other class or classes of shares as to the payment of dividends.

(d) Having preference in the assets of the corporation over any other class or classes of shares upon the voluntary or involuntary liquidation of the corporation.

(e) Convertible into shares of any other class or into shares of any series of the same or any other class, except
a class having prior or superior rights and preferences
as to dividends or distribution of assets upon liquida-
tion, but shares without par value shall not be converted
into shares with par value unless that part of the stated
capital of the corporation represented by such shares
without par value is, at the time of conversion, at least
equal to the aggregate par value of the shares into which
the shares without par value are to be converted or the
amount of any such deficiency is transferred from surplus
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.

(a) If the articles of incorporation so provide, the
shares of any preferred or special class may be divided
into and issued in series. If the shares of any such class
are to be issued in series, then each series shall be so
designed as to distinguish the shares thereof from the
shares of all other series and classes. Any or all of the
series of any such class and the variations in the rela-
tive rights and preferences as between different series
may be fixed and determined by the articles of incor-
poration, but all shares of the same class shall be iden-
tical except as to the following relative rights and pref-
ervences, as to which there may be variations between
different series:

(1) The rate of dividend.

(2) Whether shares may be redeemed and, if so, the
redemption price and the terms and conditions of re-
demption.

(3) The amount payable upon shares in event of
voluntary and involuntary liquidation.

(4) Sinking fund provisions, if any, for the redemp-
tion or purchase of shares.

(5) The terms and conditions, if any, on which shares
may be converted.

(6) Voting rights if any.

(b) If the articles of incorporation shall expressly vest
authority in the board of directors, then, to the extent
that the articles of incorporation shall not have estab-
lished series and fixed and determined the variations
in the relative rights and preferences as between series,
the board of directors shall have authority to divide
any or all of such classes into series and, within the
limitations set forth in this section and in the articles
of incorporation, fix and determine the relative rights
and preferences of the shares of any series so established.

In order for the board of directors to establish a series,
where authority so to do is contained in the articles of
incorporation, the board of directors shall adopt a resolu-
tion setting forth the designation of the series and fixing
and determining the relative rights and preferences
thereof, or so much thereof as shall not be fixed and
determined by the articles of incorporation.

Prior to the issue of any shares of a series established
by resolution adopted by the board of directors, the
corporation shall file in the office of the secretary of
state a statement setting forth:

(1) The name of the corporation.

(2) A copy of the resolution establishing and designat-
ing the series, and fixing and determining the relative
rights and preferences thereof.

(3) The date of adoption of such resolution.

(4) That such resolution was duly adopted by the
board of directors.

(c) Such statement shall be executed in duplicate
by the corporation by its president or a vice president
and by its secretary or an assistant secretary, and veri-
ified by one of the officers signing such statement, and
shall be delivered to the secretary of state. If the secre-
tary of state finds that such statement conforms to law,
he shall, when all fees have been paid as prescribed by
law, (i) endorse on each of such duplicate originals
the word "Filed," and the month, day and year of the
filing thereof; (ii) file one of such duplicate originals
in his office; and (iii) return the other duplicate origi-
nal to the corporation or its representative.
(d) Upon the filing of such statement by the secretary of state, the resolution establishing and designating the series and fixing and determining the relative rights and preferences thereof shall become effective and shall constitute an amendment of the articles of incorporation.

§31-1-80. Subscription for shares.

A subscription for shares of a corporation to be organized shall be irrevocable for a period of six months, unless otherwise provided by the terms of the subscription agreement or unless all of the subscribers consent to the revocation of such subscription.

Unless otherwise provided in the subscription agreement, subscriptions for shares, whether made before or after the organization of a corporation, shall be paid in full at such time, or in such installments and at such times, as shall be determined by the board of directors.

Any call made by the board of directors for payment on subscriptions shall be uniform as to all shares of the same class or as to all shares of the same series, as the case may be. In case of default in the payment of any installment or call when such payment is due, the corporation may proceed to collect the amount due in the same manner as any debt due the corporation. The bylaws may prescribe other penalties for failure to pay installments or calls that may become due, but no penalty working a forfeiture of a subscription, or of the amounts paid thereon, shall be declared as against any subscriber unless the amount due thereon shall remain unpaid for a period of twenty days after written demand has been made therefor. If mailed, such written demand shall be deemed to be made when deposited in the United States mail in a sealed envelope addressed to the subscriber at his last post-office address known to the corporation, with postage thereon prepaid. In the event of the sale of any shares by reason of any forfeiture, the excess of proceeds realized over the amount due and unpaid on such shares shall be paid to the delinquent subscriber or to his legal representative.

§31-1-81. Consideration for shares.

Shares having a par value may be issued for such
consideration expressed in dollars, not less than the par
value thereof, as shall be fixed from time to time by
the board of directors.

Shares without par value may be issued for such
consideration expressed in dollars as may be fixed from
time to time by the board of directors unless the articles
of incorporation reserve to the shareholders the right
to fix the consideration. In the event that such right
be reserved as to any shares, the shareholders shall,
prior to the issuance of such shares, fix the consideration
to be received for such shares, by a vote of the holders
of a majority of all shares entitled to vote thereon.

Treasury shares may be disposed of by the corpora-
tion for such consideration expressed in dollars as may
be fixed from time to time by the board of directors.

That part of the surplus of a corporation which is
transferred to stated capital upon the issuance of shares
as a share dividend shall be deemed to be the considera-
tion for the issuance of such shares.

In the event of the issuance of shares upon the conver-
sion or exchange of indebtedness or shares, the considera-
tion for the shares so issued shall be (1) the principal
sum of, and accrued interest on, the indebtedness so
exchanged or converted, or the stated capital then repres-
ented by the shares so exchanged or converted, and
(2) that part of surplus, if any, transferred to stated
capital upon the issuance of shares for the shares so
exchanged or converted, and (3) any additional consid-
eration paid to the corporation upon the issuance of shares
for the indebtedness or shares so exchanged or converted.

§31-1-82. Payment for shares.

The consideration for the issuance of shares may be
paid, in whole or in part, in cash, in other property,
tangible or intangible, or in labor or services actually
performed for the corporation. When payment of the
consideration for which shares are to be issued shall have
been received by the corporation, such shares shall be
deemed to be fully paid and nonassessable.
Neither promissory notes nor future services shall constitute payment or part payment for the issuance of shares of a corporation.

In the absence of fraud in the transaction, the judgment of the board of directors or the shareholders, as the case may be, as to the value of the consideration received for shares shall be conclusive.

§31-1-83. Rights of corporation to acquire and dispose of its own shares.

Subject to the provisions of chapter thirty-one-a of this code and unless otherwise prohibited by law, a corporation shall have the right to purchase, take, receive or otherwise acquire, hold, own, pledge, transfer or otherwise dispose of its own shares, but purchases of its own shares, whether direct or indirect, shall be made only to the extent of unreserved and unrestricted earned surplus available therefor, and, if the articles of incorporation so permit or with the affirmative vote of the holders of a majority of all shares entitled to vote thereon, to the extent of unreserved and unrestricted capital surplus available therefor.

To the extent that earned surplus or capital surplus is used as the measure of the corporation's right to purchase its own shares, such surplus shall be restricted so long as such shares are held as treasury shares, and upon the disposition or cancellation of any such shares the restriction shall be removed pro tanto.

Notwithstanding the foregoing limitation, a corporation may purchase or otherwise acquire its own shares for the purpose of:

(a) Eliminating fractional shares.

(b) Collecting or compromising indebtedness to the corporation.

(c) Paying dissenting shareholders entitled to payment for their shares under the provisions of this article.

(d) Effecting, subject to the other provisions of this article, the retirement of its redeemable shares by re-
demption or by purchase at not to exceed the redemp-

tion price.

No purchase of or payment for its own shares shall be
made at a time when the corporation is insolvent or when
such purchase or payment would make it insolvent.

§31-1-84. Stock rights and options.

Subject to the provisions of section ninety of this
article and further subject to any provisions in respect
thereof set forth in its articles of incorporation, a corpo-
ration may create and issue, whether or not in connec-
tion with the issuance and sale of any of its shares or
other securities, rights or options entitling the holders
to purchase from the corporation shares of any
class or classes. Such rights or options shall be evi-
denced in such manner as the board of directors shall
approve and, subject to the provisions of the articles
of incorporation, shall set forth the terms upon which,
the time or times within which and the price or prices
at which such shares may be purchased from the corpo-
ration upon the exercise of any such right or option.

If such rights or options are to be issued to directors,
officers or employees as such of the corporation or of
any subsidiary thereof, and not to the shareholders
generally, their issuance shall be approved by the affirma-
tive vote of the holders of a majority of the shares
entitled to vote such a vote of shareholders. In the
absence of fraud in the transaction, the judgment of
the board of directors as to the adequacy of the consid-
eration received for such rights or options shall be
conclusive. The price or prices to be received for any
shares having a par value, other than treasury shares
to be issued upon the exercise of such rights or options,
shall not be less than the par value thereof.

§31-1-85. Determination of amount of stated capital.

In case of the issuance by a corporation of shares hav-
ing a par value, the consideration received therefor
shall constitute stated capital to the extent of the par
value of such shares, and the excess, if any, of such
consideration shall constitute capital surplus.
In case of the issuance by a corporation of shares without par value, the entire consideration received therefor shall constitute stated capital unless the corporation shall determine as provided in this section that only a part thereof shall be stated capital. Within a period of sixty days after the issuance of any shares without par value, the board of directors may allocate to capital surplus any portion of the consideration received for the issuance of such shares. No such allocation shall be made of any portion of the consideration received for shares without par value having a preference in the assets of the corporation in the event of involuntary liquidation except the amount, if any, of such consideration in excess of such preference.

If shares have been or shall be issued by a corporation in merger or consolidation or in acquisition of all or substantially all of the outstanding shares or of the property and assets of another corporation, whether domestic or foreign, any amount that would otherwise constitute capital surplus under the foregoing provisions of this section may instead be allocated to earned surplus by the board of directors of the issuing corporation except that its aggregate earned surplus shall not exceed the sum of the earned surpluses as defined in this article of the issuing corporation and all other corporations, domestic or foreign, which were merged or consolidated or of which the shares or assets were acquired.

The stated capital of a corporation may be increased from time to time by resolution of the board of directors directing that all or a part of the surplus of the corporation be transferred to stated capital. The board of directors may direct that the amount of the surplus so transferred shall be deemed to be stated capital in respect of any designated class of shares.

§31-1-86. Expenses of organization, reorganization and financing.

The reasonable charges and expenses of organization or reorganization of a corporation, and the reasonable expenses of and compensation for the sale or underwrit-
ing of its shares, may be paid or allowed by such corpo-
ration out of the consideration received by it in pay-
ment for its shares without thereby rendering such
shares not fully paid or accessible.

§31-1-87. Certificates representing shares.

The shares of a corporation shall be represented by
certificates signed by the president or a vice president
and the secretary or an assistant secretary of the cor-
poration, and may be sealed with the seal of the cor-
poration or a facsimile thereof. The signatures of the
president or vice president and the secretary or assistant
secretary upon a certificate may be facsimiles if the
certificate is manually signed on behalf of a transfer
agent or a registrar, other than the corporation itself or
an employee of the corporation. In case any officer who
has signed or whose facsimile signature has been placed
upon such certificate shall have ceased to be such officer
before such certificate is issued, it may be issued by the
corporation with the same effect as if he were such
officer at the date of its issue.

Every certificate representing shares issued by a cor-
poration which is authorized to issue shares of more
than one class shall set forth upon the face or back of
the certificate, or shall state that the corporation will
furnish to any shareholder upon request and without
charge, a full statement of the designations, preferences,
limitations, and relative rights of the shares of each class
authorized to be issued, and if the corporation is autho-
rized to issue any preferred or special class in series, the
variations in the relative rights and preferences between
the shares of each such series so far as the same have
been fixed and determined and the authority of the
board of directors to fix and determine the relative
rights and preferences of subsequent series.

Each certificate representing shares shall state upon
the face thereof:

(a) That the corporation is organized under the laws
of this state.

(b) The name of the person to whom issued.
(c) The number and class of shares, and the designation of the series, if any, which such certificate represents.

(d) The par value of each share represented by such certificate, or a statement that the shares are without par value.

No certificate shall be issued for any share until such share is fully paid.

§31-1-88. Fractional shares.

A corporation may (1) issue fractions of a share, (2) arrange for the disposition of fractional interests by those entitled thereto, (3) pay in cash the fair value of fractions of a share as of the time when those entitled to receive such fractions are determined, or (4) issue scrip in registered or bearer form which shall entitle the holder to receive a certificate for a full share upon the surrender of such scrip aggregating a full share. A certificate for a fractional share shall, but scrip shall not unless otherwise provided therein, entitle the holder to exercise voting rights, to receive dividends thereon, and to participate in any of the assets of the corporation in the event of liquidation. The board of directors may cause scrip to be issued subject to the condition that it shall become void if not exchanged for certificates representing full shares before a specified date, or subject to the condition that the shares for which scrip is exchangeable may be sold by the corporation and the proceeds thereof distributed to the holders of scrip, or subject to any other conditions which the board of directors may deem advisable.

§31-1-89. Liability of subscribers and shareholders.

A holder of or subscriber to shares of a corporation shall be under no obligation to the corporation or its creditors with respect to such shares other than the obligation to pay to the corporation the full consideration for which such shares were issued or to be issued.

Any person becoming an assignee or transferee of 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-
termination of shareholders, is to be taken. If the stock
transfer books are not closed and no record date is fixed
for the determination of shareholders entitled to notice
of or to vote at a meeting of shareholders, or shareholders
entitled to receive payment of a dividend, the date on
which notice of the meeting is mailed or the date on
which the resolution of the board of directors declaring
such dividend is adopted, as the case may be, shall be
the record date for such determination of shareholders.
When a determination of shareholders entitled to vote
at any meeting of shareholders has been made as pro-
vided in this section, such determination shall apply to
any adjournment thereof.


The officer or agent having charge of the stock trans-
fer books for shares of a corporation shall make a com-
plete record of the shareholders entitled to vote at such
meeting or any adjournment thereof, arranged in alpha-
etical order, with the address of and the number of
shares held by each. Such record shall be produced and
kept open at the time and place of the meeting and shall
be subject to the inspection of any shareholder during
the whole time of the meeting for the purposes thereof.

Failure to comply with the requirements of this
section shall not affect the validity of any action taken
at such meeting.

An officer or agent having charge of the stock transfer
books who shall fail to prepare the record of share-
holders, or produce and keep it open for inspection at the
meeting, as provided in this section, shall be liable to
any shareholder suffering damage on account of such
failure, to the extent of such damage.

§31-1-93. Voting of shares.

Each outstanding share, regardless of class, shall be
entitled to one vote on each matter submitted to a vote
at a meeting of shareholders except as may be otherwise
provided in the articles of incorporation. If the articles
of incorporation provide for more or less than one vote
for any share, on any matter, every reference in this article to a majority or other proportion of shares shall refer to such a majority or other proportion of votes entitled to be cast.

Neither treasury shares, nor shares held by another corporation if a majority of the shares entitled to vote for the election of directors of such other corporation is held by the corporation, shall be voted at any meeting or counted in determining the total number of outstanding shares at any given time.

A shareholder may vote either in person or by proxy executed in writing by the shareholder or by his duly authorized attorney-in-fact. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy.

At each election for directors every shareholder entitled to vote at such election shall have the right to vote, in person or by proxy, the number of shares owned by him for as many persons as there are directors to be elected and for whose election he has a right to vote, or to cumulate his votes by giving one candidate as many votes as the number of such directors multiplied by the number of his shares shall equal, or by distributing such votes on the same principle among any number of such candidates.

Shares standing in the name of another corporation, domestic or foreign, may be voted by such officer, agent or proxy as the bylaws of such other corporation may prescribe, or, in the absence of such provision, as the board of directors of such other corporation may determine.

Shares held by an administrator, executor, guardian, committee, curator or conservator may be voted by him, either in person or by proxy, without a transfer of such shares into his name. Shares standing in the name of a trustee may be voted by him, either in person or by proxy, but no trustee shall be entitled to vote shares held by him without a transfer of such shares into his name.
Shares standing in the name of a receiver may be voted by such receiver, and shares held by or under the control of a receiver may be voted by such receiver without the transfer thereof into his name if authority so to do be contained in an appropriate order of the court by which such receiver was appointed.

A shareholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred.

On and after the date on which written notice of redemption of redeemable shares has been mailed to the holders thereof and a sum sufficient to redeem such shares has been deposited with a bank or trust company with irrevocable instruction and authority to pay the redemption price to the holders thereof upon surrender of certificates therefor, such shares shall not be entitled to vote on any matter and shall not be deemed to be outstanding shares.

§31-1-94. Voting trusts and agreements among shareholders.

Any number of shareholders of a corporation may create a voting trust for the purpose of conferring upon a trustee or trustees the right to vote or otherwise represent their shares, for a period of not to exceed ten years, by entering into a written voting trust agreement specifying the terms and conditions of the voting trust, by depositing a counterpart of the agreement with the corporation at its principal office, and by transferring their shares to such trustee or trustees for the purposes of the agreement. Such trustee or trustees shall keep a record of the holders of voting trust certificates evidencing a beneficial interest in the voting trust, giving the names and addresses of all such holders and the number and class of the shares in respect of which the voting trust certificates held by each are issued, and shall deposit a copy of such record with the corporation at its principal office. The counterpart of the voting 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,
by a vote of the holders of a majority of the shares then
entitled to vote at an election of directors.

If less than the entire board is to be removed, no one
of the directors may be removed if the votes cast against
his removal would be sufficient to elect him.

Whenever the holders of the shares of any class are
entitled to elect one or more directors by the provisions
of the articles of incorporation, the provisions of this
section shall apply, in respect to the removal of a direc-
tor or directors so elected, to the vote of the holders of
the outstanding shares of that class and not to the vote
of the outstanding shares as a whole.

§31-1-97. Director conflicts of interest.

(a) No contract or other transaction between a cor-
poration and one or more of its directors or any other
corporation, firm, association or entity in which one or
more of its directors are directors or officers or are finan-
cially interested, shall be either void or voidable because
of such relationship or interest or because such director
or directors are present at the meeting of the board of
directors or a committee thereof which authorizes, ap-
proves or ratifies such contract or transaction or because
his or their votes are counted for such purpose, if:

(1) The fact of such relationship or interest is dis-
closed or known to the board of directors or committee
which authorizes, approves or ratifies the contract or
transaction by a vote or consent sufficient for the purpose
without counting the votes or consents of such interested
directors; or

(2) The fact of such relationship or interest is dis-
closed or known to the shareholders entitled to vote and
they authorize, approve or ratify such contract or trans-
action by vote or written consent; or

(3) The contract or transaction is fair and reasonable
to the corporation.

(b) Common or interested directors may be counted
in determining the presence of a quorum at a meeting
of the board of directors or a committee thereof which
authorizes, approves or ratifies such contract or trans-
action.

(c) On any question involving the authorization, 
approval or ratification of any such contract or trans-
action, the names of those voting each way shall be 
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, 
the board of directors, by resolution adopted by a ma-
jority of the full board of directors, may designate from 
among its members an executive committee and one or 
more other committees each of which, to the extent 
provided in such resolution or in the articles of incor-
poration or the bylaws of the corporation, shall have and 
may exercise all the authority of the board of directors, 
but no such committee shall have the authority of the 
board of directors in reference to amending the articles 
of incorporation, adopting a plan of merger or consoli-
dation, recommending to the shareholders the sale, lease, 
exchange or other disposition of all or substantially all 
the property and assets of the corporation otherwise 
than in the usual and regular course of its business, 
recommending to the shareholders a voluntary dissolu-
tion of the corporation or a revocation thereof, or amend-
ing the bylaws of the corporation. The designation of 
any such committee and the delegation thereto of au-
thority shall not operate to relieve the board of directors, 
or any member thereof, of any responsibility imposed 
by law.

§31-1-99. Dividends.
1 The board of directors of a corporation may, from time 
to time, declare and the corporation may pay dividends 
in cash, property, or its own shares, except when the 
corporation is insolvent or when the payment thereof 
would render the corporation insolvent or when the 
declaration or payment thereof would be contrary to any 
restriction contained in the articles of incorporation, sub-
ject to the following provisions:
(a) Dividends may be declared and paid in cash or property only out of the unreserved and unrestricted earned surplus of the corporation, except as otherwise provided in this section.

(b) If the articles of incorporation of a corporation engaged in the business of exploiting natural resources so provide, dividends may be declared and paid in cash out of the depletion reserves, but each such dividend shall be identified as a distribution of such reserves and the amount per share paid from such reserves shall be disclosed to the shareholders receiving the same concurrently with the distribution thereof.

(c) Dividends may be declared and paid in its own treasury shares.

(d) Dividends may be declared and paid in its own authorized but unissued shares out of any unreserved and unrestricted surplus of the corporation upon the following conditions:

(1) If a dividend is payable in its own shares having a par value, such shares shall be issued at not less than the par value thereof and there shall be transferred to stated capital at the time such dividend is paid an amount of surplus equal to the aggregate par value of the shares to be issued as a dividend.

(2) If a dividend is payable in its own shares without par value, such shares shall be issued at such stated value as shall be fixed by the board of directors by resolution adopted at the time such dividend is declared, and there shall be transferred to stated capital at the time such dividend is paid an amount of surplus equal to the aggregate stated value so fixed in respect of such shares; and the amount per share so transferred to stated capital shall be disclosed to the shareholders receiving such dividend concurrently with the payment thereof.

(e) No dividend payable in shares of any class shall be paid to the holders of shares of any other class unless the articles of incorporation so provide or such payment is authorized by the affirmative vote or the written con-
sent of the holders of at least a majority of the outstanding shares of the class in which the payment is to be made.

A split-up or division of the issued shares of any class into a greater number of shares of the same class without increasing the stated capital of the corporation shall not be construed to be a share dividend within the meaning of this section.

§31-1-100. Distribution from capital surplus.

The board of directors of a corporation may, from time to time, distribute to its shareholders out of capital surplus of the corporation a portion of its assets, in cash or property, subject to the following provisions:

(a) No such distribution shall be made at a time when the corporation is insolvent or when such distribution would render the corporation insolvent.

(b) No such distribution shall be made unless the articles of incorporation so provide or such distribution is authorized by the affirmative vote of the holders of a majority of the outstanding shares of each class whether or not entitled to vote thereon by the provisions of the articles of incorporation of the corporation.

(c) No such distribution shall be made to the holders of any class of shares unless all cumulative dividends accrued on all preferred or special classes of shares entitled to preferential dividends shall have been fully paid.

(d) No such distribution shall be made to the holders of any class of shares which would reduce the remaining net assets of the corporation below the aggregate preferential amount payable in event of involuntary liquidation to the holders of shares having preferential rights to the assets of the corporation in the event of liquidation.

(e) Each such distribution, when made, shall be identified as a distribution from capital surplus and the amount per share disclosed to the shareholders receiving the same concurrently with the distribution thereof.
The board of directors of a corporation may also, from time to time, distribute to the holders of its outstanding shares having a cumulative preferential right to receive dividends, in discharge of their cumulative dividend rights, dividends payable in cash out of the capital surplus of the corporation, if at the time the corporation has no earned surplus and is not insolvent and would not thereby be rendered insolvent. Each such distribution when made, shall be identified as a payment of 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 to assist its directors without authorization in the particular case by its shareholders, but may lend money to and use its credit to assist any employee of the corporation or of a subsidiary, including any such employee who is a director of the corporation, if the board of directors decides that such loan or assistance may benefit the corporation.

§31-1-102. Liability of directors in certain cases.

1. In addition to any other liabilities imposed by law upon directors of a corporation:

(a) Directors of a corporation who vote for or assent to the declaration of any dividend or other distribution of the assets of a corporation to its shareholders contrary to the provisions of this article or contrary to any restrictions contained in the articles of incorporation, shall be jointly and severally liable to the corporation for the amount of such dividend which is paid or the value of such assets which are distributed in excess of the amount of such dividend or distribution which could have been paid or distributed without a violation of the provisions of this article or the restrictions in the articles of incorporation.

(b) Directors of a corporation who vote for or assent to the purchase of its own shares contrary to the provisions of this article shall be jointly and severally liable to the corporation for the amount of consideration paid
for such shares which is in excess of the maximum amount which could have been paid therefor without a violation of the provisions of this article.

(c) The directors of a corporation who vote for or assent to any distribution of assets of a corporation to its shareholders during the liquidation of the corporation without the payment and discharge of, or making adequate provision for, all known debts, obligations and liabilities of the corporation shall be jointly and severally liable to the corporation for the value of such assets which are distributed, to the extent that such debts, obligations and liabilities of the corporation are not thereafter paid and discharged.

A director of a corporation who is present at a meeting of its board of directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered or certified mail, return receipt requested, to the secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

A director shall not be liable under subdivision (a), (b) or (c) of this section if he relied and acted in good faith upon financial statements of the corporation represented to him to be correct by the president or the officer of such corporation having charge of its books of account, or stated in a written report by an independent public or certified public accountant or firm of such accountants fairly to reflect the financial condition of such corporation, nor shall he be so liable if in good faith in determining the amount available for any such dividend or distribution he considered the assets to be of their book value.

Any director against whom a claim shall be asserted under or pursuant to this section for the payment of a dividend or other distribution of assets of a corporation
and who shall be held liable thereon, shall be entitled to contribution from the shareholders who accepted or received any such dividend or assets, knowing such dividend or distribution to have been made in violation of this article, in proportion to the amounts received by them.

Any director against whom a claim shall be asserted under or pursuant to this section shall be entitled to contribution from the other directors who voted for or assented to the action upon which the claim is asserted.

§31-1-103. Provisions relating to actions by shareholders.

No action shall be brought in this state by a shareholder in the right of a domestic or foreign corporation unless the plaintiff was a holder of record of shares or of voting trust certificates therefor at the time of the transaction of which he complains, or his shares or voting trust certificates thereafter devolved upon him by operation of law from a person who was a holder of record at such time.

In any action hereafter instituted in the right of any domestic or foreign corporation by the holder or holders of record of shares of such corporation or of voting trust certificates therefor, the court having jurisdiction, upon final judgment and a finding that the action was brought without reasonable cause, may require the plaintiff or plaintiffs to pay to the parties named as defendant the reasonable expenses, including fees of attorneys, incurred by them in the defense of such action.

In any action now pending or hereafter instituted or maintained in the right of any domestic or foreign corporation by the holder or holders of record of less than five percent of the outstanding shares of any class of such corporation or of voting trust certificates therefor, unless the shares or voting trust certificates so held have a market value in excess of twenty-five thousand dollars, the corporation in whose right such action is brought shall be entitled at any time before final judgment to require the plaintiff or plaintiffs to give security for the 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 and records of account and shall keep minutes of the proceedings of its shareholders and board of directors and shall keep at its principal office, or at the office of its transfer agent or registrar, a record of its shareholders, giving the names and addresses of all shareholders and the number and class of the shares held by each. Any books, records and minutes may be in written form or in any other form capable of being converted into written form within a reasonable time.

2 Any person who shall have been a holder of record of shares or of voting trust certificates therefor at least six months immediately preceding his demand or shall be the holder of record of, or the holder of record of voting trust certificates for, at least five percent of all the outstanding shares of the corporation, upon written demand stating the purpose thereof, shall have the right to examine, in person, or by agent or attorney, at any reasonable time or times, for any proper purpose, its relevant books and records of accounts, minutes, and record of shareholders and to make extracts therefrom.

3 Any officer or agent who, or a corporation which, shall refuse to allow any such shareholder or holder of voting trust certificates, or his agent or attorney, so to examine and make extracts from its books and records of account, minutes and record of shareholders, for any proper purpose, shall be liable to such shareholder or holder of voting trust certificates in a penalty of ten percent of the value of the shares owned by such shareholder, or in respect of which such voting trust certificates are issued, in addition to any other damages or remedy afforded him by law. It shall be a defense to any action for penalties under this section that the person suing therefor has within two years sold or offered for sale any list of shareholders or of holders of voting trust certificates for shares of such corporation or any other corporation or has aided or abetted any person in procuring any list of shareholders or of holders of voting trust certificates for any such purpose, or has
improperly used any information secured through any
prior examination of the books and records of account,
or minutes, or record of shareholders or of holders of
voting trust certificates for shares of such corporation
or any other corporation, or was not acting in good faith
or for a proper purpose in making his demand.

Nothing herein contained shall impair the power of
any court of competent jurisdiction, upon proof by a
shareholder or holder of voting trust certificates of proper
purpose, irrespective of the period of time during which
such shareholder or holder of voting trust certificates
shall have been a shareholder of record or a holder of
record of voting trust certificates, and irrespective of
the number of shares held by him or represented by vot-
ing trust certificates held by him, to compel the production
for examination by such shareholder or holder of voting
trust certificates of the books and records of account,
minutes and record of shareholders of a corporation.

Upon the written request of any shareholder or holder
of voting trust certificates for shares of a corporation,
the corporation shall mail to such shareholder or holder
of voting trust certificates its most recent financial state-
ments showing in reasonable detail its assets and liabili-
ties and the results of its operations.

§31-1-106. Right to amend articles of incorporation.

A corporation may amend its articles of incorpora-
tion, from time to time, in any and as many respects
as may be desired, so long as its articles of incorporation
as amended contain only such provisions as might be
lawfully contained in original articles of incorporation
at the time of making such amendment, and, if a change
in shares or the rights of shareholders, or an exchange,
reclassification or cancellation of shares or rights of share-
holders is to be made, such provisions as may be neces-
sary to effect such change, exchange, reclassification or
cancellation.

In particular, and without limitation upon such
general power of amendment, a corporation may
amend its articles of incorporation from time to

time, so as:

(a) To change its corporate name.

(b) To change its period of duration.

(c) To change, enlarge or diminish its corporate pur-

poses.

(d) To increase or decrease the aggregate number

of shares, or shares of any class, which the corporation

has authority to issue.

(e) To increase or decrease the par value of the

authorized shares of any class having a par value, whether

issued or unissued.

(f) To exchange, classify, reclassify or cancel all

or any part of its shares, whether issued or un-

issued.

(g) To change the designation of all or any part of

its shares, whether issued or unissued, and to change

the preferences, limitations, and the relative rights in

respect of all or any part of its shares, whether issued

or unissued.

(h) To change shares having par value, whether

issued or unissued, into the same or a different number

of shares without par value, and to change shares with-

out par value, whether issued or unissued, into the same

or a different number of shares having a par value.

(i) To change the shares of any class, whether issued

or unissued, and whether with or without par value,

into a different number of shares of the same class or

into the same or a different number of shares, either

with or without par value, of other classes.

(j) To create new classes of shares having rights and

preferences either prior and superior or subordinate

and inferior to the shares of any class then authorized,

whether issued or unissued.

(k) To cancel or otherwise affect the right of the

holders of the shares of any class to receive dividends

which have accrued but have not been declared.
(l) To divide any preferred or special class of shares, whether issued or unissued, into series and fix and determine the designation of such series and the variations in the relative rights and preferences as between the shares of such series.

(m) To authorize the board of directors to establish, out of authorized but unissued shares, series of any preferred or special class of shares and fix and determine the relative rights and preferences of the shares of any series so established.

(n) To authorize the board of directors to fix and determine the relative rights and preferences of the authorized but unissued shares of series theretofore established in respect of which either the relative rights and preferences have not been fixed and determined or the relative rights and preferences theretofore fixed and determined are to be changed.

(o) To revoke, diminish, or enlarge the authority of the board of directors to establish series out of authorized but unissued shares of any preferred or special class and fix and determine the relative rights and preferences of the shares of any series so established.

§31-1-107. Procedure to amend articles of incorporation.

Amendments to the articles of incorporation shall be made in the following manner:

(a) The board of directors shall adopt a resolution setting forth the proposed amendment and, if shares have been issued, directing that it be submitted to a vote at a meeting of shareholders, which may be either the annual or a special meeting. If no shares have been issued, the amendment shall be adopted by resolution of the board of directors and the provisions for adoption by shareholders shall not apply. The resolution may incorporate the proposed amendment in restated articles of incorporation which contain a statement that except for the designated amendment the restated articles of incorporation correctly set forth without change the corresponding provisions of the articles of incorporation as theretofore amended, and that the re-
stated articles of incorporation together with the designated amendment supersede the original articles of incorporation and all amendments thereto.

(b) Written notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each shareholder of record entitled to vote thereon within the time and in the manner provided in this article for the giving of notice of meetings of shareholders. If the meeting be an annual meeting, the proposed amendment or such summary may be included in the notice of such annual meeting.

(c) At such meeting a vote of the shareholders entitled to vote thereon shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event the proposed amendment shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon.

Any number of amendments may be submitted to the shareholders, and voted upon by them, at one meeting.

§31-1-108. Class voting on amendments.

The holders of the outstanding shares of a class shall be entitled to vote as a class upon a proposed amendment, whether or not entitled to vote thereon by the provisions of the articles of incorporation, if the amendment would:

(a) Increase or decrease the aggregate number of authorized shares of such class.

(b) Increase or decrease the par value of the shares of such class.

(c) Effect an exchange, reclassification or cancellation of all or part of the shares of such class.

(d) Effect an exchange, or create a right of exchange,
of all or any part of the shares of another class into the shares of such class.

(e) Change the designations, preferences, limitations or relative rights of the shares of such class.

(f) Change the shares of such class, whether with or without par value, into the same or a different number of shares, either with or without par value, of the same class or another class or classes.

(g) Create a new class of shares having rights and preferences prior and superior to the shares of such class, or increase the rights and preferences or the number of authorized shares, of any class having rights and preferences prior or superior to the shares of such class.

(h) In the case of a preferred or special class of shares, divide the shares of such class into series and fix and determine the designation of such series and the variations in the relative rights and preferences between the shares of such series, or authorize the board of directors to do so.

(i) Cancel or otherwise affect dividends on the shares of such class which have accrued but have not been declared.

§31-1-109. Articles of amendment.

The articles of amendment shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary and verified by one of the officers signing such articles, and shall set forth:

(a) The name of the corporation.

(b) The amendments so adopted.

(c) The date of the adoption of the amendment by the shareholders, or by the board of directors where no shares have been issued.

(d) The number of shares outstanding, and the number of shares entitled to vote thereon, and if the shares of any class are entitled to vote thereon as a class, the designation and number of outstanding shares entitled to vote 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 reor-
ganization proceedings; contents; purposes; pro-
cedure for filing; issuance; recordation; admission
in evidence.

1 (a) Whenever a plan of reorganization of a corpora-
tion has been confirmed by order of a court of competent jurisdiction in proceedings for the reorganization of such corporations, pursuant to the provisions of any applicable statute of the United States relating to reorganizations of corporations, the articles of incorporation of the corporation may be amended, in the manner provided in this section, in as many respects as may be necessary to carry out the plan and put it into effect, so long as the articles of incorporation as amended contain only such provisions as might be lawfully contained in original articles of incorporation at the time of making such amendment.

(b) In particular and without limitation upon such general power of amendment, the articles of incorporation may be amended for such purpose so as to:

1. Change the corporate name, period of duration or corporate purposes of the corporation;
2. Repeal, alter or amend the bylaws of the corporation;
3. Change the aggregate number of shares or shares of any class which the corporation has authority to issue;
4. Change the preferences, limitations and relative rights in respect of all or any part of the shares of the corporation, and classify, reclassify or cancel all or any part thereof, whether issued or unissued;
5. Authorize the issuance of bonds, debentures or other obligations of the corporation, whether or not convertible into shares of any class or bearing warrants or other evidences of optional rights to purchase or subscribe for shares of any class, and fix the terms and conditions thereof; and
6. Constitute or reconstitute and classify or reclassify the board of directors of the corporation, and appoint directors and officers in place of or in addition to all or any of the directors or officers then in office.
(c) Amendments to the articles of incorporation pursuant to this section shall be made in the following manner:

(1) Articles of amendment approved by order of such court shall be executed and verified in duplicate by such person or persons as the court shall designate or appoint for the purpose, and shall set forth the name of the corporation, the amendments of the articles of incorporation approved by the court, the date of the order approving the articles of amendment, the title of the proceedings in which the order was entered, and a statement that such order was entered by a court having jurisdiction of the proceedings for the reorganization of the corporation pursuant to the provisions of an applicable statute of the United States.

(2) Duplicate originals of the articles of amendments shall be delivered to the secretary of state. If the secretary of state finds that the articles of amendment conform to law he shall, when all fees have been paid as prescribed by law, (i) endorse on each of such duplicate originals the word "Filed," and the month, day and year of the filing thereof; (ii) file one of such duplicate originals in his office; and (iii) issue a certificate of amendment to which he shall affix the other duplicate original.

The certificate of amendment, together with the duplicate original of the articles of amendment affixed thereto by the secretary of state, shall be returned to the corporation or its representative.

Upon the issuance of the certificate of amendment by the secretary of state, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly, without any action thereon by the directors or shareholders of the corporation and with the same effect as if the amendments had been adopted by unanimous action of the directors and shareholders of the corporation.

(d) The certificate of amendment issued by the
secretary of state pursuant to this section, or a certified copy thereof, shall be recorded in the office of the appropriate county clerk in the same manner as original certificates of incorporation are required to be recorded, in accordance with the provisions of subsection (b) of section twenty-eight of this article and received in evidence to the same extent as an original certificate of incorporation or a certified copy of such original.

§31-1-112. Restriction on redemption or purchase of redeemable shares.

No redemption or purchase of redeemable shares shall be made by a corporation when it is insolvent or when such redemption or purchase would render it insolvent, or which would reduce the net assets below the aggregate amount payable to the holders of shares having prior or equal rights to the assets of the corporation upon involuntary dissolution.

§31-1-113. Cancellation of redeemable shares by redemption or purchase; statement of cancellation; contents; filing.

(a) When redeemable shares of a corporation are redeemed or purchased by the corporation, the redemption or purchase shall effect a cancellation of such shares, and a statement of cancellation shall be filed as provided in this section. Thereupon such shares shall be restored to the status of authorized but unissued shares, unless the articles of incorporation provide that such shares when redeemed or purchased shall not be reissued, in which case the filing of the statement of cancellation shall constitute an amendment to the articles of incorporation and shall reduce the number of shares of the class so cancelled which the corporation is authorized to issue by the number of shares so cancelled.

(b) The statement of cancellation shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, and shall set forth:
19 (1) The name of the corporation.

20 (2) The number of redeemable shares cancelled through redemption or purchase, itemized by classes and series.

23 (3) The aggregate number of issued shares, itemized by classes and series, after giving effect to such cancellation.

26 (4) The amount, expressed in dollars, of the stated capital of the corporation after giving effect to such cancellation.

29 (5) If the articles of incorporation provide that the cancelled shares shall not be reissued, the number of shares which the corporation will have authority to issue itemized by classes and series, after giving effect to such cancellation.

34 (c) Duplicate originals of such statement shall be delivered to the secretary of state. If the secretary of state finds that such statement conforms to law, he shall, when all fees have been paid as prescribed by law, (i) endorse on each of such duplicate originals the word "Filed," and the month, day and year of the filing thereof; (ii) file one of such duplicate originals in his office; and (iii) return the other duplicate original to the corporation or its representative.

Upon the filing of such statement of cancellation, the stated capital of the corporation shall be deemed to be reduced by that part of the stated capital which was, at the time of such cancellation, represented by the shares so cancelled.

(d) Nothing contained in this section shall be construed to forbid a cancellation of shares or a reduction of stated capital in any other manner permitted by this 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
its board of directors, cancel all or any part of the shares
of the corporation of any class reacquired by it, other
than redeemable shares redeemed or purchased, and in
such event a statement of cancellation shall be filed as
provided in this section.

(b) The statement of cancellation shall be executed
in duplicate by the corporation by its president or a vice
president and by its secretary or an assistant secretary,
and verified by one of the officers signing such state-
ment, and shall set forth:

(1) The name of the corporation.

(2) The number of reacquired shares cancelled by
resolution duly adopted by the board of directors, item-
ized by classes and series, and the date of its adop-
tion.

(3) The aggregate number of issued shares, itemized
by classes and series, after giving effect to such can-
cellation.

(4) The amount, expressed in dollars, of the stated
capital of the corporation after giving effect to such
cancellation.

(c) Duplicate originals of such statement shall be
delivered to the secretary of state. If the secretary of
state finds that such statement conforms to law, he shall,
when all fees have been paid as prescribed by law, (i)
endorse on each of such duplicate originals the word
"Filed," and the month, day and year of the filing there-
of; (ii) file one of such duplicate originals in his office;
and (iii) return the other duplicate original to the cor-
poration or its representative.

Upon the filing of such statement of cancellation, the
stated capital of the corporation shall be deemed to be
reduced by that part of the stated capital which was,
at the time of such cancellation, represented by the
shares so cancelled, and the shares so cancelled shall be
restored to the status of authorized but unissued shares.

(d) Nothing contained in this section shall be con-
strued to forbid a cancellation of shares or a reduction
of stated capital in any other manner permitted by this
article.

§31-1-115. Reduction of stated capital without amendment of
articles or cancellation of shares; statement re-
quired to be filed and its contents; limitations.

(a) A reduction of the stated capital of a corpora-
tion, where such reduction is not accompanied by any
action requiring an amendment of the articles of incor-
poration and not accompanied by a cancellation of shares,
may be made in the following manner:

(1) The board of directors shall adopt a resolution
setting forth the amount of the proposed reduction and
the manner in which the reduction shall be effected, and
directing that the question of such reduction be sub-
mitted to a vote at a meeting of shareholders, which may
be either an annual or a special meeting.

(2) Written notice, stating that the purpose or one
of the purposes of such meeting is to consider the ques-
tion of reducing the stated capital of the corporation in
the amount and manner proposed by the board of direc-
tors, shall be given to each shareholder of record entitled
to vote thereon within the time and in the manner pro-
vided in this article for the giving of notice of meetings
of shareholders.

(3) At such meeting a vote of the shareholders en-
titled to vote thereon shall be taken on the question of
approving the proposed reduction of stated capital, which
shall require for its adoption the affirmative vote of the
holders of a majority of the shares entitled to vote
thereon.

(b) When a reduction of the stated capital of a cor-
poration has been approved as provided in subsection
(a) of this section, a statement shall be executed in
duplicate by the corporation by its president or a vice
president and by its secretary or an assistant secretary,
and verified by one of the officers signing such statement,
and shall set forth:
(1) The name of the corporation.

(2) A copy of the resolution of the shareholders approving such reduction, and the date of its adoption.

(3) The number of shares outstanding, and the number of shares entitled to vote thereon.

(4) The number of shares voted for and against such reduction, respectively.

(5) A statement of the manner in which such reduction is effected and a statement expressed in dollars, of the amount of stated capital of the corporation after giving effect to such reduction.

(c) Duplicate originals of such statement shall be delivered to the secretary of state. If the secretary of state finds that such statement conforms to law, he shall, when all fees have been paid as prescribed by law, (i) endorse on each of such duplicate originals the word "Filed," and the month, day and year of the filing thereof; (ii) file one of such duplicate originals in his office; and (iii) return the other duplicate original to the corporation or its representative.

Upon the filing of such statement, the stated capital of the corporation shall be reduced as therein set forth.

(d) No reduction of stated capital shall be made under the provisions of this section which would reduce the amount of the aggregate stated capital of the corporation to an amount equal to or less than the aggregate preferential amounts payable upon all issued shares having a preferential right in the assets of the corporation in the event of involuntary liquidation, plus the aggregate par value of all issued shares having a par value but no preferential rights in the assets of the corporation in the event of involuntary liquidation.

$31-1-116. Special provisions relating to surplus and reserves.

The surplus, if any, created by or arising out of a reduction of the stated capital of a corporation shall
be capital surplus. The capital surplus of a corporation may be increased from time to time by a resolution of the board of directors directing that all or a part of the earned surplus of the corporation be transferred to capital surplus.

A corporation may, by resolution of its board of directors, apply any part or all of its capital surplus to the reduction or elimination of any deficit arising from losses, however incurred, but only after first eliminating the earned surplus, if any, of the corporation by applying such losses against earned surplus and only to the extent that such losses exceed the earned surplus, if any. Each such application of capital surplus shall, to the extent thereof, effect a reduction of capital surplus.

A corporation may, by resolution of its board of directors, create a reserve or reserves out of its earned surplus for any proper purpose or purposes, and may abolish any such reserve in the same manner. Earned surplus of the corporation to the extent so reserved shall not be available for the payment of dividends or other distributions by the corporation except as expressly permitted by this article.

§31-1-117. Merger or consolidation; approval by shareholders; abandonment.

The board of directors of each corporation intending to merge or consolidate with another corporation, upon approving such plan of merger or plan of consolidation, shall, by resolution, direct that the plan be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting. Written notice shall be given to each shareholder of record, whether or not entitled to vote at such meeting, not less than twenty days before such meeting, in the manner provided in this article for the giving of notice of meetings of shareholders, and, whether the meeting be an annual or a special meeting, shall state that the purpose or one of the purposes is to consider the proposed plan of merger or consolidation. A copy or a summary of the plan of
merger or plan of consolidation, as the case may be, shall be included in or enclosed with such notice.

At each such meeting, a vote of the shareholders shall be taken on the proposed plan of merger or consolidation. The plan of merger or consolidation shall be approved upon receiving the affirmative vote of the holders of a majority of the shares entitled to vote thereon of each such corporation, unless any class of shares of any such corporation is entitled to vote thereon as a class, in which event, as to such corporation, the plan of merger or consolidation shall be approved upon receiving the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon. Any class of shares of any such corporation shall be entitled to vote as a class if the plan of merger or consolidation, as the case may be, contains any provision which, if contained in a proposed amendment to articles of incorporation, would entitle such class of shares to vote as a class.

After such approval by a vote of the shareholders of each corporation, and at any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation.

§31-1-118. Contents required in articles of merger or consolidation.

Articles of merger or articles of consolidation shall, in addition to any other matters deemed appropriate, set forth:

(1) The plan of merger or the plan of consolidation.

(2) As to each corporation, the number of shares outstanding, and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each such class.

(3) As to each corporation, the number of shares 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; ar-
1   ticles of merger; recordation; admission in evi-
2   dence.
3   (a) Any corporation owning at least ninety percent
4   of the outstanding shares of each class of another corpor-
5   ation may merge such other corporation into itself with-
6   out approval by a vote of the shareholders of either
7   corporation. Its board of directors shall, by resolution,
8   approve a plan of merger setting forth (i) the name of
9   the subsidiary corporation and the name of the corpor-
10   ation owning at least ninety percent of its shares, which
11   is hereinafter designated as the surviving corporation;
12   and (ii) the manner and basis of converting the shares
13   of the subsidiary corporation into shares, obligations or
14   other securities of the surviving corporation or of any
15   other corporation or, in whole or in part, into cash or
16   other property. A copy of such plan of merger shall be
17   mailed to each shareholder of record of the subsidiary
18   corporation.
19   (b) Articles of merger shall be executed in duplicate
20   by the surviving corporation by its president or a vice
21   president and by its secretary or an assistant secretary,
22   and verified by one of its officers signing such articles,
23   and shall set forth:
24   (1) The plan of merger;
25   (2) The number of outstanding shares of each class
26   of the subsidiary corporation and the number of such
27   shares of each class owned by the surviving corporation;
28   and
29   (3) The date of the mailing to shareholders of the
30   subsidiary corporation of a copy of the plan of merger.
31   (c) On and after the thirtieth day after the mailing
32   of a copy of the plan of merger to shareholders of the
33   subsidiary corporation or upon the waiver thereof by
34   the holders of all outstanding shares, duplicate originals
of the articles of merger shall be delivered to the secre-
tary of state. If the secretary of state finds that such
articles conform to law, he shall, when all fees have been
paid as prescribed by law, (i) endorse on each of such
duplicate originals the word "Filed," and the month, day
and year of the filing thereof; (ii) file one of such dupli-
cate originals in his office; and (iii) issue a certificate of
merger to which he shall affix the other duplicate
original.

The certificate of merger, together with the duplicate
original of the articles of merger affixed thereto by the
secretary of state, shall be returned to the surviving
corporation or its representative.

(d) The certificate of merger, or certified copy thereof,
shall be recorded in the office of the appropriate county
clerk in the same manner as original certificates of in-
corporation are required to be recorded, in accordance
with the provisions of subsection (b) of section twenty-
eight of this article and received in evidence to the
same extent as an original certificate of incorporation
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,
or substantially all, the property and assets of a corpor-
ation in the usual and regular course of its business,
and the mortgage or pledge of any or all property and
assets of a corporation whether or not in the usual and
regular course of business, may be made upon such
terms and conditions and for such consideration, which
may consist in whole or in part of cash or other property,
including shares, obligations or other securities of any
other corporation, domestic or foreign, as shall be autho-
ized by its board of directors; and in any such case no
authorization or consent of the shareholders shall be
required.

§31-1-121. Sale of assets other than in regular course of busi-
ness.

1 A sale, lease, exchange or other disposition of all, or
substantially all, the property and assets, with or without the good will, of a corporation, if not in the usual and regular course of its business, may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of cash or other property, including shares, obligations or other securities of any other corporation, domestic or foreign, as may be authorized in the following manner:

(a) The board of directors shall adopt a resolution recommending such sale, lease, exchange or other disposition and directing the submission thereof to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(b) Written notice shall be given to each shareholder of record, whether or not entitled to vote at such meeting, not less than twenty days before such meeting, in the manner provided in this article for the giving of notice of meetings of shareholders, and, whether the meeting be an annual or a special meeting, shall state that the purpose, or one of the purposes is to consider the proposed sale, lease, exchange or other disposition.

(c) At such meeting the shareholders may authorize such sale, lease, exchange or other disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. Such authorization shall require the affirmative vote of the holders of a majority of the shares of the corporation entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event such authorization shall require the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote as a class thereon and of the total shares entitled to vote thereon.

(d) After such authorization by a vote of shareholders, the board of directors nevertheless, in its discretion, may abandon such sale, lease, exchange or other disposition of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by shareholders.
§31-1-122. Right of shareholders to dissent.

1 Any shareholder of a corporation shall have the right
to dissent from any of the following corporate actions:

3 (a) Any plan of merger or consolidation to which
the corporation is a party; or

(b) Any sale or exchange of all or substantially all
of the property and assets of the corporation not made
in the usual and regular course of its business, including
a sale in dissolution, but not including a sale pursuant
to an order of a court having jurisdiction in the premises
or a sale for cash on terms requiring that all or sub-
stantially all of the net proceeds of sale be distributed
to the shareholders in accordance with their respective
interests within one year after the date of sale.

A shareholder may dissent as to less than all of the
shares registered in his name. In that event, his rights
shall be determined as if the shares as to which he has
dissent ed and his other shares were registered in the
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; pro-
cedure for transferring of such shares to corpora-
tion and payment therefor.

(a) Any shareholder electing to exercise his right to
dissent, pursuant to section one hundred twenty-two of
this article, shall file with the corporation, prior to or
at the meeting of shareholders at which such proposed
corporate action is submitted to a vote, a written ob-
jection to such proposed corporate action. If such pro-
posed corporate action be approved by the required vote
and such shareholder shall not have voted in favor
thereof, such shareholder may, within ten days after
the date on which the vote was taken or if a corpora-
tion is to be merged without a vote of its shareholders
into another corporation, any of its shareholders may,
within fifteen days after the plan of such merger shall
have been mailed to such shareholders, make written
demand on the corporation, or, in the case of a merger or consolidation, on the surviving or new corporation, domestic or foreign, for payment of the fair value of such shareholder's shares, and, if such proposed corporate action is effected, such corporation shall pay to such shareholder, upon surrender of the certificate or certificates representing such shares, the fair value thereof as of the day prior to the date on which the vote was taken approving the proposed corporate action, excluding any appreciation or depreciation in anticipation of such corporate action. Any shareholder failing to make demand within the ten-day period shall be bound by the terms of the proposed corporate action. Any shareholder making such demand shall thereafter be entitled only to payment as in this section provided and shall not be entitled to vote or to exercise any other rights of a shareholder.

(b) No such demand may be withdrawn unless the corporation shall consent thereto. If, however, such demand shall be withdrawn upon consent, or if the proposed corporate action shall be abandoned or rescinded or the shareholders shall revoke the authority to effect such action, or if, in the case of a merger, on the date of the filing of the articles of merger the surviving corporation, is the owner of all the outstanding shares of the other corporations, domestic and foreign, that are parties to the merger, or if no demand or petition for the determination of fair value by a court of general civil jurisdiction have been made or filed within the time provided in subsection (e) of this section, or if a court of general civil jurisdiction shall determine that such shareholder is not entitled to the relief provided by this section, then the right of such shareholder to be paid the fair value of his shares shall cease and his status as a shareholder shall be restored, without prejudice to any corporate proceedings which may have been taken during the interim.

(c) Within ten days after such corporate action is effected, the corporation, or, in the case of a merger or consolidation, the surviving or new corporation, domestic
or foreign, shall give written notice thereof to each dissenting shareholder who has made demand as herein provided, and shall make a written offer to each shareholder to pay for such shares at a specified price deemed by such corporation to be fair value thereof. Such notice and offer shall be accompanied by a balance sheet of the corporation the shares of which the dissenting shareholder holds, as of the latest available date and not more than twelve months prior to the making of such offer, and a profit and loss statement of such corporation for the twelve months' period ended on the date of such balance sheet.

(d) If within thirty days after the date on which such corporate action is effected the fair value of such shares is agreed upon between any such dissenting shareholder and the corporation, payment therefor shall be made within ninety days after the date on which such corporate action was effected, upon surrender of the certificate or certificates representing such shares. Upon payment of the agreed value the dissenting shareholder shall cease to have any interest in such shares.

(e) If within such period of thirty days, a dissenting shareholder and the corporation do not so agree, then the corporation shall within thirty days after receipt of written demand from any dissenting shareholder, which written demand must be given within sixty days after the date on which such corporate action was effected, file a complaint in a court of general civil jurisdiction requesting that the fair value of such shares be found and determined, or the corporation may file such complaint at any time within such sixty-day period at its own election. Such complaint shall be filed in any court of general civil jurisdiction in the county in which the principal office of the corporation is situated, or, if there be no such office in this state, in the county in which any dissenting shareholder resides or is found or in which the property of such corporation, or any part of it, may be. If the corporation shall fail to institute such proceedings, any dissenting shareholder may do so in the name of the corporation. All dissenting share-
holders wherever residing, may be made parties to the proceedings as an action against their shares quasi in rem. A copy of the complaint shall be served on each dissenting shareholder who is a resident of this state in the same manner as in other civil actions. Dissenting shareholders who are nonresidents of this state shall be served a copy of the complaint by registered or certified mail, return receipt requested. In addition, service upon such nonresident shareholders shall be made by publication, as provided in Rule 4(e) (2) of the West Virginia Rules of Civil Procedure. All shareholders who are parties to the proceeding shall be entitled to judgment against the corporation for the amount of the fair value of their shares. The court may, if it so elects, appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have such power and authority as shall be specified in the order of their appointment or any subsequent appointment. The judgment shall be payable only upon and concurrently with the surrender to the corporation of the certificate or certificates representing such shares. Upon payment of the judgment, the dissenting shareholder shall cease to have any interest in such shares.

The judgment shall include an allowance for interest at such rate as the court may find to be fair and equitable in all the circumstances, from the date on which the vote was taken on the proposed corporate action to the date of payment.

The costs and expenses of any such proceeding shall be determined by the court and shall be assessed against the corporation, but all or any part of such costs and expenses may be apportioned and assessed as the court may deem equitable against any or all of the dissenting shareholders who are parties to the proceeding to whom the corporation shall have made an offer to pay for the shares if the court shall find that the action of such shareholders in failing to accept such offer was arbitrary or vexatious or not in good faith. Such expenses shall include reasonable compensation for and reasonable expenses of the ap-
praisers, but shall exclude the fees and expenses of
counsel for and experts employed by any party; but if the
fair value of the shares as determined materially ex-
ceeds the amount which the corporation offered to pay
therefor, or if no offer was made, the court in its discre-
tion may award to any shareholder who is a party to the
proceeding such sum as the court may determine to be
reasonable compensation to any expert or experts em-
ployed by the shareholder in the proceeding. Any party
to the proceeding may appeal any judgment or ruling of
the court as in other civil cases.

(f) Within twenty days after demanding payment for
his shares, each shareholder demanding payment shall
submit the certificate or certificates representing his
shares to the corporation for notation thereon that such
demand has been made. His failure to do so shall, at the
option of the corporation, terminate his rights under this
section unless a court of general civil jurisdiction, for
good and sufficient cause shown, shall otherwise direct. If
shares represented by a certificate on which notation has
been so made shall be transferred, each new certificate
issued therefor shall bear similar notation, together with
the name of the original dissenting holder of such shares,
and a transferee of such shares shall acquire by such
transfer no rights in the corporation other than those
which the original dissenting shareholder had after mak-
ing demand for payment of the fair value thereof.

(g) Shares acquired by a corporation pursuant to
payment of the agreed value therefor or to payment of
the judgment entered therefor, as in this section provided,
may be held and disposed of by such corporation as in
the case of other treasury shares, except that, in the case
of a merger or consolidation, they may be held and dis-
posed of as the plan of merger or consolidation may other-
wise provide.

§31-1-124. Voluntary dissolution by incorporators.

A corporation which has not commenced business and
which has not issued any shares, may be voluntarily
dissolved by its incorporators at any time in the follow-
ing manner:
(a) Articles of dissolution shall be executed in duplicate by a majority of the incorporators and verified by them, and shall set forth:

(1) The name of the corporation.

(2) The date of issuance of its certificate of incorporation.

(3) That none of its shares has been issued.

(4) That the corporation has not commenced business.

(5) That the amount, if any, actually paid in on subscriptions for its shares, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto.

(6) That no debts of the corporation remain unpaid.

(7) That a majority of the incorporators elect that the corporation be dissolved.

(b) Duplicate originals of the articles of dissolution shall be delivered to the secretary of state. If the secretary of state finds that the articles of dissolution conform to law, he shall, subject to the provisions of section sixty-one of this article, and when all fees have been paid as prescribed by law, (i) endorse on each of such duplicate originals the word "Filed," and the month, day and year of the filing thereof; (ii) file one of such duplicate originals in his office; and (iii) issue a certificate of dissolution to which he shall affix the other duplicate original.

(c) The certificate of dissolution, together with the duplicate original of the articles of dissolution affixed thereto by the secretary of state, shall be returned to the incorporators or their representative.

(d) If the certificate of incorporation shall have been recorded in the office of the clerk of the county court of any county in the state, the incorporators or their representative shall record the certificates of dissolution in the office of the clerk of the county court in which
the certificate of incorporation is recorded, and the clerk shall note on the margin of the record book in which the certificate of incorporation is engrossed the fact of the dissolution of the corporation, and upon such recording 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 written consent of all its shareholders.

2 Upon the execution of such written consent, a statement of intent to dissolve shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, which statement shall set forth:

(a) The name of the corporation.

(b) The names and respective addresses of its officers.

(c) The names and respective addresses of its directors.

(d) A copy of the written consent signed by all shareholders of the corporation.

(e) A statement that such written consent has been signed by all shareholders of the corporation or signed in their names by their attorneys thereunto duly authorized.

§31-1-126. Voluntary dissolution by act of corporation.

1 A corporation may be dissolved by the act of the corporation, when authorized in the following manner:

(a) The board of directors shall adopt a resolution recommending that the corporation be dissolved, and directing that the question of such dissolution be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(b) Written notice shall be given to each shareholder of record entitled to vote at such meeting within the
time and in the manner provided in this article for the
giving of notice of meetings of shareholders, and, whether
the meeting be an annual or special meeting, shall state
that the purpose, or one of the purposes, of such meeting
is to consider the advisability of dissolving the cor-
poration.

(c) At such meeting a vote of shareholders entitled
to vote thereat shall be taken on a resolution to dissolve
the corporation. Such resolution shall be adopted upon
receiving the affirmative vote of the holders of a ma-

27
ty of the shares of the corporation entitled to vote
thereon, unless any class of shares is entitled to vote
thereon as a class, in which event the resolution shall be
adopted upon receiving the affirmative vote of the hold-
ers of a majority of the shares of each class of shares
entitled to vote thereon as a class and of the total shares
entitled to vote thereon.

(d) Upon the adoption of such resolution, a state-
ment of intent to dissolve shall be executed in duplicate
by the corporation by its president or a vice president
and by its secretary or an assistant secretary, and veri-
fied by one of the officers signing such statement, which
statement shall set forth:

(1) The name of the corporation.

(2) The names and respective addresses of its offi-
cers.

(3) The names and respective addresses of its direc-
tors.

(4) A copy of the resolution adopted by the share-
holders authorizing the dissolution of the corporation.

(5) The number of shares outstanding, and, if the
shares of any class are entitled to vote as a class, the
designation and number of outstanding shares of each
such class.

(6) The number of shares voted for and against the
resolution, respectively, and, if the shares of any class
are entitled to vote as a class, the number of shares of
§31-1-127. Filing of statement of intent to dissolve.

Duplicate originals of the statement of intent to dissolve, whether by consent of shareholders or by act of the corporation, shall be delivered to the secretary of state. If the secretary of state finds that such statement conforms to law, he shall, subject to the provisions of section sixty-one of this article, and when all fees have been paid as prescribed by law, (i) endorse on each of such duplicate originals the word "Filed," and the month, day and year of the filing thereof; (ii) file one of such duplicate originals in his office; and (iii) return the other duplicate original to the corporation or its representative.

§31-1-128. Effect of statement of intent to dissolve.

Upon the filing by the secretary of state of a statement of intent to dissolve, whether by consent of shareholders or by act of the corporation, the corporation shall cease to carry on its business, except insofar as may be necessary for the winding up thereof, but its corporate existence shall continue until a certificate of dissolution has been issued by the secretary of state or until an order dissolving the corporation has been entered by a court of competent jurisdiction as in this article provided.

§31-1-129. Procedure after filing of statement of intent to dissolve.

After the filing by the secretary of state of a statement of intent to dissolve:

(a) The corporation shall immediately cause notice thereof to be mailed to each known creditor of the corporation.

(b) The corporation shall proceed to collect its assets, convey and dispose of such of its properties as are not to be distributed in kind to its shareholders, pay, satisfy and discharge its liabilities and obligations and do all other acts required to liquidate its business and affairs, and, after paying or adequately providing for the pay-
ment of all its obligations, distribute the remainder of its assets, either in cash or in kind, among its shareholders according to their respective rights and interests.

(c) The corporation, at any time during the liquidation of its business and affairs, may make application to a court of competent jurisdiction within this state to have the liquidation continued under the supervision of the court as provided in this article. Such application shall be made by filing a complaint in the appropriate circuit court specified in section one hundred thirty-four of this article.

§31-1-130. Revocation of voluntary dissolution proceedings by consent of shareholders.

By the written consent of all of its shareholders, a corporation may, at any time prior to the issuance of a certificate of dissolution by the secretary of state, revoke voluntary dissolution proceedings theretofore taken.

Upon the execution of such written consent, a statement of revocation of voluntary dissolution proceedings shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, which statement shall set forth:

(a) The name of the corporation.

(b) The names and respective addresses of its officers.

(c) The names and respective addresses of its directors.

(d) A copy of the written consent signed by all shareholders of the corporation revoking such voluntary dissolution proceedings.

(e) That such written consent has been signed by all shareholders of the corporation or signed in their names by their attorneys thereunto duly authorized.


By the act of the corporation, a corporation may, at any
time prior to the issuance of a certificate of dissolution by
the secretary of state, revoke voluntary dissolution pro-
ceedings theretofore taken, in the following manner:

(a) The board of directors shall adopt a resolution
recommending that the voluntary dissolution proceedings
be revoked, and directing that the question of such revoca-
tion be submitted to a vote at a special meeting of share-
holders.

(b) Written notice, stating that the purpose or one of
the purposes of such meeting is to consider the advis-
ability of revoking the voluntary dissolution proceedings,
shall be given to each shareholder of record entitled to
vote at such meeting within the time and in the manner
provided in this article for the giving of notice of special
meetings of shareholders.

§31-1-132. Filing of statement of revocation of voluntary dis-
solution proceedings.

Duplicate originals of the statement of revocation of
voluntary dissolution proceedings, whether by consent of
shareholders or by act of the corporation, shall be de-
ivered to the secretary of state. If the secretary of state
finds that such statement conforms to law, he shall, when
all fees have been paid as prescribed by law, (i) endorse
on each of such duplicate originals the word "Filed," and
the month, day and year of the filing thereof; (ii) file one
of such duplicate originals in his office; and (iii) return
the other duplicate original to the corporation or its rep-
resentative.

§31-1-133. Effect of statement of revocation of voluntary dis-
solution proceedings.

Upon the filing by the secretary of state of a statement
of revocation of voluntary dissolution proceedings, wheth-
er by consent of shareholders or by act of the corpora-
tion, the revocation of the voluntary dissolution proceed-
ings shall become effective and the corporation may
again carry on its business.
§31-1-134. Actions for dissolution by shareholders; right of majority shareholders to purchase plaintiffs' shares; appeal.

If not less than one fifth in interest of the shareholders of a corporation desire to wind up its affairs, they may apply by complaint to the circuit court of the county in which the principal office of such corporation is situated, or, if there be no such office in this state, to the circuit court of the county in which the other shareholders, or any one or more of them, reside or are found, or in which the property of such corporation or any part of it may be, setting forth in the complaint the grounds of their application, and the court may thereupon proceed according to the principles and usages of law and equity to hear the matter, and, if sufficient cause therefor be shown, to order a dissolution of the corporation and make such orders and judgments, and award such injunctions in the cause as justice and right may require. In any such action the defendant holders of a majority of the shares of the outstanding stock of such corporation shall have the right to avoid the appointment of a receiver or the dissolution of such corporation by purchasing the shares of stock owned by the plaintiffs at their fair cash value. If the defendant shareholders shall elect to purchase the shares of stock owned by the plaintiffs and are unable to agree with the plaintiffs upon the fair cash value of such shares, and shall give bond with sufficient security to protect the interests and rights of the plaintiffs and to assure unto the plaintiffs the payment of the value of their shares of stock, the court shall stay the action or proceeding and shall proceed to ascertain and fix the value of the shares of stock owned by the plaintiffs. For such purpose the court shall appoint three disinterested commissioners to appraise the fair value of such shares of stock, and shall make an order referring the matter to the commissioners so appointed for the purpose of ascertaining such value; and such order shall prescribe the time and manner of producing evidence, if evidence be required. The award of such commissioners, or of a majority of them, when confirmed by the court shall be final and conclusive upon all parties, and the court shall enter a judgment for the
amount of such award against such defendant shareholders and the surety or sureties on such bond, and such judgment may be enforced in the same manner as other orders and judgments of such court. Any shareholder, feeling aggrieved by such action of the court, may appeal to the supreme court of appeals of this state, as otherwise provided by law. The defendant shareholders shall pay to the plaintiff shareholders the value of their stock ascertained and ordered as aforesaid, or, in case of an appeal, as fixed on such appeal; and, on receiving such payment or the tender thereof, such plaintiff shareholders shall transfer 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 or affairs of a business corporation, pursuant to section forty-one of this article, the assets of such corporation or the proceeds resulting from a sale, conveyance or other disposition thereof shall be applied to the expenses of such liquidation and to the payment of the liabilities and obligations of the corporation, and any remaining assets or proceeds shall be distributed among its shareholders 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 “corporation” shall refer exclusively to nonprofit corporations.

§31-1-137. Members.

1 A corporation may have one or more classes of members or may have no members. If the corporation has one or more classes of members, the designation of such class or classes, the manner of election or appointment and the qualifications and rights of the members of each class shall be set forth in the articles of incorporation or the bylaws. If the corporation has no members, that fact shall be set forth in the articles of incorporation or the bylaws. A corporation may issue certificates evidencing membership therein.
The directors, officers, employees and members of the corporation shall not, as such, be liable on its obligations.


1 The right of the members, or any class or classes of members, to vote may be limited, enlarged or denied to the extent specified in the articles of incorporation or the bylaws. Unless so limited, enlarged or denied, each member, regardless of class, shall be entitled to one vote on each matter submitted to a vote of members.

2 A member entitled to vote may vote in person or, unless the articles of incorporation or the bylaws otherwise provide, may vote by proxy executed in writing by the member or by his duly authorized attorney-in-fact. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy. Where directors or officers are to be elected by members, the bylaws may provide that such elections may be conducted by mail.

3 The articles of incorporation or the bylaws may provide that in all elections for directors every member entitled to vote shall have the right to cumulate his vote and to give one candidate a number of votes equal to his vote multiplied by the number of directors to be elected, or by distributing such votes on the same principle among any number of such candidates.

4 If a corporation has no members or its members have no right to vote, the directors shall have the sole voting power.

§31-1-139. Board of directors.

1 The affairs of a corporation shall be managed by a board of directors. Directors need not be residents of this state or members of the corporation unless the articles of incorporation or the bylaws so require. The articles of incorporation or the bylaws may prescribe other qualifications for directors.

§31-1-140. Removal of directors.

1 A director may be removed from office pursuant to any
procedure therefor provided in the articles of incorpora-

tion or bylaws.

§31-1-141. Committees; authority; limitations of authority.

If the articles of incorporation or the bylaws so provide,
the board of directors, by resolution adopted by a majority
of the directors in office, may designate and appoint one
or more committees each of which shall consist of two
or more directors, which committees, to the extent pro-
vided in such resolution, in the articles of incorporation
or in the bylaws of the corporation, shall have and exer-
cise all the authority of the board of directors, except that
no such committee shall have the authority of the board
of directors in reference to (i) amending, altering or
repealing the bylaws; (ii) electing, appointing or remov-
ing any member of any such committees or any director
or officer of the corporation; (iii) amending the articles
of incorporation, restating articles of incorporation, adopt-
ing a plan of merger or adopting a plan of consolidation
with another corporation; (iv) authorizing the sale, lease,
exchange or mortgage of all or substantially all of the
property and assets of the corporation; (v) authorizing
the voluntary dissolution of the corporation or revoking
proceedings therefor; (vi) adopting a plan for the dis-
tribution of the assets of the corporation; or (vii) amend-
ing, altering or repealing any resolution of the board of
directors which by its terms provides that it shall not be
amended, altered or repealed by such committee. The
designation and appointment of any such committee and
the delegation thereto of authority shall not operate to
relieve the board of directors, or any individual director
of any responsibility imposed upon it or him by law.

§31-1-142. Officers; removal of officers.

(a) The officers of a corporation shall consist of a
president, one or more vice presidents, a secretary, a
treasurer and such other officers and assistant officers as
may be deemed necessary, each of whom shall be elected
or appointed at such time and in such manner and for
such terms not exceeding three years as may be prescribed
in the articles of incorporation or the bylaws. In the
absence of any such provision, all officers shall be elected
or appointed annually by the board of directors. If the bylaws so provide, any two or more offices may be held by the same person, except the offices of president and secretary.

The articles of incorporation or the bylaws may provide that any one or more officers of the corporation shall be ex officio members of the board of directors.

The officers of a corporation may be designated by such additional titles as may be provided in the articles of incorporation or the bylaws.

(b) Any officer elected or appointed may be removed by the persons authorized to elect or appoint such officer whenever in their judgment the best interests of the corporation will be served thereby. The removal of an officer shall be without prejudice to the contract rights, if any, of the officer so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

§31-1-143. Books and records.

Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, board of directors and committees having any of the authority of the board of directors; and shall keep at its principal office in this state a record of the names and addresses of its members entitled to vote. All books and records of a corporation may be inspected by any member, or his agent or attorney, for any proper purpose at any reasonable time.

§31-1-144. Shares of stock permitted; dividends prohibited.

Corporations may have or issue shares of stock. No dividend shall be paid and no part of the income or profit of a corporation shall be distributed to its members, directors or officers. A corporation may pay compensation in a reasonable amount to its members, directors, or officers for services rendered, may confer benefits upon its members in conformity with its purposes, and upon dissolution or final liquidation may make distributions to its members as permitted by this article, and no such
payment, benefit or distribution shall be deemed to be a dividend or a distribution of income or profit.

§31-1-145. Loans to directors and officers prohibited.

No loans shall be made by a corporation to its directors or officers. Any director or officer who assents to or participates in the making of any such loan shall be liable to the corporation for the amount of such loan until the repayment thereof.

§31-1-146. Right to amend articles of incorporation.

A corporation may amend its articles of incorporation from time to time, in any and as many respects as may be desired, so long as its articles of incorporation as amended contain only such provisions as are lawful under this article.

§31-1-147. Procedure to amend articles of incorporation.

Amendments to the articles of incorporation shall be made in the following manner:

(a) If there are members entitled to vote thereon, the board of directors shall adopt a resolution setting forth the proposed amendments and directing that they be submitted to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. Written notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this article for the giving of notice of meetings of members. The proposed amendment shall be adopted upon receiving a majority of the votes which members present at such meeting or represented by proxy are entitled to cast.

(b) If there are no members, or no members entitled to vote thereon, an amendment shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

Any number of amendments may be submitted and voted upon at any one meeting.
§31-1-148. Articles of amendment.

1 The articles of amendment shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary and shall set forth:

5 (a) The name of the corporation.

(b) The amendment so adopted.

(c) If there are members entitled to vote thereon, (1) a statement setting forth the date of the meeting of members at which the amendment was adopted, that a quorum was present at such meeting, and that such amendment received a majority of the votes which members present at such meeting or represented by proxy were entitled to cast, or (2) a statement that such amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto.

(d) If there are no members, or no members entitled to vote thereon, a statement of such fact, the date of the meeting of the board of directors at which the amendment was adopted, and a statement of the fact that such amendment received the vote of a majority of the directors in office.

§31-1-149. Restated articles of incorporation; procedures for adoption; contents.

1 (a) A domestic corporation may at any time restate its articles of incorporation as theretofore amended, in the following manner:

(1) If there are members entitled to vote thereon, the board of directors shall adopt a resolution setting forth the proposed restated articles of incorporation and directing that they be submitted to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting.

(2) Written notice setting forth the proposed restated articles or a summary of the provisions thereof shall be given to each member entitled to vote thereon, within the time and in the manner provided in this article for the
giving of notice of meetings of members. If the meeting be an annual meeting, the proposed restated articles or a summary of the provisions thereof may be included in the notice of such annual meeting.

(3) At such meeting a vote of the members entitled to vote thereon shall be taken on the proposed restated articles, which shall be adopted upon receiving the affirmative vote of a majority of the members entitled to vote thereon present at such meeting or represented by proxy.

(4) If there are no members, or no members entitled to vote thereon, the proposed restated articles shall be adopted at a meeting of the board of directors upon receiving the affirmative vote of a majority of the directors in office.

(b) Upon such approval, restated articles of incorporation shall be executed in duplicate by the corporation by its president or vice president and by its secretary or assistant secretary and shall set forth:

(1) The name of the corporation.

(2) The period of its duration.

(3) The purpose or purposes which the corporation is authorized to pursue.

(4) Any other provisions, not inconsistent with law, which are then set forth in the articles of incorporation as theretofore amended, except that it shall not be necessary to set forth in the restated articles of incorporation the address of the principal office of the corporation, its directors or its incorporators.

The restated articles of incorporation shall state that they correctly set forth the provisions of the articles of incorporation as theretofore amended, that they have been duly adopted as required by law and that they supersede the original articles of incorporation and all amendments thereto.

§31-1-150. Approval of merger or consolidation; abandonment.

A plan of merger or consolidation shall be adopted in the following manner:
(a) If the members of any merging or consolidating corporation are entitled to vote thereon, the board of directors of such corporation shall adopt a resolution approving the proposed plan and directing that it be submitted to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. Written notice setting forth the proposed plan or a summary thereof shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this article for the giving of notice of meetings of members. The proposed plan shall be adopted upon receiving the approval of the majority of the votes which members present at each such meeting or represented by proxy are entitled to cast.

(b) If any merging or consolidating corporation has no members, or no members entitled to vote thereon, a plan of merger or consolidation shall be adopted at a meeting of the board of directors of such corporation upon receiving the vote of a majority of the directors in office.

After such approval, and at any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation.

§31-1-151. Contents required in articles of merger or consolidation.

Articles of merger or articles of consolidation shall, in addition to any other matters deemed appropriate, set forth:

(1) The plan of merger or the plan of consolidation.

(2) If the members of any merging or consolidating corporation are entitled to vote thereon, then as to each such corporation (i) a statement setting forth the date of the meeting of members at which the plan was adopted, that a quorum was present at such meeting, and that such plan received a majority of the votes which members present at such meeting or represented
by proxy were entitled to cast, or (ii) a statement that such amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto.

(3) If any merging or consolidating corporation has no members, or no members entitled to vote thereon, then as to each such corporation a statement of such fact, the date of the meeting of the board of directors at which the plan was adopted and a statement of the fact that such plan received the vote of a majority of the directors in office.

§31-1-152. Sale, lease, exchange or mortgage of assets.

A sale, lease, exchange, mortgage, pledge or other disposition of all, or substantially all, the property and assets of a corporation may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any corporation, domestic or foreign, whether stock or nonstock and whether or not organized for profit, as may be authorized in the following manner:

(a) If there are members entitled to vote thereon, the board of directors shall adopt a resolution recommending such sale, lease, exchange, mortgage, pledge or other disposition and directing that it be submitted to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. Written notice stating that the purpose, or one of the purposes, of such meeting is to consider the sale, lease, exchange, mortgage, pledge or other disposition of all, or substantially all, the property and assets of the corporation shall be given to each member entitled to vote at such meeting, within the time and in the manner provided by this article for the giving of notice of meetings of members. At such meeting the members may authorize such sale, lease, exchange, mortgage, pledge or other disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. Such authorization shall require the approval of the majority
of the votes which members present at such meeting or represented by proxy are entitled to cast. After such authorization by a vote of members, the board of directors nevertheless, in its discretion, may abandon such sale, lease, exchange, mortgage, pledge or other disposition of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by members.

(b) If there are no members, or no members entitled to vote thereon, a sale, lease, exchange, mortgage, pledge or other disposition of all or substantially all of the property and assets of a corporation shall be authorized upon receiving the vote of a majority of the directors in office.

§31-1-153. Right of members to dissent; procedures for determining value of dissenting members' interests.

(a) Any member of a corporation who holds shares of or owns an interest in such corporation shall have the right to dissent from any of the following corporate actions:

(1) Any plan of merger or consolidation to which the corporation is a party; or

(2) Any sale or exchange of all or substantially all of the property and assets of the corporation not made in the usual and regular course of its business, including a sale in dissolution but not including a sale pursuant to an order of a court having jurisdiction in the premises or a sale for cash on terms requiring that all or substantially all of the net proceeds of sale be distributed to the members in accordance with their respective interests within one year after the date of sale.

(b) All of the rights enjoyed by dissenting shareholders, as provided in section one hundred twenty-three of this article, shall apply to and be enjoyed by any member electing to exercise his right of dissent, and all of the procedures relating to the valuation and purchase of such dissenting member's shares or interest in the corporation and to the payment therefor as are contained in said section one hundred twenty-three shall apply to such dis-
senting member’s shares or interest to the same extent as if said section one hundred twenty-three were set forth in extenso in this section. Similarly, the right to judicial relief, as provided for dissenting shareholders in said section one hundred twenty-three, shall be available to the same extent as specified in such section, and the same procedures therein outlined shall apply to any civil action instituted under this section one hundred fifty-three.

§31-1-154. Voluntary dissolution.

(a) A corporation may dissolve and wind up its affairs in the following manner:

(1) If there are members entitled to vote thereon, the board of directors shall adopt a resolution recommending that the corporation be dissolved, and directing that the question of such dissolution be submitted to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. Each member entitled to vote at such meeting shall be given written notice stating that the purpose, or one of the purposes, of such meeting is to consider the advisability of dissolving the corporation. Such notice shall be given within the time and in the manner provided in this article for the giving of notice of meetings of members. A resolution to dissolve the corporation shall be adopted upon receiving the approval of the majority of the votes which members present at such meeting or represented by proxy are entitled to cast.

(2) If there are no members, or no members entitled to vote thereon, the dissolution of the corporation shall be authorized at a meeting of the board of directors upon the adoption of a resolution to dissolve by the vote of a majority of the directors in office.

(b) Upon the adoption of a resolution to dissolve by the members, or by the board of directors if there are no members or no members entitled to vote thereon, the corporation shall cease to conduct its affairs except insofar as may be necessary for the winding up thereof. The corporation shall immediately cause a notice of the proposed dissolution to be mailed to each known creditor.
of the corporation by registered or certified mail, return
receipt requested, and the corporation shall proceed to
collect its assets and apply and distribute them as pro-
vided in this article.

(c) As soon as practicable after the passage of a
resolution to dissolve, the directors and officers of the
corporation shall cause the corporate assets to be dis-
tributed in the manner provided in this article, but no such
distribution shall be made to the members of the cor-
poration until notice of the resolution of dissolution shall
have been published as a Class II legal advertisement in
compliance with the provisions of article three, chapter
fifty-nine of this code. The publication area for such pub-
lication shall be the county in which its principal office
in this state is located, or if there be no such office in this
state, then any county in this state where it conducts its
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.
(d) Other assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the bylaws to the extent that the articles of incorporation or bylaws determine the distributive rights of members, or any class or classes of members, or provide for distribution to others.

(e) Any remaining assets may be distributed to such persons, societies, organizations or domestic or foreign corporations, whether stock or nonstock and whether or not organized for profit, as may be specified in a plan of distribution adopted as provided in this article.

§31-1-156. Plan of distribution.

A plan providing for the distribution of assets, not inconsistent with the provisions of this article, may be adopted by a corporation in the process of dissolution and shall be adopted by a corporation for the purpose of authorizing any transfer or conveyance of assets for which this article requires a plan of distribution, in the following manner:

(a) If there are members entitled to vote thereon, the board of directors shall adopt a resolution recommending a plan of distribution and directing the submission thereof to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. Written notice setting forth the proposed plan of distribution or a summary thereof shall be given to each member entitled to vote at such meeting, within the time and in the manner provided in this article for the giving of notice of meetings of members. Such plan of distribution shall be adopted upon receiving the approval of a majority of the votes which members present at such meeting or represented by proxy are entitled to cast.

(b) If there are no members or no members entitled to vote thereon, a plan of distribution shall be adopted at a meeting of the board of directors upon receiving a vote of a majority of the directors in office.

§31-1-157. Revocation of voluntary dissolution proceedings.

A corporation may, at any time prior to the issuance of a certificate of dissolution by the secretary of state,
revoke the action theretofore taken to dissolve the corporation, in the following manner:

(a) If there are members entitled to vote thereon, the board of directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked, and directing that the question of such revocation be submitted to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. Each member entitled to vote at such meeting shall be given written notice stating that the purpose, or one of the purposes of such meeting, is to consider the advisability of dissolving the corporation. Such notice shall be given within the time and in the manner provided in this article for the giving of notice of meetings of members. A resolution to revoke the voluntary dissolution proceedings shall be adopted upon receiving the approval of a majority of the votes which members present at such meeting or represented by proxy are entitled to cast.

(b) If there are no members, or no members entitled to vote thereon, a resolution to revoke the voluntary dissolution proceedings shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

Upon the adoption of such resolution by the members, or by the board of directors where there are no members or no members entitled to vote thereon, the corporation may thereupon again do or transact business or conduct its affairs.

§31-1-158. Application of assets in liquidation of corporation by court.

In all proceedings to liquidate the assets and business or affairs of a nonprofit corporation, pursuant to section forty-one of this article, the assets of such corporation or the proceeds resulting from a sale, conveyance or other disposition thereof shall be applied and distributed as follows:

(a) All costs and expenses of the court proceedings and all liabilities and obligations of the corporation shall be
paid, satisfied and discharged, or adequate provision shall be made therefor;

(b) Assets held by the corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution or liquidation, shall be returned, transferred or conveyed in accordance with such requirements;

(c) Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational or similar purposes, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution or liquidation, shall be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving or liquidating corporation as the court may direct;

(d) Other assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the bylaws to the extent that the articles of incorporation or bylaws determine the distributive right of members, or any class or classes of members, or provide for distribution to others;

(e) Any remaining assets may be distributed to such persons, societies, organizations or domestic or foreign corporation, whether stock or nonstock and whether or not organized for profit, specified in the plan of distribution adopted as provided in this article, or where no plan of distribution has been adopted, as the court may direct.

§31-1-159. Annual report of domestic and foreign corporations; filing.

(a) Each domestic corporation, and each foreign corporation authorized to conduct affairs or do or transact business in this state, shall file, within the time prescribed by this article, an annual report setting forth:

(1) The name of the corporation and the state or country under the laws of which it is incorporated.

(2) In the case of a domestic corporation, the address
(3) A brief statement of the character of the affairs which the corporation is actually conducting, or the business it is doing or transacting, in this state.

(4) The names and respective addresses of the directors and officers of the corporation.

(b) Such annual report shall be made on forms prescribed and furnished by the secretary of state, and the information therein contained shall be given as of the date of the execution of the report. It shall be executed by the corporation by its president, a vice president, secretary, an assistant secretary or treasurer, or, if the corporation is in the hands of a receiver or trustee, it shall be executed on behalf of the corporation by such receiver or trustee.

(c) Such annual report of a domestic or foreign corporation shall be delivered to the secretary of state between the first day of January and the first day of March of each year, except that the first annual report of a domestic or foreign corporation shall be filed between the first day of January and the first day of March of the year next succeeding the calendar year in which its certificate of incorporation or its certificate of authority, as the case may be, was issued by the secretary of state. Proof to the satisfaction of the secretary of state that prior to the first day of March such report was deposited in the United States mail in a sealed envelope, properly addressed, with postage prepaid, shall be deemed compliance with this requirement. If the secretary of state finds that such report conforms to the requirements of this article, he shall file the same. If he finds that it does not so conform, he shall promptly return the same to the corporation for any necessary corrections in which event the penalties hereafter prescribed in this article for failure to file such report within the time hereinabove provided shall not apply, if such report is corrected to conform to the re-
quirements of this article and returned to the secretary of
state within thirty days from the date on which it was
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.

Each corporation, domestic or foreign, which fails or
refuses to file its annual report for three successive years,
as required by the provisions of section one hundred
fifty-nine of this article, shall be notified by registered
or certified mail, return receipt requested, of its failure
to file such annual report. Such notice shall be mailed to
the address of its last known principal office in this state
or if it has no such principal office in this state, then
such notice shall be mailed to the address of its last known
principal office, wherever situated.

Such notice shall also advise the corporation that its
failure to file all of the annual reports within thirty days
of receipt of the notice shall subject such corporation to
an order of dissolution or an order revoking its certificate
of authority, as the case may be. Such order shall also
advise the corporation of its right to a hearing and shall
set forth the date and time of the hearing, which hearing
shall be held in the office of the secretary of state by the
secretary of state or his designee. At such hearing, the
corporation shall be afforded an opportunity to explain
its reasons for failure to file the required reports.

If the corporation fails to file the required reports
within such thirty-day period or fails to appear at the
hearing, as set by the secretary of state, or fails to ex-
plain to the satisfaction of the secretary of state its rea-
sions for not filing the reports, then the secretary of state
shall issue an order dissolving the corporation or shall
issue an order revoking its certificate of authority, as the
case may be.

Any person or corporation aggrieved by the action of
the secretary of state with respect to dissolving the cor-
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 its license tax by the tax commissioner, under the provisions of this article, may apply to the board of public works for relief; and the board shall have authority to consider such case, and also cases of the insolvency or financial distress of any corporation or any other case involving such license tax. In any such case the board may fix the amount to be paid by such corporation in full discharge of the license tax, interest and penalties due the state for the period named in the order made therein. Every such order shall be entered in the record of the board and a certified copy thereof shall be delivered 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 tax on its charter for the fiscal year beginning on the first day of July of each year, based on its authorized capital stock as follows: If the authorized capital stock
be five thousand dollars, or less, twenty dollars; if more
then five thousand dollars and not more than ten thou-
sand dollars, thirty dollars; if more than ten thousand
dollars and not more than twenty-five thousand dol-
lars, forty dollars; if more than twenty-five thousand
dollars and not more than fifty thousand dollars, fifty
dollars; if more than fifty thousand dollars and not
more than seventy-five thousand dollars, eighty dollars;
if more than seventy-five thousand dollars and not
more than one hundred thousand dollars, one hundred
dollars; if more than one hundred thousand dollars
and not more than one hundred and twenty-five thou-
sand dollars, one hundred and ten dollars; if more than
one hundred and twenty-five thousand dollars and not
more than one hundred and fifty thousand dollars, one
hundred and twenty dollars; if more than one hun-
dred and fifty thousand dollars and not more than
one hundred and seventy-five thousand dollars, one
hundred and forty dollars; if more than one hundred
and seventy-five thousand dollars and not more than
two hundred thousand dollars, one hundred and fifty
dollars; if more than two hundred thousand dollars
and not more than one million dollars, one hundred and
eighty dollars, and an additional twenty cents on each
one thousand dollars, or fraction thereof, in excess of two
hundred thousand dollars; if more than one million
dollars and not more than fifteen million dollars, three
hundred and forty dollars, and an additional fifteen cents
on each one thousand dollars, or fraction thereof, in ex-
cess of one million dollars; if more than fifteen million
dollars, twenty-five hundred dollars. The license tax col-
lected hereunder shall be in addition to the annual fee,
if any, payable to the secretary of state as statutory at-
torney-in-fact. For the purpose of the assessment of the
license tax provided by this section, and that provided by
sections eighty and eighty-one of this article, and for no
other purpose, shares of stock having no par value shall
be presumed to be of the par value of twenty-five dollars
each: Provided, That if such stock was original-
ly issued for a consideration greater than twenty-five
dollars per share, such license taxes as are required to
be paid to the tax commissioner under the provisions of sections seventy-nine, eighty and eighty-one of this article shall be computed upon the basis of the consideration for which such stock was issued.

§11-12-79. Assessment and collection of tax on domestic corporation.

When application is made to the secretary of state for a certificate of incorporation, it shall be his duty to make the assessment and collect the license tax for the first year before issuing such certificate. If such certificate be issued after the last day of the third month of the license year, he shall assess one tenth of the amount of the annual tax for each month, or fractional part of a month, to ensue before the first day of the next license tax year; but in no case shall the amount assessed and collected be less than ten dollars in addition to the fee, if any, payable to the secretary of state as statutory attorney-in-fact. Thereafter, on or before the first day of the license tax year next following the date of the certificate of incorporation, and on or before the first day of each succeeding license tax year, the tax commissioner shall collect such tax for a full year together with the statutory attorney fee; except that if the certificate of incorporation be issued on or after the first day of the second month preceding the beginning of the license tax year, and before the first day of the ensuing license tax year, the secretary of state shall assess and collect the tax for the full year beginning on such first day of the license tax year in addition to the initial tax, together with the statutory attorney fee. The money so received by the secretary of state and the tax commissioner shall be paid by them into the state treasury. Any corporation authorized by its articles of incorporation to issue stock having no par value shall, within sixty days after its board of directors shall have authorized the issue of all or a portion of such stock under the provisions of article one, chapter thirty-one of this code, make a report to the tax commissioner stating the number of shares of stock so authorized to be issued and the consideration for which such stock is authorized to be issued. Such report shall be verified by the affidavit of the presi-
The payment of the tax and statutory attorney fee, payable under the provisions of this section, shall be accompanied by a report on forms provided by the tax commissioner for the purpose, and shall be submitted in duplicate. The tax commissioner shall forward a copy of such report to the secretary of state, together with a list of all corporations which have paid such tax. Such report shall contain, in addition to such information as the tax commissioner deems appropriate, the name and address of the corporation, the date of incorporation, the place of its principal office and the names and post-office addresses of its president, secretary and other officers.

§11-12-80. License tax on foreign corporations.

Every foreign corporation which has qualified to hold property or to do business in this state shall make a report in duplicate to the tax commissioner annually in the third month preceding the beginning of the license tax year, in which report shall be set out: (a) The name of such corporation, the name of the state or country by which incorporated, the date of the incorporation, the date of the certificate of the secretary of state authorizing it to do business in this state, the place of its principal office, the names and post-office addresses of its president, secretary and its officers, if any, charged with the duty of making returns of its property for taxation and the name and post-office address of its attorney of record in this state; (b) the number of shares of its authorized capital stock having a par value and the par value of each share, and the number of its issued and outstanding shares and the par value of each share; (c) the number of shares of its authorized capital stock having no par value, the number of shares of such stock authorized to be issued and the considerations fixed for the issue of each share of the same by its articles of incorporation or board of directors, and the number of shares thereof issued and outstanding; (d) the value of the property owned and used by such corporation within this state, where situate, of what it consists,
and the number of acres of land it holds in this state, and
the value of its property owned and used without this
state; and (e) the proportion of its capital stock which is
represented by property owned and used in the state of
West Virginia. Such report shall be verified by the
affidavit of the president, secretary or other executive
officers of such corporation.

It shall be the duty of the tax commissioner to assess
and fix the license tax of such corporation according to the
proportion of its issued and outstanding capital stock
which is represented by its property owned and used in
this state, which license tax shall be at the rate prescribed
in section seventy-eight of this article, plus seventy-five
percent of such tax. In no event shall any such corpora-
tion pay an annual license tax of less than two hundred
fifty dollars, which shall be in addition to the fee of the
secretary of state as statutory attorney-in-fact. The tax
commissioner may in any case require such additional
information as he may deem necessary to enable him
to assess and fix the just amount of license tax of such
corporation; and it shall be his duty to notify every such
corporation of the amount so assessed by him and it
shall be the duty of the corporation to pay the same to
the tax commissioner within thirty days thereafter, and
if it fails to do so it shall be liable to the penalties pre-
scribed in sections eighty-six and eighty-seven of this
article.

§11-12-81. Preliminary report by foreign corporations; assess-
ment; collection of license taxes.

Every foreign corporation, at the time of its application
for a certificate of authority under the provisions of article
one of chapter thirty-one of this code, shall file with the
secretary of state a report preliminary to the annual
report hereinbefore provided for, which preliminary
report shall contain sufficient information upon which to
base an assessment of its license tax for the then current
year. It shall be the duty of the secretary of state to make
assessment of its license tax for such year, and he may
require such further information as he may deem neces-
sary for that purpose. Before issuing such certificate the
secretary of state shall collect the amount of license tax he finds to be proper for the license tax year ending with the thirtieth day of the last month of the license tax year. If the certificate be issued after the last day of the third month of the license tax year and before the first day of the ensuing license tax year, the secretary of state shall assess and collect such taxes at the rate of one tenth the amount of the annual license tax for each month or fractional part of a month to ensue before the first day of the ensuing license tax year. Thereafter on or before the first day of the license tax year next following the date of the certificate of authority and on or before every succeeding first day of the license tax year the tax commissioner shall collect such tax for a full year: Provided, That if the certificate be issued in either of the last two months of the license tax year, the secretary of state shall assess and collect the license tax for such month or months, as well as for a full year beginning with the first day of the ensuing license tax year. When the tax commissioner shall assess and collect the tax on any such foreign corporation, he may include in the tax for any year any amount that such corporation should have paid for any previous year and failed to pay. The collections hereunder shall be in addition to the annual fee of the secretary of state as statutory attorney-in-fact. All moneys collected by the secretary of state and the tax commissioner shall be paid into the state treasury in the manner prescribed by law.

§11-12-82. Annual fee of secretary of state as attorney-in-fact.

Every foreign corporation, and every domestic corporation whose principal place of business or chief works is located without the state, shall pay an annual fee of ten dollars for the services of the secretary of state as attorney-in-fact for such corporation, which fee shall be due and payable at the same time, collected by the same officers, and accounted for in the same way, as the annual license tax, payable to the secretary of state as statutory attorney-in-fact.

§11-12-83. Notice to corporations taxable; statement on payment; tax as lien.

It shall be the duty of the tax commissioner, between
the fifteenth day of the third month next preceding the
first day of the license tax year and the fifteenth day of
the second month next preceding the first day of the
license tax year, in each year, to notify each corporation,
able to the tax imposed by this article, of the time of
payment of such tax and the amount thereof, together
with the statutory attorney fee, if any. Such notices may
be sent through the mails, addressed to the corporation
at its last known post-office address as shown by the
records in the office of the secretary of state. If the tax
commissioner shall make a mistake in the amount of such
tax such corporation may file a sworn certificate of the
president, vice president or secretary of the corporation,
showing such mistake, or showing the actual amount of
tax due; and, in that event, it shall be the duty of the tax
commissioner to accept the amount due as shown by such
certificate, unless contrary to provisions of this article.
At the time of making payment to the tax commissioner
every domestic corporation shall deliver to him a state-
ment, in duplicate, which shall show the name of the
corporation, the date of its certificate of incorporation, the
name and post-office address of its attorney of record in
this state, if any, the names and post-office addresses of its
president, secretary and treasurer, the amount of its au-
thorized capital stock, the number of acres of land it holds
in this state if the number exceeds ten thousand acres,
and such other facts as the tax commissioner may require.
Such statement shall be signed by the president, secretary
or treasurer of the corporation. The amount of such tax
shall be deemed a debt due the state, and shall be a lien
as to an innocent purchaser for value, on the property and
assets of the corporation prior to all other liens, except
the lien of the taxes levied on its property for state, county
and district purposes, from the time a notice of such lien,
specifying the year and the amount for which the lien is
claimed, is filed in the office of the clerk of the county
court of the county in which the property subject to such
liens is situated. Such clerk shall, upon the filing in his
office of any such notice, record such notice in a separate
docket in his office to be known as “Corporation License
Tax Lien Docket,” and index the same in the name of the
corporation against whom the lien is claimed. Upon payment of such lien debt there shall be executed by the tax commissioner and delivered to the clerk of the county court in whose office notice of such lien is filed a release thereof, which said release shall be filed and recorded by such clerk in like manner as releases of judgment liens are filed and recorded. Such tax shall be a preferred debt in case of insolvency.

The tax commissioner shall forward to the secretary of state a copy of the statement required by this section, together with a list of all corporations which have delivered such statements and which have paid their taxes. Such list shall contain, in addition to such information as the tax commissioner deems appropriate, the name and address of the corporation, the place of its principal office, and the names and post-office addresses of its president, secretary and other officers.

§11-12-84. Publication of list of delinquent corporations.

The tax commissioner shall, between the first and fifteenth day of the second month of the license tax year in every year, publish a list of all corporations failing to pay the license tax, or any part thereof, due therefrom on or before the first day of the first month of the license tax year, as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the state. Such list shall contain the names of such delinquent corporations, arranged in two classes, domestic and foreign. The cost of such publication shall be paid by the tax commissioner when allowed by the board of public works, out of the moneys in the treasury. Any such delinquent corporation may, on or before the first day of the fifth month of the license tax year following or at any time before judgment or order is entered as hereinafter provided, pay the amount of such tax and a penalty of one percent per month for each month or fractional part thereof that such failure continued, but the amount of such penalty shall not be less than five dollars. After the publication of the list of delinquent corporations by the tax commissioner, he shall mail to
the last known post-office address of each of such corpora-
tions a supplemental notice, together with a statement of
the total amount of tax and penalties due therefrom,
which notice shall be mailed at least thirty days before
the first day of the fifth month of the license tax year.

§11-12-85. Investigation of corporations' delinquencies.

The tax commissioner, with the approval of the gover-
nor, may appoint agents to investigate all violations of the
provisions of this article concerning landholding or char-
ter license taxes on corporations, and also for the purpose
of collecting such taxes from all corporations which have
not paid the same, whether due from domestic or foreign
corporations. The compensation of all such agents shall
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.

Within thirty days after such first day of the fifth
month of the license tax year, the tax commissioner shall
certify to the governor and the secretary of state a list
of all such delinquent corporations, domestic and foreign.
The secretary of state shall preserve the list in his office,
and a certificate from him that the name of any corpora-
tion mentioned in such certificate is delinquent in the
payment of the license tax imposed by this article shall
be prima facie evidence thereof. Within thirty days after
receiving such list from the tax commissioner the gov-
ernor shall issue his proclamation, in which he shall de-
clare the delinquency of every such corporation. A copy
of such proclamation shall be filed and recorded in the
office of the secretary of state, and be published in such
newspapers as the governor may designate, not exceed-
ing one in each congressional district; the costs of such
publication shall be paid by the governor. Sixty days
after the date of the publication of such proclamation,
it shall be the duty of the attorney general to institute
in the circuit court, in the county in which the seat of
government is, an action or actions, in the name of the
state, in which such delinquent corporations shall be
made defendants; in the complaint so filed it shall only be necessary to allege that the corporations therein made defendants have failed to pay such license tax, and that each of them justly owes to the state the amount of license tax, penalty and fines stated therein, in connection with the name of the corporation, which amount shall be computed up to the first day of the month succeeding that in which such complaint is filed. No such corporation shall interpose as a plea or defense in such action the fact that the tax commissioner failed to notify it as prescribed in this article, or that it failed to receive such notice, or that its name was not included in the list or proclamation hereinbefore mentioned. Upon the hearing of such action, if it shall appear to the court that any such corporation has failed to pay any such license tax and the penalties and fines assessed against it, the court shall enter an order of judgment against such corporation for the amount due, including the costs of the proceeding, or such portion of such costs as the court shall apportion to be paid by such corporation, and, if the same be not then and there paid, the court shall enter an order if it be a domestic corporation, forfeiting its charter or certificate of incorporation, rights and franchises; and if it be a foreign corporation, revoking its rights and privileges to hold property and transact business in this state. The amount of the judgment, including costs, entered against any corporation, and interest thereon until paid, may be collected by the attorney general, or be collected by the tax commissioner in the same manner that other claims due the state are collected. In any such action the court may upon payment of the judgment hereinabove mentioned together with interest and costs and the payment of any and all license taxes which may have accrued since the institution of such action, reinstate any corporation to its former rights as if it had not been delinquent and proceeded against under this section, and make such other orders as it shall deem necessary and proper; and may appoint a receiver for any such corporation and order its assets marshalled and distributed among its creditors; and may, on motion of the attorney general, grant an injunction against any such corporation
restraining it from the exercise of any franchise or the transaction of any business within this state, until such tax and the costs be paid. Any person or persons who shall exercise or attempt to exercise any powers under the articles of incorporation, charter or certificate of incorporation of any such corporation, after the issuing of the governor’s proclamation, shall be guilty of a misdemeanor, and, shall be punished by imprisonment not exceeding one year, or a fine not exceeding one thousand dollars, or both such fine and imprisonment, in the discretion of the court. The words “license tax” used in this section include, in addition to the amount of license tax proper, all penalties and fines accruing for failure to pay such tax, the annual fee of the secretary of state as statutory attorney-in-fact, and the cost of any action to enforce the collection of the same. When two or more corporations are included in one action, the court shall apportion the cost thereof among them as it may deem just.

If in any such action the court shall order the sale of the property of any delinquent corporation without ordering that its assets be marshalled and distributed among its creditors, the purchaser at the sale shall acquire title to the property subject to any rights which the creditors of the corporation would have had if no action had been brought by the state for collection of delinquent license taxes. In any subsequent action, however, brought by the creditors of the corporation to subject the property in the hands of the purchaser to the payment of their claims against the corporation, the purchaser shall be given a preference over any creditor for the payment of the purchase price, including costs with interest at six 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.

No action shall be instituted in any court of this state on and after the first day of January, one thousand nine hundred and fifty, for the purpose of setting aside the sale of all or any of the assets of any corporation heretofore sold by order of the court in any former action or proceeding
§11-12-88. Process in such action; record of forfeiture, revocation or dissolution.

In any such action process shall be served in the manner provided by law. The attorney general may cause a copy of any order of publication to be mailed to each corporation at its last known post-office address as aforesaid. It shall be the duty of the clerk of every court of this state in which any proceedings are had which result in the forfeiture of the charter or certificate of incorporation of any corporation issued under the laws of this state, or result in the dissolution or extinction of any such corporation, or in the revocation of the rights and privileges, of any foreign corporation to do business in this state, to notify the secretary of state of any such forfeiture, dissolution, extinction or revocation, in which report he shall state the name of the court, the name of the corporation, the nature of the actions and the date of the order or judgment, and such other pertinent matter as may be required by the secretary of state; and the secretary of state shall file and record such report in his office, and aptly note the same in the indexes of corporations kept in his office. If any clerk fail to make such report he shall be liable to a fine of not exceeding one hundred dollars.

§11-12-89. Corporations exempt from license tax.

Nothing in sections seventy-five through ninety, inclusive, of this article shall be construed as imposing license tax on corporations chartered strictly for educational, literary, agricultural, scientific, religious or charitable purposes, or upon charters, or certificates of incorporation incorporating cemeteries or lodges of Masons, Odd Fellows, or the like, or other charitable, fraternal or patriotic societies not incorporated for profit to the stockholders; but the secretary of state shall require full proof as to the character of any such corporation claiming such exemption from the payment of license tax. Every such corporation, however, shall, in the third month
§11-12-90. Monthly report by secretary of state to tax commissioner as to corporations.

The secretary of state shall within twenty days after the close of each month make a report to the tax commissioner for the preceding month, in which he shall set out the name of every corporation to which he issued a certificate of incorporation during the month, as well as the name of each corporation to which he issued a certificate under section fifty-four, article one, chapter thirty-one of this code with the amount of license tax paid to him by each; also he shall set out in such report the names of all corporations to which he issued, during such preceding month, certificates of increase or decrease of stock, or of shares of stock, or of par value of shares of stock; certificates of change of name or of change of location of principal office; and a statement of all moneys received by him during such preceding month from all sources and due to the state, and pay the same into the treasury; if he fail to do so it shall be the duty of the tax 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.

Except as may be otherwise provided in article one, chapter thirty-one of this code, the secretary of state shall charge for services rendered in his office the following fees to be paid by the person to whom the service is rendered at the time it is done:

For each certificate of incorporation or copy thereof, including restatements of any such certificates issued on new agreements, and/or consolidations or all certificates of merger or consolidation or certificates authorizing a foreign corporation to do business within this state __________________ $10.00
For each certified copy of certificate of incorporation, not to exceed ten pages .......................... 10.00
If such copy contains in excess of ten pages, for each additional page ........................................... 0.20
For filing and recording a trademark ........................................... 5.00
For each certificate of change of name, of increase or decrease of authorized capital stock, of change of principal office, or of amendment to certificate of incorporation ........................................... 5.00
For recording a power of attorney and certificate thereof ........................................... 3.00
For any other certificate, whether required by law or made at the request of any person ................. 5.00
The foregoing fees shall include the tax on the great seal or the less seal impressed on any such document, as well as the filing, recording and indexing of the same.
For endorsing and filing reports of corporations, and all other papers, which shall include the indexing of the same, for each report or paper filed ........................................... 1.00
For any search, not less than ........................................... 1.00
For searches of more than one hour, for each hour or fraction thereof consumed in making such search ........................................... 1.00
The cost of the search shall be in addition to the cost of any certificate issued pursuant thereto or based thereon.
For entering statement of satisfaction of conditional sale contract ........................................... 1.00
For filing each financing, continuation or termination statement or other statement or writing permitted to be filed under chapter forty-six of the code ........................................... 1.00
For filing, preserving and indexing a security agreement filed under chapter forty-six of the code ...... 2.00
For recording any paper for which no specific fee is prescribed ........................................ 1.00

Or at the rate, for each one hundred words recorded, of .................................................. .20

For issuing commission to a notary public, or to a commissioner of deeds, which shall include the tax on the state seal thereon and other charges ... 5.00

For a testimonial .................................................................................................................. 1.50

For a copy of any paper, if one sheet .......... 1.00

For each sheet of copy after the first .......... .75

For issuing a commission to a commissioner in any other state ........................................ 5.00

For making out a requisition for a fugitive from justice demanded of the executive authority of another state .......................................................... 2.00

For issuing a warrant for the arrest of a fugitive from justice demanded by the executive authority of another state .................................................. 2.00

For any other work or service not herein enumerated, such fee as may be elsewhere prescribed.

---

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.

Any financial institution as defined in section one of this article is authorized to become a member of a corporation organized under the provisions of this article by making application to the board of directors on such form and in such manner as the board of directors may require and membership shall become effective upon acceptance of such application by said board. Membership in the corporation shall be for the duration of the corporation: Provided, That upon written notice given to the corporation one year in advance, a member may withdraw from membership in the corporation at the expiration date of such notice and shall not thereafter be obligated to make any loans to the corporation.

Each member of the corporation shall make loans to the corporation as and when called upon by it to do so on such terms and other conditions as shall be mutually approved
from time to time by the board of directors of the corporation and such member, subject to the following conditions:

(1) All loan limits shall be established at the thousand-dollar amount nearest to the amount computed in accordance with the provisions of this section.

(2) No loans to the corporation shall be made if immediately thereafter, the total amount of the obligations of the corporation would exceed ten times the amount then paid in on the outstanding capital stock of the corporation. This limitation shall not apply with respect to that portion of the corporation's obligations incurred for the purpose of providing funds for making loans or for the acquisition of assets or investments to the extent that such loans, assets or investments are federally guaranteed, which for the purposes of this section seven means secured or covered by guaranties or by commitments or agreements to take over, or purchase, made by the United States of America, or by any department, bureau, agency, board, commission or establishment of the United States including any corporation, wholly owned, directly or indirectly, by the United States.

(3) The total amount outstanding on loans to the corporation made by any member at any one time, when added to the amount of the investment in the capital stock of the corporation then held by such member, shall not exceed:

(a) Twenty percent of the total amount then outstanding on loans to the corporation by all members, including in said total amount outstanding, amounts validly called for loans but not yet loaned.

(b) The following limit, to be adjusted annually on the basis of the audited balance sheet of such member at the close of its fiscal year, or, in the case of an insurance company, its annual statement to the commissioner of insurance: two percent of the capital, surplus and undivided profits of commercial banks and trust companies; one percent of the total outstanding loans made by a building and loan association or industrial loan company; one percent of the capital and unassigned surplus of stock insurance companies, except fire insurance companies; one percent of the unassigned surplus of mutual insurance companies, except fire insurance companies; one tenth of one percent of
the assets of fire insurance companies; and such limits as may
be approved by the board of directors of the corporation for
other financial institutions.

In computing the total amount outstanding on loans to the
corporation made by a member at any time, there shall be
excluded such portion of such loans as were obtained by
the corporation for the purpose of providing funds for the
making of loans or for the acquisition of assets or investments
to the extent that such loans, assets or investments are
federally guaranteed.

Subject to paragraph three (a) of this section, each call made
by the corporation shall be prorated among the members of the
corporation in substantially the same proportion that the ad-
justed loan limit of each member bears to the aggregate of the
adjusted loan limit of all members. The adjusted loan limit of a
member shall be the amount of such member's loan limit, re-
duced by the balance of outstanding loans by such member to
the corporation and the investment in capital stock of the
corporation held by such member at the time of such call.

All loans to the corporation by members shall be evidenced
by bonds, debentures, notes or other evidences of indebtedness
of the corporation, which shall be freely transferable at all
times, and which shall bear interest at a rate of not less
than one quarter of one percent in excess of the rate of interest
determined by the board of directors to be the prime rate
prevailing at the date of issuance thereof on unsecured
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 empowered to establish, operate and maintain, either directly or by contract, garbage and refuse collection and disposal services, and to pay for the establishment, operation and maintenance of such collection and disposal services, in whole or in part, either out of general funds in the county treasury, or out of special funds to be derived from fees charged to and paid by the users of such services or a combination of both such general revenue or special fund: Provided, That the power and authority hereby conferred upon county courts shall not be exercised in territory included within the boundaries of any municipal corporation, except as provided herein.

Any county court for the purpose of implementing this section is hereby authorized to enter into such contract or contracts with any municipality or county within this state for the purposes of carrying out the powers vested in such county courts by this section, and all said county courts may, pursuant to such contract, exercise the authority herein granted within such contracting municipality: Provided, however, That where an area is furnished garbage and refuse collection service by an existing carrier under authority issued by the public service commission of West Virginia, the county court may enter into contracts or agreements with such carrier to supplement such existing service, but shall not enter into any competing service without authority being granted by the public service commission.
The term "users" as used herein shall mean and include any person to whom such services are made available 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 conferred by law upon county courts or tribunals in lieu thereof, hereinafter referred to as county courts or courts, such courts are hereby empowered to employ, fix compensation for and discharge such clerical, stenographic, technical, professional and other personnel, including specialists and consultants, as may from time to time be necessary to aid such courts in exercising their powers or discharging their duties as provided by law and including a county administrator, to coordinate the court’s activities and to do such other things as the court may direct: Provided, That such courts shall not have the power to employ...
any such personnel to perform powers and duties that are performed by such courts through their clerks pursuant to law.

The county courts shall, not later than March twenty-eight of each year, take up and consider the probable amount necessary to be expended for such personnel in the following fiscal year; shall determine and fix an aggregate sum to be expended during the following fiscal year for the compensation of such personnel, which shall be reasonable and proper, taking into account the amount of labor and services necessary to be performed by those who are to receive the compensation; and shall make and enter an order stating any action taken in this regard.

The county courts shall file with their clerks a statement in writing showing such action and setting forth the name of each person employed pursuant to the provisions of this section, the time for which employed and the monthly compensation. Such courts shall have authority to discharge at their will and pleasure, any such personnel by filing with their clerks a statement in writing showing such action, to be entered in, and made a part of, their order book or other daily record book. All statements required to be filed by this section shall be verified by the affidavit of a majority of the members of the county court making them, and among other things contained in the affidavit shall be the statement that the amounts shown therein were the amounts actually paid or intended to be paid to each person employed without rebates, or any agreement, understanding and expectation that any part thereof shall be repaid to any of such members making said affidavit, and that nothing has heretofore been paid or promised any of such members making said affidavit on that account, and that if any of such members making said affidavit shall thereafter receive any money, or thing of value, on account thereof, the same will be accounted for and paid to the county. Until the statements required by this section shall have been filed, no allowance or payments shall be made by the county courts for personnel.
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 law upon county courts, such courts are hereby authorized and empowered to make grants from general county revenues and any other revenues of the county available for such purposes, to public service districts as defined and provided for in article thirteen-a, chapter sixteen of the code and to municipalities for the purpose of establishing or improving 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.

In addition to the payment for services in court as described in section four of this article, all county commissioners shall be paid compensation out of the county treasury in amounts hereafter set forth for each class of county as determined by the provisions of section three, article seven, chapter seven:

Provided, That as to any county having a tribunal in lieu of a county court, the county commissioners of such county may be paid less than the minimum compensation limits of the county court for the particular class of such county.

<table>
<thead>
<tr>
<th>Class</th>
<th>Compensation</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>$12,600</td>
</tr>
<tr>
<td>II</td>
<td>$9,600</td>
</tr>
<tr>
<td>III</td>
<td>$9,000</td>
</tr>
<tr>
<td>IV</td>
<td>$6,400</td>
</tr>
<tr>
<td>V</td>
<td>$4,300</td>
</tr>
<tr>
<td>VI</td>
<td>$2,500</td>
</tr>
<tr>
<td>VII</td>
<td>$1,000</td>
</tr>
</tbody>
</table>
17 The compensation hereinabove provided shall be paid on and after January one, one thousand nine hundred seventy-five to each county commissioner beginning a new term of office. Salaries in effect December thirty-one, one thousand nine hundred seventy-four shall remain in effect except as hereinbefore provided in this section.

ARTICLE 7. TRAINING PROGRAMS FOR COUNTY EMPLOYEES, ETC.; COMPENSATION OF ELECTED COUNTY OFFICIALS; COUNTY ASSISTANTS, DEPUTIES AND EMPLOYEES, THEIR NUMBER AND COMPENSATION.

§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 commissioners for each class of county; effective date.

§7-7-3. Classification of counties for purpose of determining compensation of elected county officials.

1 For the purpose of determining the compensation of elected county officials, the counties of the state of West Virginia are hereby grouped into seven classes based on their assessed valuation of property, all classes. These seven classes and the minimum and maximum valuation of property, all classes, established to determine the classification of each county are as follows:

<table>
<thead>
<tr>
<th>Class</th>
<th>Minimum Assessed Valuation of Property All Classes</th>
<th>Maximum Assessed Valuation of Property All Classes</th>
</tr>
</thead>
<tbody>
<tr>
<td>8</td>
<td>Class I</td>
<td>$600,000,000</td>
</tr>
<tr>
<td>9</td>
<td>Class II</td>
<td>$450,000,000</td>
</tr>
<tr>
<td>10</td>
<td>Class III</td>
<td>$200,000,000</td>
</tr>
<tr>
<td>11</td>
<td>Class IV</td>
<td>$100,000,000</td>
</tr>
<tr>
<td>12</td>
<td>Class V</td>
<td>$50,000,000</td>
</tr>
<tr>
<td>13</td>
<td>Class VI</td>
<td>$15,000,000</td>
</tr>
<tr>
<td>14</td>
<td>Class VII</td>
<td>$0</td>
</tr>
</tbody>
</table>

15 The assessed valuation of property, all classes, that shall be used as the base to determine the class of a county shall
be the assessed valuation of property, all classes, of the
county as certified by the county assessor, state auditor and
county clerk prior to March twenty-nine, one thousand nine
hundred seventy-two.

Prior to March twenty-nine, one thousand nine hundred
seventy-four and each second year thereafter, the county
court of each county shall determine if the assessed valuation
of property, all classes, of the county, as certified by the
county assessor, state auditor and county clerk, is within
the minimum and maximum limits of a class above or below
the class in which the county then is. If the county court so
determines, it shall record the new classification of the county
with the state auditor and state tax commissioner and record
its action on its county court record.

The classification of each county shall be subject to review
by the state tax commissioner. He shall determine if the
classification of each county is correct based on the final
assessed valuation of property, all classes, certified to him
by the county assessor, state auditor and county clerk. If
he finds that a county is incorrectly classified he shall notify
the county court of that county promptly of his finding and
in any case shall notify the county court prior to June
thirtieth of that current fiscal year. Any county court so
notified shall correct its classification immediately and make
any necessary corrections in the salaries of its elected county
officials for the next fiscal year. Nothing in this section shall
be construed as authorizing an increase in compensation
except at such time as the affected county officer begins a
new term of office.

§7-7-4. Compensation of elected county officials other than county
commissioners for each class of county; effective date.

For the purpose of determining the compensation to be
paid to the elected county officials of each county, the fol-
lowing compensations for each county office by class are
hereby established and shall be used by each county court in
determining the compensation of each of their county officials
other than compensation of members of the county court:
<table>
<thead>
<tr>
<th>Class</th>
<th>County Clerk</th>
<th>Circuit Clerk</th>
<th>Assessor</th>
<th>Prosecuting Attorney</th>
</tr>
</thead>
<tbody>
<tr>
<td>7 Class I</td>
<td>$12,000</td>
<td>$19,500</td>
<td>$19,500</td>
<td>$12,000</td>
</tr>
<tr>
<td>8 Class II</td>
<td>$8,400</td>
<td>$15,600</td>
<td>$15,600</td>
<td>$8,400</td>
</tr>
<tr>
<td>9 Class III</td>
<td>$10,000</td>
<td>$15,600</td>
<td>$15,600</td>
<td>$12,000</td>
</tr>
<tr>
<td>10 Class IV</td>
<td>$10,000</td>
<td>$13,000</td>
<td>$13,000</td>
<td>$10,000</td>
</tr>
<tr>
<td>11 Class V</td>
<td>$9,000</td>
<td>$11,500</td>
<td>$11,500</td>
<td>$9,000</td>
</tr>
<tr>
<td>12 Class VI</td>
<td>$6,900</td>
<td>$8,300</td>
<td>$8,300</td>
<td>$6,900</td>
</tr>
<tr>
<td>13 Class VII</td>
<td>$4,200</td>
<td>$3,600</td>
<td>$3,000</td>
<td>$3,600</td>
</tr>
</tbody>
</table>

Any county clerk, circuit clerk, joint clerk of the county and circuit court, if any, county assessor, sheriff and prosecuting attorney of a Class I county and any prosecuting attorney of a Class II county shall devote full time to his public duties to the exclusion of any other employment. Notwithstanding the effective date of this section the compensation provided in this section for county clerks, circuit clerks and joint clerks of county and circuit courts shall become effective January one, one thousand nine hundred seventy-five, and the compensation provided in this section for assessors, sheriffs and prosecuting attorneys shall become effective January one, one thousand nine hundred seventy-three.

In the case of a county that has a joint clerk of the county and circuit court, the compensation of the joint clerk shall be fixed in an amount twenty-five percent higher than the compensation would be fixed for the county clerk if it had separate offices of county clerk and circuit clerk.

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.]
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 printing of two thousand dollars or less in amount in the open market, but a purchase of and contract for commodities and printing over two thousand dollars shall be based on competitive bids, except in case of emergency.

6 The county court of any county is hereby authorized and empowered to promulgate rules and regulations governing the procedure of competitive bids.

9 As used in this section, the terms “commodities” and “printing” shall have the same meaning as those terms are defined in section one, article one, chapter five-a of this code.

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.
Ch. 20] COUNTY COURTS AND COUNTY OFFICERS 335

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 approval of the county court, or of the governor, or of the court of the county vested with authority to try criminal offenses, or of the judge thereof in vacation, may, within his discretion, offer rewards for the apprehension of persons charged with crime, or may expend money for the detection of crime. Any money expended under this section shall, when approved by the prosecuting attorney, be paid out of the county fund, in the same manner as other county expenses are paid: Provided, That the prosecuting attorneys of the several counties of the state may, with the approval of the county courts of their respective counties, entered of record, appoint to assist them in the discharge of their official duties, trained and qualified full-time or part-time investigators of crime. Such investigators shall accept no other public employment or employment in a private police or investigative capacity during the term of their appointment and shall be paid such salary and expenses as may be fixed by the county court. Such expenses shall be itemized and sworn to by the investigator upon presentation to the county court.

22 Notwithstanding any other provision of this code to the contrary, the prosecuting attorney of any county, with the consent of the judge of the court of competent jurisdiction and the county court, may appoint an investigator of crime 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.

The county court of each county shall allow to each county official and to their deputies, assistants and employees, when they are required to drive their personally owned vehicles in the actual performance and discharge of their official duties, reimbursement at the rate of fifteen cents for each mile traveled in their personally owned vehicles.
Every county official shall file monthly, under oath, a full and accurate account of all the actual mileage driven by him, his deputies, assistants and employees, in the performance and discharge of their official duties supported by verified accounts before reimbursement thereof shall be allowed by the county court. Reimbursement, properly allowed, shall be made from the general county fund.

CHAPTER 50. JUSTICES AND CONSTABLES.

ARTICLE 17. FEES, FINES AND COSTS.

§50-17-12. Fees of constables in criminal cases.

Every constable shall be entitled to the following fees in criminal cases:

1. For an arrest in case of felony $3.50
2. For an arrest in cases other than felony 3.00
3. For serving a subpoena .50
4. For executing a search warrant 2.50
5. For summoning a jury in criminal action 1.50
6. Witness fee constable .50
7. In addition to above fees, constables shall be allowed twelve cents for each mile of necessary travel utilizing their personally owned vehicles in the actual performance and discharge of their official duties, and fifteen cents per mile for transporting prisoners if the constables are driving their personally owned motor vehicles in the transporting of such prisoners, if such mileage fees in any case shall exceed one dollar.
8. In cases of search warrants and proceedings under article one, chapter sixty-two of this code, the fees of the constable shall be chargeable to the county, shall be audited and paid as other claims of like nature by the county court.
9. In criminal cases, other than felony, such fees shall be charged and paid as provided in section fifteen, article five, chapter seven of this code, and section eight, article eighteen 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.


1 With the approval of the county sheriff, the county court of any county is hereby authorized to employ any person imprisoned upon conviction for a misdemeanor in a county jail to work within the county as the county court may decide. In such instance the wages to be paid to the prisoner shall be no less than one dollar per hour. Such prisoners shall remain in the custody of and be supervised by said sheriff.

2 No imprisoned person shall be required to work without his consent.

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.

A judge of the supreme court of appeals and of a circuit court shall be entitled to an allowance for mileage at the rate of twelve cents for each mile, to be computed according to the distance by the nearest practicable route, necessarily traveled from his place of residence, to the place of holding any term of court in a county other than that of his residence, and from such place to his residence; and a judge of the circuit court shall be paid the sum of twenty-five dollars per day as expenses while holding court in a county other than that in which he resides: Provided, That no judge of a circuit court shall be paid mileage and expenses for holding more than ten terms of court in any county in any one year, including regular, adjourned and special terms. The mileage and expenses provided for in this article shall be paid to any judge out of the state 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.]
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 advance from the party or parties requesting such services the following fees:

1. (1) For entering and trying any civil suit and the issuance of all papers including distress warrant and attachment orders and the performance of all other services in connection with any such civil suit whether the suit be contested or uncontested and whether or not the suit be completed or discontinued but excepting services in connection with executions or garnishments and suggestee executions $5.00

2. (2) For all services in connection with an execution on judgment, suggestion on judgment, execution and garnishment whether execution be without garnishment or there be both execution and garnishment or suggestee execution $2.50

3. (3) For each bond filed in a case, appeal bond, stay of execution bond, bail bond, civil order of arrest, detinue bond, except bond in attachment case and docketing same $1.00

4. (4) For taking depositions of witnesses if done in an hour or less $1.00

5. (5) If not completed in an hour, for additional time at the rate, per hour of $1.00

6. (6) For taking an inquest on a dead body, to be audited and paid from the treasury of the county $5.00
29  (7) Order of appraisement, 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. 


§50-19-7. 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. 


§50-19-1. 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.

The county court of each county shall forthwith appoint those persons serving as justices of the peace on the first day of January, one thousand nine hundred seventy-four, and actively engaged in the practice of justice of the peace, as aforesaid, to the office of county magistrate for his district, unless such person is not so serving on the effective date of this article, in which event the person then serving as justice of the peace, if any, shall be appointed as county magistrate. In the event any such person is unwilling or, in the opinion of the county court, unable, due to physical or mental debility, to serve or in the event no person is entitled to appointment by virtue of service as a justice of the peace or in the event of a vacancy in the office of county magistrate, the county court may, but notwithstanding any other provision of law to the contrary shall not be required to, appoint a qualified person to serve as county magistrate. The oath of office for county magistrates shall be administered by the county court.

The question of whether a person has been actively engaged in the practice of justice of the peace so as to be entitled to appointment as a county magistrate shall be determined by the county court, and its decision with respect to this issue shall be final and conclusive subject to review by the circuit court upon application therefor made by such person within thirty days after the decision of the county court has been entered upon the order book of such county court.

§50-19-3. Magistrate courts; county magistrates; jurisdiction; procedure; appeal.

Each county magistrate shall hold and preside over a magistrate court. Such magistrate court shall not be a court of record for any purpose. County magistrates shall be commissioned by the governor and shall have the same jurisdiction over all matters, both civil and criminal, which is now or may hereafter be conferred upon justices of the peace, in addition to jurisdiction which may otherwise be conferred by law upon county magistrates.

Except as they may be clearly in conflict with the provisions
of this article, all provisions of law relating to justices of the peace in regard to all aspects of procedure, trial of causes and appeals shall apply to county magistrates.

§50-19-4. Fees and costs; limitation on justices of the peace; disposition.

Notwithstanding any provision of article seventeen of this chapter or any other provision of law to the contrary, no justice of the peace, after the thirtieth day of June, one thousand nine hundred seventy-four, or county magistrate, at any time, except as provided in section five of this article, shall collect or receive any sum of money or other emolument by virtue of his office for his own use or benefit. Notwithstanding any provision of article seventeen of this chapter or any other provision of law to the contrary, no justice of the peace shall collect or receive any sum of money or other emolument by virtue of his office as justice of the peace while he serves as a county magistrate.

Each county magistrate shall collect all fees and costs, both civil and criminal, which a justice of the peace may by law collect in the same manner and subject to the prohibitions as prescribed by law for justices of the peace. All such fees and costs, together with an accounting of their source and the services for which rendered, shall be paid over to the sheriff of the county by the fifteenth day of the month following the month of their collection. Such fees and costs shall be deposited into the general fund of the county. Each county magistrate shall pay over all fines, costs, forfeitures and penalties which accrue to the state in the same manner and subject to the same provisions of law as apply to justices of the peace.


For the purpose of establishing maximum limitations on the compensation for county magistrates, the counties shall be classified according to population, as ascertained in the last preceding census taken under the authority of the United States, as follows: Counties with a population of two hundred thousand or more shall be designated Class I counties; counties with a population of one hundred thousand or more but less than two 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.

Salaries for county magistrates shall be fixed by the county
19 courts within the following maximum limits: In Class I
20 counties, not more than seventeen thousand five hundred
21 dollars per year; in Class II counties, not more than fifteen
22 thousand dollars per year; in Class III counties, not more
23 than twelve thousand five hundred dollars per year; in Class
24 IV counties, not more than ten thousand dollars per year; in
25 Class V counties, not more than seven thousand five hundred
26 dollars per year; in Class VI counties, not more than six
27 thousand two hundred fifty dollars per year; and in Class
28 VII counties, not more than five thousand dollars per year.

Within the maximum limitations above prescribed, the
29 county court may fix the same salary for all county magistrates
30 within such county or it may establish a different salary for
31 one or more of such county magistrates. In fixing the salaries
32 within the maximum limitations above prescribed, the county
33 court shall consider the advice of the advisory board herein
34 created and shall take into account the amount of time each
35 county magistrate shall be available to perform the duties
36 of his office.

For the purpose of advising the county court in the fixing of
39 salaries of county magistrates within the maximum limitations
40 above prescribed, there is hereby created in each county
41 the county magistrates advisory board which shall be com-
42 posed of the county clerk, the clerk of the circuit court and
43 three members to be appointed by the county court. Justices of
44 the peace, county magistrates or members of their immediate
45 families shall be ineligible to serve as members of the board
46 unless their service is by virtue of their office as county clerk or
47 clerk of the circuit court. The advisory board shall elect from
its membership a chairman. The advisory board shall meet at
such times and places as shall be directed by the chairman or
by the county court. It shall be the duty of the advisory board
to advise the county court on the fixing of salaries of county
magistrates within the maximum limitations above prescribed.
No member of the county magistrates advisory board shall be
entitled to any pay or reimbursement for expenses incurred in
the performance of his duties.

In addition to his salary, as specified by the county court,
each county magistrate shall be entitled to be reimbursed for all
reasonable and necessary expenses actually incurred by him in
providing office space, furnishing necessary clerical help and
providing stationery and supplies and for all other incidental
operating expenses, but the total of all such reimbursed ex-
penses in any fiscal year may not exceed seventy-five percent
of the salary of such county magistrate for such fiscal year.
Requisition for such reimbursement shall be accompanied by
a sworn statement, detailed vouchers and documentation per-
taining to such expenses.

The salary of each county magistrate and all payments made
to reimburse him for all reasonable and necessary expenses
actually incurred in the performance of his duties as a county
magistrate shall be paid by the county court from the county
general fund. The salary shall be paid in equal monthly in-


All constables as provided for in this chapter shall perform
the functions and duties for county magistrates as may be pre-
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.

Except as may be modified by the provisions of this article
and except as may be clearly conflicting with the provisions of
this article, all county magistrates are hereby imposed with
the duty to conduct their fiscal affairs in the same manner as
prescribed for justices of the peace.
Each county court may by order entered of record adopt rules and regulations establishing administrative requirements as to the discharge of the duties of county magistrates, including, but not limited to, the specification of a reasonable schedule of hours for each county magistrate, requirements that the office of a county magistrate be located in a place readily accessible to the public, and requirements that each county magistrate maintain regular telephone service if such service is available.

Each county magistrate shall be subject to supervision by the circuit court of his county as to the performance of his judicial functions, and, without any limitation of all other power and authority vested in the circuit court, such court, upon receipt of a complaint against a county magistrate, shall have plenary power and authority, after hearing, to censure or suspend such county magistrate.

Each county magistrate shall be subject to audit of his records, both civil and criminal, and all materials relating to such records, by the chief inspector of public offices. For the purpose of uniformity, the chief inspector of public offices shall designate the form of records to be used by county magistrates.

Each county magistrate shall furnish to the county court of his county monthly reports indicating the volume of judicial business handled by him, both civil and criminal, the total amount of moneys received, whether in the form of fees, costs, fines, forfeitures or penalties, the total amount of moneys remitted by him as required by law, the total amount of expenses incurred by such county magistrate during such month for which reimbursement is claimed, and all such other detailed information as the county court shall require. The county court shall consolidate all such monthly reports and each quarter forward a copy of the consolidated report to the joint committee on government and finance.


Except as may be clearly in conflict with the provisions of this article, all provisions of this code relating to justices of the peace, including those provisions specifying and prohibiting
unlawful or improper conduct, and including the requirement to
post bond as provided in section ten, article two, chapter six of
this code, shall apply to county magistrates. To the extent such
provisions are clearly in conflict, the provisions of this article
shall control.


Any county magistrate who shall violate any provision of
this article or any provision of this code which by virtue of
this article is made applicable to county magistrates shall be
guilty of a misdemeanor, and, upon conviction thereof, shall
be fined not more than one thousand dollars, or imprisoned
in the county jail not more than one year, or both fined and im-
prisoned. A conviction hereunder shall effect the removal of a
county magistrate from office and shall disqualify him from
further service as a county magistrate.


The provisions of this article shall expire on the thirtieth day
of June, one thousand nine hundred seventy-five. Such expira-
tion, however, shall not affect any act or decision of a county
magistrate.

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.

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 may nevertheless be opened on any subsequent day; provided, in the case of any court of record for any county, the same be done before four o'clock in the afternoon of the third day.
2 If, after a court is opened, it fail to sit on any day, it may nevertheless sit on any subsequent day of the term: Provided,
3 That in the case of any court of record for any county, there be not more than seven consecutive days of such failure.
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 to a case, a typewritten transcript of his shorthand notes of the testimony or other proceedings, which shall be upon paper measuring eight and one-half inches in width and eleven inches in length, with margins of one-half inch on the right side and bottom, one inch at the top and one and one-half inches on the left, with twenty-four lines on each page, and shall certify the same as being correct, and shall be paid therefor, by the party requesting such transcript, at the rate of one dollar and ten cents for each page so transcribed and certified; and for each carbon copy of such transcript, ordered at the same time, he shall be paid forty cents for each page so furnished.

A transcript of such testimony or proceedings, when certified by the official reporter and by the judge of the court, shall be authentic for all purposes, and shall be used by the parties to the cause in any further proceeding therein wherein the use of the same may be required. It may be used, without further authentication, in making up the record on appeal, as provided in sections thirty-six and
Ch. 28] COURTS AND THEIR OFFICERS 351

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 ses-
sion, one thousand nine hundred seventy-two, relating to in-
creasing 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:
§2.  Jurisdiction.

That said common pleas court of Cabell County shall have original jurisdiction within said county of all crimes, felonies, misdemeanors, criminal proceedings, and all matters in anywise relating thereto, and all civil actions, civil matters and proceedings in anywise relating thereto.

Such jurisdiction of the common pleas court shall be general, common and concurrent with the jurisdiction of the circuit court of such county in all and every respect as the same is constituted and set forth in section twelve, article eight of the constitution of West Virginia, and by the laws and statutes of the state of West Virginia, except where the matters in controversy in civil suits or proceedings shall exceed the sum of two hundred fifty thousand dollars, and except as to those matters specifically reserved to the jurisdiction of the circuit court, but including concurrent jurisdiction with that of the circuit court in all suits and matters arising under chapter thirty-six, article seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and known as the “West Virginia Gifts to Minors Act.”


The judge of the common pleas court of Cabell County, shall, from and after the first day of July, one thousand nine hundred seventy-four, receive for his services a salary in the amount of twenty six thousand dollars per annum, to be paid in semimonthly installments out of the county treasury of Cabell County, out of the funds of said treasury, in the manner provided by statute. The salary of said judge shall continue as provided in chapter thirty, acts of the Legislature, regular session, one thousand nine hundred seventy-two, until the first day of July, one thousand nine hundred seventy-four. The county court of Cabell County shall annually make provision by appropriate levy and appropriation for the payment of said salary.

All acts or parts of acts inconsistent or in conflict here-with are repealed.
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.

The said domestic relations court shall have jurisdiction within the said county of Cabell, concurrent with the circuit court, of all matters and causes arising out of or pertaining to annulment of marriages, separate maintenance suits, divorce, alimony, the custody and maintenance of children of litigants and the adjudication of property rights arising out of the same, and of all other matters and causes coming within the purview of chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, and all amendments and reenactments thereof concerning domestic relations, habeas corpus proceedings; of all matters and causes coming within the purview of chapter forty-nine of
the code of West Virginia, one thousand nine hundred thirty-one, as enacted by chapter one, acts of the Legislature of West Virginia, one thousand nine hundred thirty-six, and of all amendments and reenactments thereof, commonly known as the child welfare law; of all matters and causes coming within the purview of chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, and all amendments and reenactments thereof, commonly called the general school law; of all matters and causes coming within the purview of chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, and of all amendments and reenactments thereof, commonly known as the reciprocal dependency law; of all matters and causes coming within the purview of chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, and all amendments and reenactments thereof, commonly known as the adoption law; and of all matters and causes coming within the purview of chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, and of all amendments and reenactments thereof, commonly known as the maintenance of illegitimate children law; and of all matters and causes coming within the purview of chapter forty-eight, article ten, section fourteen of the code of West Virginia, one thousand nine hundred thirty-one, and of all amendments and reenactments thereof, commonly known as the approval of the compromising of infants' claims for damages; and of all matters and causes coming within the purview of chapter forty-eight, article one, section six-c of the code of West Virginia, one thousand nine hundred thirty-one, and of all amendments and reenactments thereof, commonly known as the issuance of marriage license in case of emergency or extraordinary circumstances; and of all matters and causes coming within the purview of chapter fifty-five, article seven-a of the code of West Virginia, one thousand nine hundred thirty-one, and of all amendments and reenactments thereof, commonly known as the liability of parents; and of all
matters and causes coming within the purview of chapter thirty-seven of the code of West Virginia, one thousand nine hundred thirty-one, and of all amendments and reenactments thereof, commonly known as the approval of the sale, lease or mortgage of infants’ lands; and of all matters and causes coming within the purview of chapter sixty-one, article seven, section two, commonly known as license to carry weapons, how obtained; and shall have concurrent with the circuit court of Cabell County, supervision and control of proceedings before justices and other inferior tribunals by mandamus, prohibition and certiorari; and of all matters and causes, concurrent with the circuit court of Cabell County and the common pleas court of Cabell County coming within the purview of chapter sixty-two, article one-c, section one, commonly known as the right to bail; and of all matters and causes coming within the purview of all other or future acts of the Legislature touching the subject matter of any and all said laws and acts, and the amendments and reenactments thereof, and of the common law of said state relating to the subject matter thereof. Independently of any of the foregoing matters, the domestic relations court shall also have and is hereby given what was heretofore recognized as general equity jurisdiction concurrent with the circuit court, excepting in cases involving the enforcement of criminal laws and labor disputes, and excepting cases where it shall appear from the pleadings that the matter or thing in controversy exceeds in value the sum of five hundred thousand dollars. The proceedings and modes of procedure and power and jurisdiction conferred by law upon the circuit court or the common pleas court in any and all said matters and causes are hereby conferred upon and shall be exercised by said domestic relations court.

The court is authorized and empowered to appoint and discharge one chief probation officer at a yearly salary of eleven thousand dollars and two probation officers at a yearly salary of ten thousand seven hundred fifty dollars each, which said salaries shall be paid by the county court in monthly installments, and in addition thereto the said county court shall reimburse the said probation officers of their necessary expenses actually incurred monthly in the
performance of official duties, including an allowance of ten
cents per mile of their automobile driven in the performance
of official duties. The court is further authorized and
empowered to appoint and discharge such medical, clerical
and secretarial assistance as shall enable it to discharge all
of the duties required of it under the provisions of this
section and the general laws of the state and such person or
persons shall be paid by the county court monthly upon the
written approval of the judge of the said court.

§4. Salary of judge.

The judge of the domestic relations court of Cabell County,
shall, from and after the first day of July, one thousand nine
hundred seventy-four, receive for his services a salary in the
amount of twenty six thousand dollars per annum, to be paid
in monthly installments out of the county treasury of Cabell
County, out of the funds of said treasury, in the manner pro-
vided by statute. The salary of said judge shall continue as
provided in chapter thirty-one, acts of the Legislature, regular
session, one thousand nine hundred seventy-two, until the
first day of July, one thousand nine hundred seventy-four.
The county court of Cabell County shall annually make pro-
vision by appropriate levy and appropriation for the pay-
ment of said salary.

All acts or parts of acts inconsistent or in conflict herewith
are hereby repealed.

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 thou-
sand 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.

The court shall have jurisdiction within Hancock County, concurrent with the circuit court of said county of causes, matters, proceedings and suits relating to: (a) Those matters within the purview of article one, chapter forty-eight of the official code of West Virginia, as amended; (b) adoption proceedings arising out of article four, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; (c) proceedings for a change of name arising out of article five of said chapter forty-eight, as amended; (d) maintenance of illegitimate children proceedings arising out of article seven, chapter forty-eight of the official code of West Virginia, as amended; (e) desertion and nonsupport of wife or child proceedings arising out of article eight, chapter forty-eight of the official code of West Virginia, as amended; (f) the enforcement of support of dependents arising out of article nine of said chapter forty-eight, as amended; (g) all civil actions or proceedings at law, except where it shall appear from the pleadings that the matter in controversy exceeds the value of seventy-five thousand dollars; (h) all cases arising under articles five, six, seven and eight, chapter forty-nine of the official code of West Virginia, one thousand nine hundred thirty-one, as amended; (i) appellate jurisdiction in all cases, civil and criminal, from judgments of justices of the peace in said county, police judges or mayors of any incorporated city, town or village, or of any inferior tribunal therein, wherein an appeal, writ of error, supersedeas or writ of certiorari may be allowed; (j) all proceedings under article one, chapter thirty-seven of the official code of West Virginia, one thousand nine hundred thirty-one, as amended; (k) the approval of compromising an infant's claim for damages in accordance with section fourteen, article ten,
chapter forty-four of the official code of West Virginia, as amended; (l) any and all other matters arising under the present and future laws of the state of West Virginia, common or statutory, incidental to the foregoing, including, but not limited to, the disposition of property and property interests involved in any such matters, and, as well, the adjudication of any and all rights, titles and interests necessary or incidental to a full determination of all such matters pending in said court.

The court shall have general equity jurisdiction in causes, matters, proceedings and suits before it within its jurisdiction with power to grant injunctions and to require and take recognizances.

The proceedings, modes of procedures, power and jurisdiction conferred by law upon the circuit court of Hancock County in any and all said causes, matters, proceedings and suits are hereby conferred upon and shall be exercised by the court of common pleas of Hancock County.

The judge of said court shall have the same powers in vacation as to any and all of said causes, matters, proceedings and suits that are conferred upon the judges of the circuit court of Hancock County.

It shall not be necessary in any such causes or proceedings to set forth upon the record the facts authorizing said court to take jurisdiction thereof, but jurisdiction shall be presumed unless the contrary plainly appears from the record.

§5. Salary.

The judge of the common pleas court of Hancock County, shall, from and after the first day of July, one thousand nine hundred seventy-four, receive for his services a salary in the amount of twenty-five thousand dollars per annum, to be paid in monthly installments out of the treasury of Hancock County, out of the funds of said treasury, in the manner prescribed by statute. The salary of said judge shall continue as provided in chapter thirty-five, acts of the Legislature, regular session, one thousand nine hundred seventy, until the first day of July, one thousand nine hundred seventy-four. The county court shall annually make provision by appropriate levy and appropriation for the payment of said salary.
§12. Supplies, finances, seal, courtrooms and offices.

It shall be the duty of the county court of Hancock County to provide all records and other books and stationery, postage and supplies that may be necessary for said court. Likewise a seal for said court shall be provided and full faith and credit shall be given to the records of the court and certificates of its judge or clerk in like manner and with the same effect as if the same were records of the circuit court similarly authenticated. The county court of Hancock County shall likewise furnish rooms, furniture and equipment for the proper conduct and administration of said court and shall, through annual levy and appropriations, make provision for the payment for all such rooms, supplies and equipment. It shall be the duty of the county court of Hancock County to pay the salary of a full-time secretary in the office of the judge of said court, to be appointed by him, whose compensation shall be set annually by the county court of Hancock County.

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.


1 The judge of the intermediate court of Kanawha County, West Virginia, shall, from and after the first day of January, one thousand nine hundred seventy-five, receive for his services a salary in the amount of twenty-six thousand dollars per annum, to be paid in monthly installments out of the county treasury of Kanawha County, out of the funds of said treasury, in the manner provided by statute. The salary of said judge shall continue as provided in chapter thirty-eight, acts of the Legislature, regular session, one thousand nine hundred seventy, until the first day of January, one thousand nine hundred seventy-five.

CHAPTER 32

(P.L. 707—Ch. 32, Acts of the Legislature, regular session, 1973—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 by chapter thirty-six, acts of the Legislature, regular session, 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.
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.

The court shall have jurisdiction within Raleigh County, concurrent with the circuit court of said county, of actions, causes, matters, proceedings and suits relating to (a) those matters within the purview of article one, chapter forty-eight of the code of West Virginia and of all amendments and reenactments thereof, of which the circuit court now has exclusive jurisdiction, including the issuance of a marriage license in an emergency or under extraordinary circumstances as now provided in section six-c of said article and chapter; (b) affirmation of marriages, annulment of marriages, separate maintenance, divorce, alimony, the care, custody, maintenance
and education of children of litigants and the adjudication
of property rights arising out of same and all other causes
and matters arising within the provisions of article two,
chapter forty-eight of the code of West Virginia, commonly
known as "the divorce law," and of all amendments and
reenactments thereof; (c) adoption proceedings arising out of
article four of the chapter last aforesaid and of all amendments
and reenactments thereof; (d) proceedings for a change of
name arising out of article five of the chapter last aforesaid
and of all amendments and reenactments thereof; (e) the
enforcement of support of dependents arising out of article
nine of the chapter last aforesaid and of all amendments and
reenactments thereof; (f) the care and disposition of delin-
quent, defective, neglected and dependent children and juve-
nile offenders arising out of articles five, six and seven,
chapter forty-nine of the code of West Virginia and of all
amendments and reenactments thereof; (g) all proceedings
arising out of article eight, chapter forty-nine of the code
of West Virginia, known as the "Interstate Compact on
Juveniles," and of all amendments and reenactments thereof;
h) compulsory school attendance and truancy arising out
of article eight, chapter eighteen of the code of West Virginia
and of all amendments and reenactments thereof; (i) habeas
corpus proceedings involving the award and custody of
children under the age of eighteen years; (j) the col-
clection of recognizances and bonds taken by said court, or of
bonds taken by the clerk thereof in vacation, to secure the
payment of judgments for fines and costs rendered by said
court; (k) the approval of compromise by fiduciaries of
liabilities where acting as guardian for an infant in accordance
with the provisions of section seven, article five, chapter
forty-four of the code of West Virginia and of all amend-
ments and reenactments thereof; (l) concerning the transfer
of securities the property of an infant in the name of a
fiduciary in accordance with the provisions of section eight,
article five, chapter forty-four of the code of West Virginia
and of all amendments and reenactments thereof; (m) di-
rection to fiduciaries concerning moneys belonging to a
minor in accordance with the provisions of section one,
article six, chapter forty-four of the code of West Virginia
and of all amendments and reenactments thereof; (n) authority for investment by a fiduciary when the beneficiary of trust funds is the property of a minor in accordance with the provisions of section three, article six, chapter forty-four of the code of West Virginia and of all amendments and reenactments thereof, and authority for investment or disbursement by a guardian or committee for a person receiving veteran’s benefits, in accordance with the provisions of article fifteen, chapter forty-four of the code of West Virginia and of all amendments and reenactments thereof; (o) instruction of fiduciaries where minor is beneficiary of an estate or trust as provided in section four, article six, chapter forty-four of the code of West Virginia and of all amendments and reenactments thereof; (p) authorization of disbursements by guardians from income and corpus of the estate of infant wards as provided in section eight, article ten, chapter forty-four of the code of West Virginia and of all amendments and reenactments thereof; (q) sale of personal estate by guardian in accordance with the provisions of section nine, article ten, chapter forty-four of the code of West Virginia and of all amendments and reenactments thereof; (r) proceedings between guardians and wards in accordance with the provisions of section thirteen, article ten, chapter forty-four of the code of West Virginia and of all amendments and reenactments thereof; (s) the approval of compromising an infant’s claim for damages in accordance with the provisions of section fourteen, article ten, chapter forty-four of the code of West Virginia and of all amendments and reenactments thereof; (t) the transfer of property of nonresident infant or nonresident insane person to foreign guardian in accordance with the provisions of section three, article eleven, chapter forty-four of the code of West Virginia and of all amendments and reenactments thereof; (u) the transfer of proceeds of sale belonging to nonresident infant to foreign guardian in accordance with section four, article eleven, chapter forty-four of the code of West Virginia and of all amendments and reenactments thereof; (v) the approval of the sale, lease, mortgage or deeding in trust of infants’ lands or insane persons’ lands in accordance with the provisions of article one, chapter thirty-seven of the code of West Virginia and
of all amendments and reenactments thereof; (w) release of
dower of an infant in accordance with the provisions of
section nine, article one, chapter thirty-seven of the code of
West Virginia and of all amendments and reenactments
thereof; (x) all matters coming within the purview of section
one, article one, chapter forty-eight of the code of West
Virginia, relating to the age of consent and of all amendments
and reenactments thereof; (y) all felonies, misdemeanors and
offenses committed within said county, and jurisdiction as to
the supervision and control of such proceedings before justices
of said county, or the mayor or police judge or police court of
any incorporated city, town or village of said county, by ap-
peal, mandamus, prohibition and certiorari.

Said court shall have jurisdiction in actions, causes, matters,
proceedings and suits which would have been matters in
equity prior to the adoption of the West Virginia rules of civil
procedure, which are before it within its jurisdiction with power
to grant injunctions and to require and take recognizances.

The proceedings, modes of procedures, power and jurisdic-
tion conferred by law upon the circuit court of Raleigh County
in any and all said actions, causes, matters, proceedings and
suits, are hereby conferred upon and shall be exercised by said
court.

It shall not be necessary in any such actions, causes, matters,
proceedings or suits to set forth upon the record the facts
authorizing said court to take jurisdiction thereof, but jurisdic-
tion shall be presumed unless the contrary plainly appears
from the record.

§5. Salary.

The judge of the intermediate court of Raleigh County shall,
from and after the first day of January, one thousand nine
hundred seventy-five, receive for his services a salary in the
amount of twenty-four thousand dollars per annum, to be paid
in monthly installments out of the county treasury of Raleigh
County, out of the funds of said treasury, in the manner pro-
vided by statute. The salary of said judge shall continue as
provided in chapter thirty-eight, acts of the Legislature, regular
session, one thousand nine hundred seventy-two, until the first day of January, one thousand nine hundred seventy-five. The county court of Raleigh County shall annually make provision by appropriate levy and appropriation for the payment of said salary.

§8. Transfer of pending causes.

The judge of the circuit court of Raleigh County may, in his discretion, after the effective date of this act or by the first day of July, one thousand nine hundred seventy-four, certify to the intermediate court of Raleigh County all criminal matters yet to be tried or otherwise to be disposed of and any and all other matters pending in said court and properly coming within the jurisdiction of this court as defined in section three hereof, and all such matters, suits, actions, petitions and proceedings so certified to the intermediate court of Raleigh County shall be docketed and thereafter proceeded with therein according to law. The judge of the said circuit court, in his discretion, may also direct the clerk of his court to certify to and to docket all such matters, suits, actions, petitions, and proceedings properly within the jurisdiction of the intermediate court of Raleigh County as may be instituted on and after the effective date of this act or not later than the first day of July, one thousand nine hundred seventy-four, in the circuit court in the intermediate court of Raleigh County. In the event of the absence or disqualification of the judge of the circuit court, any matter coming within the purview of this act, pending in said court, may be certified by the judge of the intermediate court of Raleigh County, docketed therein and proceeded within according to law. In any civil action or proceeding where a party is entitled to a jury trial, and demands the same, or the court orders a jury trial, the said action or proceeding shall be transferred by the judge of the intermediate court of Raleigh County in its entirety to the circuit court for disposition as though the same had been originally instituted in the circuit court. For the purpose of effecting such transfer, the intermediate court of Raleigh County shall have 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.

For the purpose of maturing, docketing, hearing and determining all matters, suits, petitions and other proceedings properly determinable in the intermediate court of Raleigh County there shall be regularly continued and held three jury terms of court each year, at which grand and petit juries shall be called, beginning on the first Monday in the months of February, June and October of each year. Special terms of said court, with grand and petit juries, may be called and held whenever, in the discretion of the judge of the court, public interest requires such special terms. The judge of the court shall have like jurisdiction and authority, in vacation of the court, to make and enter such proper orders in any matter, suit, action, petition or proceeding pending in the court as the judges of the circuit courts have under the laws of the state. All matters arising under the jurisdiction of the court may be heard and determined either in term time or in vacation: Provided, That proper notice of any such proceedings be given as provided by law for the particular case: Provided, however, That all felonies, misdemeanors, and offenses committed within said county shall be heard and determined at a regular or special term of said court.

The mode of procedure in cases instituted in this court shall be the same as that prescribed for the circuit court in similar causes. The court is authorized and empowered to appoint such additional officers, commissioners and probation officers, and clerical and secretarial assistance as may be authorized by law and as shall enable the court to discharge all the duties required of it under the provisions of this chapter, and the general laws of the state, which appointments shall be entered of record in the office of the circuit clerk, with a copy to be filed with the county court. Such personnel or staff of the judge shall be paid such salaries, fees and expenses as may be determined by the court and authorized by law from any available source, including federal grant money or by the county court: Provided, That for all such sums as shall be paid by the county court, the
judge shall first obtain the approval of the county court of Raleigh County of the expenses to be incurred and the salary or salaries to be paid. The county court shall at its next meeting, regular or special, approve or disapprove in whole or in part, said appointments, in writing, and shall notify the judge of said court of its action. If the county court fails or refuses to act on said appointments as herein provided, said appointments shall be deemed to have been approved. If the county court disapproves any appointment, such appointment shall be nullified to the extent that the county court shall not be obligated to pay any expenses or salary for such disapproved appointment. Such appointment shall be made by the judge and the appointees shall serve during the pleasure of the judge.

The appointment of the probation officer and secretarial and other assistants, when made by the judge, shall be entered on the law order book of the court. A copy of the order of appointment shall be transmitted to the clerk of the county court. Thereupon, the county court shall make provision for payment and shall pay the salaries of the probation officer, clerical and secretarial assistance as shown by the order of appointment. The annual salaries provided for in said order of appointment shall be paid in equal monthly installments. Expenses and mileage accounts of the probation officer shall be itemized and verified and presented to and paid by the county court, if such accounts are approved by the judge. The county court shall provide such office space, equipment and supplies for the probation staff, clerical and secretarial assistance as the judge shall deem necessary 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.
§10. Clerk; powers, duties and compensation.
§11. Salary of judge; payment.
§12. Terms 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.

That a court of limited jurisdiction is hereby established
within and for the county of Wood, to be held and presided
over as of January one, one thousand nine hundred seventy-five, by a judge to be selected as hereinafter provided, which
court shall be named and designated as the “Court of Com-
mon Pleas of Wood County.”
§2. Jurisdiction.

1 That said court shall have original jurisdiction within said county of all crimes, felonies, misdemeanors, criminal proceedings, and all matters in anywise relating thereto, and all civil actions, civil matters and proceedings in anywise relating thereto.

2 Such jurisdiction of said common pleas court shall be general, common and concurrent with the jurisdiction of the circuit court of such county in all and every respect as the same is constituted and set forth in section twelve, article eight of the constitution of West Virginia, and by the laws and statutes of the state of West Virginia, except where the matters in controversy in civil suits or proceedings shall exceed the sum of five hundred thousand dollars, including appellate jurisdiction in all matters of probate arising in the county court wherein an appeal or writ of error may be allowed, which appellate jurisdiction shall be concurrent with that of the circuit court.

§3. Powers conferred upon court.

1 The proceedings, modes of procedure, powers and jurisdiction conferred by law upon the circuit courts in any and all said actions, causes, matters and proceedings are hereby conferred upon and shall be exercised by the said court of common pleas of Wood County, and the judge of said court shall have the same powers in vacation as are now or may hereafter be conferred upon the judge of the circuit court of the fourth judicial circuit in respect to all cases, matters and proceedings within the jurisdiction of said court of common pleas of Wood County.

§4. Qualifications of judge.

1 The judge of said court shall be a resident of Wood County 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 nominated at the primary election on the second Tuesday in May in the year one thousand nine hundred seventy-four in accordance with the provisions of chapter three, article five of
the official code of West Virginia, as amended. Candidates
for nomination to said office shall file a certificate of candidacy
no later than the first Saturday in April, said certificate shall
be in the form required by section seven, article five, chapter
three of said code. There shall, at the general election in
this state to be held on Tuesday after the first Monday in
November, one thousand nine hundred seventy-four, be elected
by the legal voters of said county, a judge of the court of
common pleas of Wood County, for the term of two years,
from the first day of January succeeding said election. There
shall, at the general election in this state to be held on Tuesday
after the first Monday in November, one thousand nine hundred
seventy-six and every eight years, thereafter, be elected by said
voters, a judge of said court for the term of eight years from the
first day of January succeeding said election.

§ 6. Jurisdiction presumed.

It shall not be necessary in any case or proceeding in said
court of common pleas that the facts authorizing it to take
jurisdiction or proceeding shall be set forth upon the record,
but the jurisdiction shall be presumed unless the contrary
plainly appears from the record.

§ 7. Punishment for contempt.

The said court of common pleas shall have the same powers
to punish for contempt as are conferred upon the circuit
court by law.

§ 8. Grand jury for each term.

The said court of common pleas shall impanel at least one
grand jury at each term thereof, and said court, or the judge
thereof may, in his discretion, order a grand jury to be drawn
or summoned to attend at any special or adjourned term of
said court. Such grand jury may consider any offense against
the laws committed within said county of Wood, and all the
provisions of chapter fifty-two of the code of West Virginia, in
regard to grand juries in the circuit court, shall apply, so far
as applicable, to the grand juries in said court of common
pleas. The grand and petit juries serving in said court shall be
chosen and impaneled in the same manner as they are chosen.
and impaneled by law in the circuit court, and shall receive
the same compensation as said jurors in the circuit court.


The county court of Wood County, shall provide all record
books and other books and stationery that may be necessary,
and likewise a seal, for said court of common pleas together
with appropriate offices, courtroom, court stenographer and
secretarial assistance. Full faith and credit shall be given to
the records of said court and to the certificate of its judge or
clerk, whether the seal of the court be affixed thereto or not, in
like manner and with like effect as if the same were records
of the circuit court or certificates of the judge or clerk of the
circuit court similarly authenticated.

§10. Clerk; powers, duties and compensation.

The clerk of the circuit court of Wood County shall, ex
officio, be, act as and perform the duties of the clerk of the
said court and shall exercise the same power and duties aris-
ing within the jurisdiction of said court as are performed by
him as clerk of the circuit court. All processes, rules and
orders of the court, in the exercise of its jurisdiction, shall be
signed by the clerk thereof to be directed to the sheriffs of the
proper counties wherein the same are to be executed in like
manner and with the same effect as processes issuing from the
circuit court of Wood County. For his services under and pur-
suant to this act, the clerk shall receive no compensation in
addition to his annual salary as provided by general statute.

§11. Salary of judge; payment.

The judge of said court shall, for his services receive the
sum of twenty-six thousand dollars per annum, to be paid in
monthly installments out of the treasury of Wood County. The
county court shall annually make provision by appropriate
levy and appropriation for the payment of said salary.

§12. Terms of court.

There shall be four terms of said court held in each year
commencing on the fourth Monday in February, third Monday
in May, fourth Monday in August and the third Monday in
November. Adjourned and special terms of said court may be

The said terms of said court shall be held in Parkersburg in said County of Wood at the courthouse thereof, or at such other place as may be provided by the county court, pursuant to chapter seven, article three, section two of the official code of West Virginia, as amended.

§14. Sheriff to execute process.

The sheriff of Wood County and the sheriffs of the several counties of the state shall by themselves or their deputies execute all process of said court, or issued by the clerk thereof, directed to them, respectively, and all process emanating from said court, or issued by the clerk thereof, shall be directed to and executed by them in the same manner as is provided by law as to process issuing from the circuit court or its clerk; and the sheriff of Wood County shall perform the same duties and services for the court of common pleas of Wood County as he now by law is required to perform for the circuit court of said county; and in the execution of the process, rules and orders of said court the said officers shall have the same power and rights, be subject to the liabilities, govern themselves by the same rules and principles of law and the statutes of the state, and be entitled to the same fees as though the process issued from the circuit court of said county.

§15. Certification to circuit court; special judge.

If the judge of said court in his judgment cannot properly preside at the hearing of any cause pending therein, said cause may be, in his discretion, certified to, and the original papers, together with a copy of the orders of the court, filed in the circuit court of said county, and the cause shall be docketed therein and proceeded with as though the cause had originally been brought and proceedings therein had in the circuit court. When for any cause the judge of said court of common pleas is incapable of acting, or is absent, a special judge may be elected in the same manner as a special judge of the circuit court, and be governed in all respects so far as applicable by
the laws governing special judges of the circuit court, and he shall be allowed the same per diem as a special judge of the circuit court to be paid out of the county treasury.

§16. Transfer of cases.

And to the end that justice may be administered without delay and to expedite the dispatch of the business of the circuit court and the court of common pleas of Wood County, the circuit court may by order entered of record certify down for trial by the court of common pleas, any suit or proceeding at law or in equity now, or which may hereafter be, upon the docket of said circuit court, and within the jurisdiction of said court of common pleas, and such cause shall thereupon be docketed, proceeded with, heard and determined the same in all respects as though originally brought, matured and docketed in said court of common pleas; and the court of common pleas may, likewise, by and with the consent of the circuit court, certify for trial by the circuit court, any cause upon its docket, the same to be proceeded with in the circuit court in like manner.

§17. Indictments found or pending in circuit court may be certified to common pleas court.

The circuit court of said county may in its discretion certify to said common pleas court for trial all indictments and prosecutions for felonies, misdemeanors and offenses now pending in said circuit court or that may hereafter be found by the grand juries impaneled in said circuit court; and the said circuit court may in its discretion take proper recognizances from the defendant in bailable cases, and also from witnesses for the state, for their appearance before the said court of common pleas.

§18. Cases where appeals allowed to common pleas court concurrent with circuit court.

Every person sentenced to imprisonment by the judgment of a justice, or the judgment of the mayor of any incorporated city, town or village, in said county, or to the payment of a fine of ten dollars or more, shall be allowed an appeal, as provided in section ten, article eighteen, chapter fifty of the code.
Appeals.

Appeals from, or writs of error or supersedeas to, any judgment, decree or order of said court shall be governed by and subject to the provisions of article four, chapter fifty-eight of the official code of West Virginia, and of all enactments and reenactments thereof pertaining to the subject of “Appeals from Courts of Record of Limited Jurisdiction.”

Prosecuting attorney or his assistant to attend terms of court; what duties to perform.

The prosecuting attorney of Wood County shall attend the terms of said common pleas court either by himself or his assistant, and shall perform the duties of his office as required by section one, article four, chapter seven of the code, and for the compensation therein stated and provided.

Certain sections of article eight, chapter seven made applicable.

Sections three and four, article eight, chapter seven of the code of West Virginia shall apply to the court of common pleas of Wood County and the judge thereof in the same manner and to the same extent as they do to the circuit court of Wood County and the judge thereof.

Court reporter appointed; compensation.

The judge of said common pleas court shall appoint a court reporter for said court, who shall attend the terms of said common pleas court and take the evidence and transcribe the same when required so to do. For his services he shall receive compensation as provided by law.

Contest of office of judge.

If the office of judge of said court be contested, the con-
§24. Vacancy; how filled.

If from any cause the office of judge of said court shall become vacant, the vacancy shall be filled in the same manner as in the case of a vacancy in the office of judge of the circuit court.

§25. Removal proceedings.

The judge of said court may be removed from office for the same reasons and in the same manner as judges of the circuit courts.

§26. Taxing of costs.

In the taxation of costs in said court the clerk and court shall be governed by the same rules and provisions of law as are provided in the circuit court.

§27. Writs of habeas corpus.

The court of common pleas of Wood County and the judge thereof in vacation shall, concurrent with the supreme court of appeals, the circuit court of said county, or any judge of either of said courts in vacation, grant the writ of habeas corpus ad subjiciendum, as provided in the code of West Virginia.

§28. West Virginia reports and acts.

The West Virginia reports and bound acts of the Legislature are to be delivered to the said judge of the said court in the same manner as they are required to be delivered to the circuit courts of the state.

§29. Liens, executions and remedies.

Upon every judgment of said court the judgment creditors shall be entitled to all liens, executions and remedies to secure or recover the same to which they would be entitled if the same were a judgment of the circuit court; judgments rendered in said court of common pleas may be docketed in the judgment lien docket kept in the county clerk's office of any
county in like manner and with like effect as other judgments, and executions on said judgments may likewise be docketed the same as executions from the circuit court.

§30. Issuance of attachments.

Attachments may be issued by the clerk of said court of common pleas under the same regulations and in the same cases as attachments are now issued by the clerks of the circuit courts, whenever applicable, and be served in the same manner and with like effect.

§31. Severability.

The provisions of this act shall be construed as separable and severable and should any provision or part hereof be held unconstitutional or for any reason invalid the remaining provisions or parts shall not be thereby affected.

CHAPTER 35

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-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-5. Reasonable belief that a minor is eighteen years of age.

§61-8A-6. Hiring, employing, etc., minor; penalty.


1 When used in this article, the following words, and any variations thereof required by the context, shall have the meaning ascribed to them in this section:

(1) “Distribute” means to transfer possession of, whether with or without consideration.

(2) “Employee” means any individual who renders personal services in the course of a business, who receives compensation therefor at a fixed rate and who has no financial interest in the ownership or operation of the business other than his salary or wages.

(3) “Exhibit” means to display or offer for viewing, whether with or without consideration.

(4) “Knowingly” means to have knowledge or to be aware of the content or character of obscene matter.

(5) “Matter” means any book, magazine, newspaper or other printed or written material, or any picture, drawing or photograph, motion picture, or other visual representation, or any statue or other figure, or live conduct, or any recording, transcription or mechanical, chemical or electrical reproduction, or any other articles, equipment, machines or materials.

(6) “Minor” means any individual under the age of eighteen years.

(7) “Obscene matter” means to the average individual, applying contemporary state standards, matter which:
(a) Considered as a whole, appeals to the prurient interests;

(b) Depicts or describes in a patently offensive manner ultimate sexual acts, both normal and perverted, actual or simulated, masturbation, sodomy, fellatio, cunnilingus, bestiality, sadism, excretory functions or lewd exhibition of the genitals; and

(c) Considered as a whole lacks serious literary, artistic, political or scientific value.

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

(9) "Prepare" means to produce, publish or print.

(10) "Public display" means the placing of material on or in a billboard, viewing screen, theatre, marquee, newsstand, display rack, window, showcase, display case or similar public place so that the material within the meaning of "obscene matter" is easily visible from a public thoroughfare from the property of others or from commercial or business premises generally open to minors at the time of such placing.

§61-8A-2. Preparation, distribution or exhibition of obscene matter to minors; penalties.

If any person knowingly sends or causes to be sent or brings or causes to be brought into this state for distribution, exhibition, or public display, or in this state prepares, distributes, exhibits or makes a public display or offers to prepare, distribute, exhibit, or make a public display, or has in his possession with the intent to distribute, exhibit, or make a public display of any obscene matter to a minor, he shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five hundred dollars or imprisoned in the county jail not more than six months or both fined and imprisoned. A person convicted of a second or subsequent offense under this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars or imprisoned in the county jail not more than one year or both fined and imprisoned.
§61-SA-3. Employees acting within scope of employment shall not be prosecuted.

1 No employee shall be guilty of a violation of this article when such employee is a projectionist, ticket taker, usher, or when such employee distributes, prepares or exhibits obscene matter while acting within the scope of his regular employment.


1 Any person who distributes or exhibits obscene matter, or possesses obscene matter with the intent to distribute or exhibit the same in the course of his business, is presumed to do so with knowledge of its content or character.

§61-SA-5. Reasonable belief that a minor is eighteen years of age.

1 No person shall be guilty of distributing or exhibiting obscene matter to a minor when such person has reasonable cause to believe that the minor involved was eighteen years of age or more and such minor exhibited to such person a driver's license, draft card or other official or apparently official document purporting to establish that such minor was eighteen years of age or more.

§61-SA-6. Hiring, employing, etc., minor; penalty.

1 Any person who, with knowledge that a person is a minor under eighteen years of age, or who, while in possession of such facts that he should reasonably know that such person is a minor under eighteen years of age, hires, employs or uses such minor to do or assist in doing any of the acts prescribed in paragraph (b), subdivision (7), section one of this article, shall be guilty of a misdemeanor.


1 Nothing herein shall be construed to limit the free exercise of free speech or picketing by any organization, group or individual 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 LIABILITIES 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, any conveyance or transfer of property, or any interest therein, with a right of survivorship executed by either husband or wife to or in favor of the other, shall be valid to the same extent as a similar transfer or conveyance from a third party to the husband and wife together or by a straw party deed.

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.


Notwithstanding the provisions of subsection (c), section two of this article, if an election precinct of this state includes territory contained in more than one delegate district, as such delegate districts are established by subsection (d), section two of this article, it shall be the duty of the county court of the county in which such precinct is located, prior to the fifteenth day of April, one thousand nine hundred seventy-four, to alter the boundary lines of its election precincts so that no precinct contains territory included in more than one delegate district. The provisions of this section shall govern and control notwithstanding any conflicting provision of section seven, article one, chapter three of this code.

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.

The "state election commission," heretofore created, is hereby continued and, on and after the effective date of this section, shall be composed of the secretary of state, and four persons appointed by the governor, by and with the advice and consent of the Senate. The commission shall, from this membership elect a chairman for a term of two years. Each member of the commission shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of his duties as a member of the commission.

§3-1A-2. Qualifications of members of commission.

No member of the commission appointed by the governor shall be a candidate for or hold any public office other than that of membership on the commission; nor shall such appointed member be a member of any committee of a political party. Any person who, directly or indirectly, (1) designs, owns, manufactures, distributes or sells any voting machine, or (2) owns any patent rights or contract rights thereto, or (3) has any interest in any joint venture, partnership, firm, corporation
or association designing, owning, manufacturing, distributing
or selling any voting machine, or owning any patent rights or
contract rights thereto, shall be disqualified from serving as a
member of the commission. At least one member appointed by
the governor shall be selected with special reference to his
expert knowledge as a student of the problems of public elec-
tions. Not more than two members appointed by the governor
shall be members of the same political party. In case a mem-
ber appointed by the governor becomes a candidate for or is
appointed to any other public office or political committee,
his office as member of the commission shall be deemed im-
mediately vacated.

§3-1A-3. Terms of office of commission members; filling vacancies.

The terms of office of the members of the commission shall
be six years. Members in office shall continue as members
until their respective terms expire on the fourth day of June,
one thousand nine hundred sixty-nine and one thousand nine
hundred seventy-two. On the expiration of these terms and
every three years thereafter appointments shall be made for six
year terms. Appointments to fill vacancies shall be for the
unexpired term.

§3-1A-4. Office and meetings of commission.

The office and place of meeting of the commission shall be
the office of the secretary of state in the state capitol.

The commission shall hold such meetings as may be called
by the chairman, the governor or the secretary of state.

§3-1A-5. Powers and duties of commission.

The commission shall have the power and duty to approve
or disapprove applications for approval of any voting machine
as provided in section seven, article four of this chapter.

The commission also shall serve as a body advisory to the
secretary of state, and, as such, shall have the following powers
and duties;

(a) To recommend policies and practices pertaining to the
registration of voters and the conduct of elections generally;

(b) To review the work of the office of secretary of state
pertaining to the duties of that office with respect to elections, and for this purpose to have access at reasonable times to pertinent records, books, papers and documents;

(c) To consider and study the election practices of other jurisdictions, with a view to determining the techniques used in eliminating fraud in elections and in simplifying election procedure;

(d) To advise or make recommendations to the governor relative to election practices and policy in the state; and

(e) To keep minutes of the transactions of each meeting of the commission, which shall be public records and filed with the secretary of state.

It shall be the commission's further duty to prepare and distribute in its name, within available appropriations and upon the recommendation of the secretary of state, (1) nonpartisan educational material to inform voters of the importance of voting, to encourage voters to vote, to inform voters of election laws and procedures, and to inform voters of the effect of any public question, constitutional amendment or bond issue that is to be voted upon by all the voters of the state and that has been authorized to be placed upon the ballot by the Legislature, and (2) manuals to assist county courts, ballot commissioners, circuit and county clerks and other election officials in the proper performance of their duties in the conduct of elections.

§3-1A-6. Election rules; powers and duties of secretary of state; exercise of powers by appointees.

The secretary of state shall be the chief election official of the state. He shall have authority, after consultation with the state election commission, of which he is a member, to make, amend and rescind such rules, regulations and orders as may be necessary to carry out the policy of the Legislature, as contained in this chapter. It shall be the duty of all election officials, county courts, clerks of county courts, clerks of circuit courts, boards of ballot commissioners, election commissioners and poll clerks to abide by such rules, regulations and orders, which shall include:
(a) Uniform rules of procedure for registrars and other registration officials in the performance of their duties, as to time and manner of performance;

(b) Uniform rules for the purging of registration records;

(c) Uniform rules for challenging registrants; and

(d) Any other rules, regulations or directions necessary to standardize and make effective the administration of the provisions of this chapter.

The secretary of state also shall have authority to require collection and report of statistical information and to require other reports by county courts, clerks of county courts and clerks of circuit courts.

It shall be his further duty to advise with election officials; to furnish to the election officials a sufficient number of indexed copies of the current election laws of West Virginia and the administrative orders and rules and regulations issued or promulgated thereunder; to investigate the administration of election laws, frauds and irregularities in any registration or election; to report violations of election laws to the appropriate prosecuting officials; and to prepare an annual report.

The secretary of state shall also have the power to administer oaths and affirmations, issue subpoenas for the attendance of witnesses, issue subpoena duces tecum to compel the production of books, papers, records, registration records and other evidence, and fix the time and place for hearing any matters relating to the administration and enforcement of this chapter, or the rules, regulations and directions promulgated or issued hereunder by the secretary of state as the chief election official of the state. In case of disobedience to a subpoena or subpoena duces tecum, he may invoke the aid of any circuit court in requiring the attendance, evidence and testimony of witnesses and the production of papers, books, records, registration records and other evidence.

All powers and duties vested in the secretary of state under this article may be exercised by appointees of the
secretary of state at his discretion, but the secretary of state shall be responsible for their acts.

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 each political party for all offices to be filled at the ensuing general election by the voters of the entire state, of each congressional district, of each state senatorial district, of each delegate district, of each judicial circuit of West Virginia, of each county, and of each magisterial district in the state shall be nominated by the voters of the different political parties, except that no presidential elector shall be nominated at a primary election.

10 In primary elections a plurality of the votes cast shall be sufficient for the nomination of candidates for office. Where only one candidate of a political party for any office in a political division, including party committeemen and delegates to national conventions, is to be chosen, the candidate receiving the highest number of votes therefor in the primary election shall be declared the party nominee for such office. Where two or more such candidates are to be
chosen in the primary election, the candidates constituting
the proper number to be so chosen who shall receive the
highest number of votes cast in the political division in which
they are candidates shall be declared the party nominees and
choices for such offices, except that: (1) Candidates for
the office of commissioner of the county court shall be nomi-
nated and elected in accordance with the provisions of section
twenty-three, article eight of the constitution of this state;
(2) members of county boards of education shall be elected at
primary elections in accordance with the provisions of section
six of this article; and (3) candidates for the House of Dele-
gates shall be nominated and elected in accordance with the
residence restrictions provided in section two, article two,
chapter one of this code.

In case of tie votes between candidates for party nominations
or elections in primary elections, the choice of the political
party shall be determined by lot by the executive committee
of the party for the political division in which such persons
are candidates.

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 announce-
ments 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.

At the primary election, to be held in the year one thousand nine hundred seventy-four, there shall be elected by the eligible voters of the democratic party in each congressional district in the state four delegates to the one thousand nine hundred seventy-four conference on democratic party organization and policy for the purpose of considering and adopting a permanent charter for the democratic party of the United States and such other matters as may be authorized by the democratic national committee. The four candidates in each congressional district receiving the highest number of votes shall be elected as such delegates.

§2. Eligibility and announcements of candidates; fees; filing period with secretary of state; primary election statutes applicable.

Any qualified voter of the democratic party of the state may become a candidate therefor within the congressional district wherein such voter is a bona fide resident by filing with the secretary of state a certificate of announcement, declaring himself to be a candidate for election to such position; which certificate shall be in form or effect and filed in the manner provided in section seven, article five, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended. Each
person who becomes a candidate for election as such dele-

gate shall, at the time of filing the certificate of announce-

ment as herein required, pay a filing fee of ten dollars

in the manner and subject to the same conditions as set

forth in section eight, article five, chapter three of the

code of West Virginia, one thousand nine hundred thirty-

one, as amended. The secretary of state shall receive such

certificates of announcement and certify the same in ac-

cordance with the procedures set out in section nine,

article five, chapter three of the code of West Virginia,

one thousand nine hundred thirty-one, as amended. Not-

withstanding any other provisions of the code of West

Virginia, one thousand nine hundred thirty-one, as

amended, such certificates of announcement shall be filed

with the secretary of state not later than the first Saturday

of March next preceding the primary election day, and

must be received by the secretary of state before mid-

night, eastern daylight standard time, of that day or, if

mailed, shall be postmarked before that hour. All of the

provisions of article five, chapter three of the code of

West Virginia, one thousand nine hundred thirty-one, as

amended, relating to primary elections and nominating

procedures, to the extent that such provisions are ap-

propriate, shall be applicable to the election of such dele-

gates.

CHAPTER 41

(S. B. 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, chap-
ter forty-four of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to appoint-
ment of a nonresident individual, nonresident banking in-
stitution, 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 furnish ing 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.

Notwithstanding any other provision of law, no person not a resident of this state nor any nonresident banking institution nor any corporation having its principal office or place of business outside this state shall be appointed or act as executor, administrator, curator, guardian or committee, except that a testator who is a nonresident of this state at the time of his death may name, and there may be appointed and act, a nonresident as his executor, and except that for the guardian of an infant who is a nonresident of this state there may be appointed and act the same person who is appointed guardian at the domicile of the infant: Provided, That whenever the will of a decedent who was a resident of this state at the time of his death, hereinafter in this section referred to as "resident
"decedent," designates an individual, who is the husband,
wife, father, mother, brother, sister, child, grandchild or
sole beneficiary of such resident decedent, as executor,
then such designated individual may qualify and act as
such executor notwithstanding the fact that he is a non-
resident: Provided further, That a nonresident individual
may be appointed as administrator of an estate in accord-
ance with the provisions of section four, article one of this
chapter and act as such administrator if such individual
be the husband, wife, father, mother, brother, sister, child,
grandchild or the sole beneficiary of a decedent who was
a resident of this state at the time of his death, hereinafter
in this section also referred to as a "resident decedent,"
and if such individual may otherwise qualify as such ad-
ministrator. Nonresident executors and administrators of
resident decedents shall give bond with corporate surety
thereon, qualified to do business in this state, in such
penalty as may be fixed pursuant to the provisions of sec-
tion seven, article one of this chapter except that such
penalty in the case of a nonresident executor shall not
be less than (1) double the value of the personal estate
and (2) double the value of any real property authorized
to be sold under the will or the value of any rents and
profits from any real property which the will authorizes
such nonresident executor to receive, and except that such
penalty in the case of a nonresident administrator shall
not be less than double the value of the personal estate.
The personal estate of a resident decedent may not be re-
moved from this state until the inventory or appraisement
of the resident decedent's estate has been filed and any
new or additional bond required to satisfy the penalty
specified above in this section has been furnished. The
liability of such nonresident executor or administrator
and such surety shall be joint and several and a civil ac-
tion on any such bond may be instituted and maintained
against the surety, notwithstanding any other provision of
this code to the contrary, even though no civil action has
been instituted against the nonresident executor or ad-
ministrator.

When a nonresident qualifies as an executor or admin-
FIDUCIARIES

55 administrator 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
to the service of notice or process in any other lawful mode or manner. The fee of five dollars shall be deposited in the county treasury.

Any nonresident executor or administrator who removes from this state the personal estate of a resident decedent without complying with the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars or by confinement in the county jail for not more than one year, or, in the discretion of the court, by both such fine and imprisonment.

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.

(a) The Legislature hereby finds and declares that the purposes of this section are to protect and promote the public peace, safety, economy, revenue, health and welfare and interest of the people of this state and, to do so, it is necessary to ensure free and competitive access to gasoline and special fuel for and to the users of gasoline or special fuel in this state during the time of any fuel emergency as declared by the governor pursuant to the power and authority herein granted.

(b) As used herein or as used in any proclamation,
order, rule or regulation issued by the governor pursuant to this section, unless the context requires a different meaning, the terms or phrases "actual metered gallons," "distributor," "producer," "gallon," "gasoline," "importer," "person," "petroleum carrier," "purchase," "receive," "retail dealer," "sale," "special fuel," "supply tank," "tank wagon" and "user" shall have the same meanings ascribed to those terms or phrases in section two, article fourteen, chapter eleven of this code.

(c) 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, the governor is hereby empowered and authorized and it shall be his duty to issue a proclamation declaring the existence of a fuel emergency in this state or any part thereof. Upon the issuance of such proclamation by the governor, the governor is hereby granted plenary power and authority to issue, amend, suspend or revoke orders, rules and regulations to:

(1) Allocate or distribute gasoline or special fuel to the extent permitted by any federal law relating to the allocation or distribution of gasoline or special fuel and rules and regulations promulgated thereunder or to the extent permitted by the appropriate federal agency.

(2) Control, restrict and regulate the sale by distributors, producers, importers and retail dealers of gasoline and special fuel to users by any appropriate means including, but not limited to, the establishment of quotas, rationing, specifications that certain users may purchase gasoline or special fuel only on certain days, and other conditions upon the purchase of gasoline or special fuel to the extent permitted by any federal law relating to the allocation or distribution of gasoline or special fuel and rules and regulations promulgated thereunder or to the extent permitted by the appropriate federal agency.

Any such order, rule or regulation shall have such statewide, regional, county or other area application, as the governor shall specify therein. Whenever the nature and severity of a fuel emergency varies from area to area in the state, the governor shall have plenary power and authority, within the limitations
of subdivisions (1) and (2) above, to establish different allocation or distribution formulae, controls, restrictions and regulations for different areas of the state at different times.

(d) Any orders, rules or regulations issued pursuant to this section shall be valid only during the period of any such fuel emergency and may be issued or promulgated without complying with the provisions of chapter twenty-nine-a of this code: Provided, That a copy of every such order, rule or regulation shall be filed in the office of the secretary of state before the same is effective and the secretary of state shall, within five days thereafter, forward a certified copy thereof to the clerk of the county court of each county and every such clerk shall forthwith admit such order, rule or regulation to record in the miscellaneous records of the county court kept in the office of each such clerk, but such filing in the office of the secretary of state shall alone constitute constructive notice to any person affected by such order, rule or regulation: Provided, however, That the county court of each county shall, when the first such order, rule or regulation is admitted to record, forthwith cause to be published a notice to the effect that such order, rule or regulation is, and that all further orders, rules and regulations or record copies thereof shall be, available for inspection in the office of the county clerk of such county. Such notice shall be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be such county. A copy of any such order, rule or regulation certified by the secretary of state shall be admissible in any court in this state as proof of the contents thereof.

(e) The governor is hereby granted plenary power and authority to enforce any order, rule or regulation issued pursuant to this section and, in so doing, may secure the assistance of any state agency, the attorney general or his designate, the prosecuting attorneys of the several counties and any state or local law-enforcement agencies or officers. Such persons shall assist the governor in enforcing the provisions of any such order, rule or regulation so issued and promulgated by the governor when called upon to do so by the governor. The governor may petition any circuit court of this state for the
issuance of a temporary restraining order or injunction or for any other remedy, as may be appropriate, to compel any person to comply with any such order, rule or regulation, and it shall be the duty of the attorney general and the prosecuting attorneys of the various counties to assist and cooperate with the governor in obtaining such relief. No injunction bond shall be required, and in the event of an appeal to the West Virginia supreme court of appeals, the filing of such appeal shall not stay enforcement of the final judgment of the circuit court enforcing any such order, rule or regulation.

(f) Whenever it appears to the governor that there exists a serious, direct and immediate threat to the health and safety of any persons in this state because of the failure or refusal of a producer or distributor to comply, in a timely manner, with an order, rule or regulation issued pursuant to the provisions of subsection (c) of this section, the governor shall have the authority to distribute or cause to have distributed from the supplies of gasoline or special fuel owned, retained or possessed by such producer or distributor a sufficient amount of gasoline or special fuel as may be required to alleviate any such emergency. Such producer or distributor shall be compensated by the user, consumer or retail dealer receiving such gasoline or special fuel at the then existing average market value, either retail value or wholesale value, as the case may be: Provided, That there shall be deducted from such compensation the amount necessary to pay for the cost of distribution of such gasoline or special fuel: Provided, however, That the governor shall be required to serve written notice of his intent to exercise the powers granted by this subsection to the parties involved: Provided further, That upon the issuance of such notice, the governor shall cause to be initiated those legal proceedings relevant to the enforcement of any order, rule or regulation as required by and hereinbefore set out in subsection (e) of this section: And provided further, That such order, rule or regulation issued by the governor shall not conflict with or be contrary to any federal law relating to the allocation or distribution of gasoline or special fuel and rules and regulations promulgated thereunder or to any power granted the governor by any federal agency.

(g) Any producer or distributor violating any provision
of any such order, rule or regulation of the governor issued
or promulgated pursuant to this section, shall be guilty of a
misdemeanor, and, upon conviction thereof, shall be fined not
less than one hundred dollars nor more than twenty-five
thousand dollars, or imprisoned in the county jail for not more
than one year, or both fined and imprisoned. Any retail
dealer violating any provision of any such order, rule or
regulation of the governor issued or promulgated pursuant to
this section, shall be guilty of a misdemeanor, and, upon
conviction thereof, shall be fined not less than twenty-five
dollars nor more than one hundred dollars. Each day or part
thereof that any such violation shall take place, or continue to
take place, shall be deemed to constitute a distinct and separate
offense and shall be punishable accordingly.

(h) When the governor determines that any such fuel
emergency no longer exists, he shall issue a proclamation
terminating all orders, rules or regulations issued pursuant to
the provisions of this section.

(i) The provisions of this section shall expire on July one,
one thousand nine hundred seventy-four.

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 mem-
bers.

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.

There shall be a state board of health, to be known as the West Virginia board of health, which shall be a corporation and as such may contract and be contracted with, plead and be impleaded, sue and be sued, and have and use a common seal. The state board of health shall consist of nine members, who shall be appointed by the governor, by and with the advice and consent of the Senate. Three members of the board shall be physicians or surgeons holding the degree of doctor of medicine, one shall be a dentist, one shall be an osteopathic physician, one shall be a pharmacist, one shall be chosen as the representative of the hospitals licensed in the state of West Virginia and two shall be representative citizens, neither of which said representative citizens shall be an employee of, or connected in any way with, any hospital licensed in this state, and neither of whom shall be a member of any of the professions named above.

All persons appointed to membership on the state board of health shall be citizens of this state and shall have been such citizens and residents of the state for at least five years prior to the date of their appointment. Every professional member of the said board shall be duly licensed to practice his profession in this state on the date of his appointment and shall have been so licensed and have been actively practicing his profession for at least five years immediately preceding the date of such appointment. Before appointing any professional member, the governor shall request the state professional society of the profession practiced by any proposed appointee to furnish to the governor a full and complete report concerning the qualifications and suitability of the proposed appointee. All members of the board shall be appointed for terms of nine years each, except that the persons originally appointed, shall be appointed to serve for designated terms beginning on the first day of July, one thousand nine hundred forty-nine, and continuing for one, two, three, four, five, six, seven, eight and nine years, respectively.

Upon the expiration of such initial appointments the term
of each new appointee shall be nine years. Any vacancy on
the board shall be filled by the governor by appointment for
the unexpired term.

No more than five of the members of the board shall be-
long to the same political party. Not less than one nor more
than three members shall be appointed from the same con-
gressional district. No person shall be eligible for appointment
to membership on the state board who is a member of any
political party executive committee, or who holds any public
office or public employment under the federal government
or under the government of this state or any of its political
subdivisions, or who is an appointee or employee of the
board. All members shall be eligible for reappointment.

No member may be removed from office by the governor
except for official misconduct, incompetence, neglect of duty
or gross immorality and then only in the manner prescribed
by law for the removal by the governor of state elective
officers: Provided, That the expiration or revocation of the
professional license of any professional member of the board
shall be cause for his removal.

The members of the board shall be paid the sum of thirty-
five dollars for each day actually served in attendance at
official meetings of the board. Each member shall be
reimbursed for travel at the rate of twelve cents per mile
if by private automobile and actual cost if travel is by common
carrier. Each member shall also be reimbursed for other
actual expenses incurred in the performance of the duties of
his office.

CHAPTER 44
(H. B. 1189—By Mr. Teets)

[Passed March 8, 1974; in effect July 1, 1974. Approved by the Governor.]
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 created and established under the provisions of this article shall be composed of five members appointed by the county court or the governing body of the municipality. Where any county board of education contributes funds to a county court or a municipality, which creates such board of health, for health purposes, such board of education may nominate one member of such local board of health. Such nominee shall be appointed to such board of health by the appointing authority, if otherwise qualified. In the event such nominee is rejected by the appointing authority, or in the event his position on the board of health is vacated during the term for which he is appointed, such county board of education may nominate another person, who, if otherwise qualified, shall be appointed to the board of health by the appointing authority. In the event such county board of education fails or refuses to nominate some person for such appointment within thirty days of the date of the receipt of a request, in writing, from the appointing authority, for a nomination, the appointing authority shall proceed to make such appointment without any nomination by the county board of education.

23 All members of any such board of health shall be citizens and residents of the county or municipality they are appointed to represent. No more than three of the members
of such board shall belong to the same political party, nor shall more than two of such members be residents of the same magisterial district or municipal ward, nor shall more than two such members be personally and individually licensed in, engaged in, or actively participating in or carrying on, the same business, profession, or occupation. All members shall be eligible for reappointment.

All members of such board shall be appointed for terms of five years each, except that the persons appointed when the board is initially created shall be individually designated to serve for terms of one, two, three, four and five years, respectively. Upon the expiration of such initial appointments the terms for each new appointee shall be five years. Each member shall serve until the appointment of his duly qualified successor. Any vacancy on such board shall be filled by appointment for the unexpired term.

Such county or municipal board of health shall organize by electing from its members a chairman who shall serve as such for a period of one year. Such chairman shall have the power to sign documents, execute contracts and otherwise act for and in the name of such board in all matters within its lawful powers and duly authorized by a majority of its members.

No member of such board may be removed from office during the term for which he is appointed except for official misconduct, incompetence, neglect of duty or gross immorality: Provided, That the revocation of a professional license issued by this state to any such member shall be sufficient reason and cause for the removal of such member from office.

Each member of such board shall receive a sum set by the county court or governing body but not exceeding ten dollars as compensation for his services in attending each meeting of the board as required by law and may be reimbursed for actual and necessary travel and other expenses incurred by him in the performance of his duties as a member of such board.
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.

The Legislature finds and declares: (1) That the safe and efficient operation of life-saving and life-preserving emergency medical service to meet the needs of citizens of this state is a matter of general public interest and concern; (2) that, in order to ensure provision of adequate emergency medical service within this state for the protection of the public health, safety and welfare, it is imperative that minimum standards for emergency medical service attendants be established and enforced by the state; (3) that emergency medical service attendants should meet minimum training standards promulgated by the state board of health; (4) that it is the public policy of this state to enact legislation to carry out these purposes and comply with minimum standards for emergency medical service attendants specified in the Federal Highway Safety Act of 1966 and standards promulgated thereunder; and (5) that any patient who receives emergency medical service and who is unable to consent thereto should be liable for the reasonable cost of such service.

§16-4C-2. Definitions.

As used in this article, unless the context clearly requires a different meaning:

“Ambulance” means any privately or publicly owned vehicle or aircraft which is designed, constructed or modified; equipped or maintained; and operated for the transportation of patients.

“Ambulance service” means the transportation, and treatment at the site of pickup and enroute, of a patient to or from
a place where medical, hospital or clinical service is normally available.

"Emergency medical service attendant" means any person who is responsible for attending, caring for and giving life-saving or life-preserving treatment to a patient transported in an ambulance. This term includes both the driver of an ambulance and any person assigned to the ambulance to attend patients.

"Governing body" shall have the meaning ascribed to it as applied to a municipality in subsection (b), subdivision (1), section two, article one, chapter eight of this code.

"Municipality" shall have the meaning ascribed to it in subsection (a), subdivision (1), section two, article one, chapter eight of this code.

"Patient" means any sick, injured, wounded or otherwise incapacitated or helpless person, or an expectant mother who needs medical, hospital or clinical service under an existing or imminent emergency situation.

"State board" means the state board of health.

§16-4C-3. Vehilces, aircraft and persons aboard them exempted from requirements of article.

The following vehicles and aircraft are exempted from the application of the provisions of this article and rules promulgated pursuant to it and persons aboard them are not required to comply with the provisions of section four of this article:

(a) Privately owned vehicles and aircraft not ordinarily used in the business or service of transporting patients.

(b) Vehicles and aircraft used as ambulances in case of a catastrophe or emergency when the ambulances normally staffed by certified emergency medical service attendants based in the locality of the catastrophe or emergency are insufficient to render the service required.

(c) Ambulances based outside this state, except that emergency medical service attendants aboard any such ambulance receiving a patient within this state for transportation to a lo-
cation within this state must comply with the provisions of this article and the rules promulgated pursuant to it.

(d) Ambulances owned by or operated under the direct control of a governmental agency of the United States.

(e) Vehicles and aircraft designed primarily for rescue operations and which do not ordinarily transport patients.

(f) An ambulance being used to transport a person or persons not in an existing or imminent emergency situation where the purpose of that mode of transportation is to facilitate their movement or comfort.

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

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

In accordance with the provisions of chapter twenty-nine-a of this code, the state board shall promulgate rules regarding the age, training and physical requirements of emergency medical service attendants. As a minimum training requirement, every emergency medical service attendant shall have earned and possess a valid American Red Cross advanced first aid certificate, or an advanced first aid certificate issued by the United States bureau of mines (now referred to as the mining enforcement and safety administration, United States department of the interior) or the equivalent thereof; or have successfully completed the course on emergency care and transportation of the sick and injured recommended by the American academy of orthopedic surgeons or the equivalent thereof, before he is issued a certificate: Provided, That any member of a rescue unit organized
and engaged in providing ambulance service prior to the first
day of January, one thousand nine hundred seventy-five, which
is operated by a rescue squad, fire department, police depart-
ment, county or municipality of this state, who on that date is
certified by the respective county health officer of the county
wherein such unit is based, or, if there is no county health off-
er, by the county court or governing body of the jurisdiction
wherein such unit is based, that he is adequately trained and is
capable of performing the service required of an emergency
medical service attendant, shall be issued an original emergency
medical service attendant certificate by the state board upon his
submitting proper application for such certificate. The state
board may promulgate rules for emergency medical service at-
tendents which exceed this minimum training requirement, but
such rules must first be approved by the emergency medical ser-
vice advisory council provided for in section six of this article.

Any person desiring certification as an emergency medical
service attendant shall apply to the state board using forms and
procedures prescribed by the state board. Upon receipt of
such application, the state board shall determine if the appli-
cant meets the requirements for certification and examine the
applicant as, in its discretion, is necessary to make such deter-
mination. If it is determined that the applicant meets all of the
requirements, the state board shall issue an emergency medi-
cal service attendant certificate to the applicant. Emergency
medical care attendant certificates issued by the state board
shall be valid for two years from the date of their issuance
unless sooner suspended or revoked by the state board. Certifi-
cates may be renewed for additional two-year periods after
examination of the certificate holder and determination by the
state board that such holder meets the requirements estab-
lished for emergency medical service attendants: Provided,
That if any county health officer of any county, or, if there is
no county health officer, the county court or governing body
of the jurisdiction concludes that any area of that jurisdiction
has not been afforded the necessary training or equipment to
implement this section, then this section shall not apply.

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

There shall be no fee or other payment required of an applicant for original certification as an emergency medical service attendant, renewal of such certificate or of an applicant for temporary certification as an emergency medical service attendant.

§16-4C-5. Suspension or revocation of certificate or temporary certificate.

(a) The board may at any time upon its own motion and shall upon the verified written complaint of any person conduct an investigation to determine whether there are any grounds for the suspension or revocation of a certificate or temporary certificate issued under the provisions of this article.

(b) The board shall suspend or revoke any certificate or temporary certificate when it finds the holder thereof has:

(1) Obtained a certificate or temporary certificate by means of fraud or deceit;

(2) Been incompetent, grossly negligent, or guilty of other malpractice as defined by the board by reasonable rules and regulations; or

(3) Failed or refused to comply with the provisions of this article or any reasonable rule and regulation promulgated by the board hereunder or any order or final decision of the board.

(c) The board shall also suspend or revoke any certificate or temporary certificate if it finds the existence of any grounds which would justify the denial of an application for such
license or temporary permit if application were then being made for it.

§16-4C-6. Notice of refusal, suspension or revocation of certificate; appeals to state board; judicial review.

An application for an original emergency medical service attendant certificate, for the renewal of an emergency medical service attendant certificate or for a temporary emergency medical service attendant certificate, shall be acted upon by the state board, and the state board's certificate delivered or mailed, or a copy of any order of the state board denying any such application delivered or mailed to the applicant, by the state board within fifteen days after the date upon which such application was received from the applicant.

Whenever the state board shall refuse to issue an emergency medical service attendant certificate or a temporary emergency medical service attendant certificate, or shall suspend or revoke an emergency medical service attendant certificate, or a temporary emergency medical service attendant certificate, it shall make and enter an order to that effect, which order shall specify the reasons for such denial, suspension or revocation, and shall cause a copy of such order to be served in person or by certified mail, return receipt requested, on the applicant or certificate holder, as the case may be.

Whenever a certificate is suspended or revoked, the state board shall in the order of suspension or revocation direct the holder thereof to return his certificate to the state board. It shall be the duty of such certificate holder to comply with any such order following expiration of the period provided for an appeal to the state board.

Any applicant or certificate holder, as the case may be, adversely affected by an order made and entered by the state board may appeal to the state board for an order vacating or modifying such order or for such order as the state board should have entered. The person so appealing shall be known as the appellant. An appeal shall be perfected by filing a notice of appeal with the state board within ten days after the date upon which the appellant received the copy of such order. Said notice of appeal shall be in
such form and contain such information as may be prescribed
by the state board, but in all cases shall contain a description
of any order appealed from and the grounds for said appeal.
The filing of the notice of appeal shall operate to auto-
maticallly stay or suspend execution of any order which is the
subject matter of said appeal. All of the pertinent provisions
of article five, chapter twenty-nine-a of this code shall apply to
and govern the hearing on appeal and the administrative pro-
cedures in connection with and following such hearing, with
like effect as if the provisions of said article five were set
forth in extenso herein.

The state board shall set a hearing date which shall be
not less than ten days after it received the notice of appeal
unless there is a postponement or continuance. The state
board may postpone or continue any hearing on its own
motion, or for good cause shown upon the application of the
appellant. The appellant shall be given notice of said hearing
in person or by certified mail, return receipt requested.
Any such hearing shall be held in Charleston, Kanawha
County, West Virginia, unless another place is specified by
the state board.

After such hearing and consideration of all of the testi-
mony, evidence and record in the case, the state board shall
make and enter an order affirming, modifying or vacating
the order of the state board, or shall make and enter such
order as the state board should have entered. Such order
shall be accompanied by findings of fact and conclusions
of law as specified in section three, article five, chapter twenty-
ine-a of this code, and a copy of such order and accompany-
ing findings and conclusions shall be served upon the ap-
pellant, in person or by certified mail, return receipt requested.
The order of the state board shall be final unless vacated or
modified upon judicial review thereof.

Any appellant adversely affected by a final order made
and entered by the state board is entitled to judicial review
thereof. All of the pertinent provisions of section four, article
five, chapter twenty-nine-a of this code shall apply to and
govern such review with like effect as if the provisions
of said section four were set forth in extenso herein. The
judgment of the circuit court shall be final unless reversed,
§16-4C-7. Emergency medical service advisory council created; duties, composition, appointment, meetings, expenses.

For the purpose of assisting the state board in developing standards for emergency medical service attendants, there is hereby created the emergency medical service advisory council.

The council shall be composed of ten members appointed by the governor. The governor shall appoint one representative each from the West Virginia Association of County Officials, West Virginia Council of Towns and Cities, West Virginia State Firemen’s Association, American Red Cross, West Virginia Hospital Association, West Virginia State Medical Association, West Virginia Funeral Directors Association, Governor's Highway Safety Administration, one person to represent private commercial ambulance services within the state and one person to represent emergency rescue squads operating within the state. The person appointed from the West Virginia Funeral Directors Association shall be a person who provides ambulance service at the time of his appointment and throughout his term.

Initially, the governor shall appoint four members of the council for terms of two years and five for terms of four years. Thereafter, appointments shall be for terms of four years and made in a manner to preserve the representation of the council as it was originally comprised.

The council shall choose its own chairman and meet at the call of the director of the state department of health but the council shall not meet more than five times in any one year. Council members shall not receive any compensation for their services as council members but shall be reimbursed by the state board for all reasonable and necessary expenses actually incurred by them in the discharge of their official duties.

§16-4C-8. Liability for cost of ambulance service.

Any patient who receives ambulance service and who is unable to give his consent to, or contract for, the service,
whether or not he has agreed or consented to liability for the
service, shall be liable in implied contract to the person pro-
viding the ambulance service for the reasonable cost thereof.

§16-4C-9. Violations; criminal penalties.

Any person who operates an ambulance or who provides
ambulance service not in compliance with the provisions of
this article or the rules promulgated by the state board pur-
suant to this article, or who operates an ambulance with un-
certified emergency medical service attendants aboard when
not lawfully permitted to do so shall be guilty of a misde-
meanor, and, upon conviction thereof, shall be fined not less
than one hundred dollars nor more than three hundred dol-
ars, or imprisoned in the county jail not more than one month,
or both fined and imprisoned.

§16-4C-10. Actions to enjoin violations; injunctive relief.

Whenever it appears to the state board that any person has
been or is violating or is about to violate any provision of this
article or any final order of the state board, the state board
may apply in the name of the state, to the circuit court of the
county in which the violation or violations or any part thereof
has occurred, is occurring or is about to occur, for an injunc-
tion against such person and any other persons who have
been, are or are about to be, involved in, or in any way partic-
ipating in, any practices, acts or omissions, so in violation,
enjoining such person or persons from any such violation or
violations. Such application may be made and prosecuted to
collection whether or not any such violation or violations have
resulted or shall result in prosecution or conviction under the
provisions of section eight of this article.

Upon application by the state board, the circuit courts of
this state may by mandatory or prohibitory injunction compel
compliance with the provisions of this article and all final
orders of the state board.

The court may issue a temporary injunction in any case
pending a decision on the merits of any application filed.

The judgment of the circuit court upon any application per-
mitted by the provisions of this section shall be final unless
reversed, vacated or modified on appeal to the supreme court of appeals. Any such appeal shall be sought in the manner and within the time provided by law for appeals from circuit courts in other civil cases.

§16-4C-11. Private rights of action.

1 No physician or surgeon who in good faith gives emergency instructions to a certified emergency service medical attendant, nor any certified emergency service medical attendant who in good faith cares for or gives life saving or life preserving treatment to a patient transported in an ambulance, shall be liable for any civil damage or injury resulting from such treatment, unless such damage or injury be intentionally inflicted or the result of gross negligence.

CHAPTER 46

(Com. Sub. for H. B. 844—By Mrs. Smid)

[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 state, when so requested by any person other than a minor, or
mentally incompetent person, or any other person suffering from any similar disability which would affect their ability to enter into a valid contractual agreement, to perform upon such person, a male or female sterilization procedure: Provided, That a request in writing is made by such person and that at the time of such request a full and reasonable medical explanation is given by the physician to such person as to the meaning and consequences of such operation: Provided, however, That the female sterilization procedure shall only take place in a hospital or facility duly licensed by the state board of health and authorized by said board to perform similar operations, or a hospital or facility administered or owned by the state and duly authorized by said board to perform such operations.

Nothing in this section shall require any hospital or other medical facility to admit any patient for the purpose of undergoing a sterilization operation. No hospital shall be subject to any legal or other penalty or restrictions or shall incur any civil liability because of any refusal to perform, accommodate or assist in any sterilization procedure for any reason. No person shall be required to perform or participate in medical procedures which result in the sterilization of an individual, and the refusal of any person to perform or participate in such medical procedure shall not be a basis for any legal sanction to any person. No hospital administrator or governing board of any hospital shall terminate the employment of, prevent or impair the practice or occupation of, or impose any other penalties or restrictions upon any person who refuses to perform or participate in a sterilization procedure.

§16-11-2. Immunity of persons performing operation.

No properly licensed health care facility or any superintendent or administrator thereof, or physician or any other person legally participating in any such properly requested sterilization operation shall be liable either civilly or criminally by reason of such participation: Provided, That this section shall not be construed to be in derogation of any actionable negligence occurring during or tort liability arising from such operation.
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
Ch. 47] INDUSTRIAL DEVELOPMENT 417

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
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 of the state of West Virginia, and any agency, board or commission of any thereof, and 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 such motor vehicle parking facility.

CHAPTER 13. PUBLIC BONDED INDEBTEDNESS.

ARTICLE 2C. INDUSTRIAL DEVELOPMENT AND COMMERCIAL DEVELOPMENT BOND ACT.

§13-2C-2. Legislative findings.
§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-9. Requirements respecting lease of industrial project or commercial project.
§13-2C-11. Use of proceeds from sale of bonds.
§13-2C-12. No contribution by county or municipality.


This article may be known as and may be cited as the "Industrial Development and Commercial Development Bond Act."

§13-2C-2. Legislative findings.

It is hereby determined and declared as a matter of legislative finding (a) that critical conditions of unemployment exist in many areas of this state; (b) that lack of employment and business opportunities have resulted in thousands of people leaving this state to find employment elsewhere, and this exodus has adversely affected the tax base of
counties and municipalities within this state, resulting in an impairment of their ability to support local government; (c) that the development of new commercial, mining, industrial and manufacturing projects are essential to relieve unemployment and establish a balanced economy within the state; (d) that the present and prospective health, happiness, safety, right of gainful employment and general welfare of the citizens of each of the counties and municipalities of this state will be promoted by the establishment of industrial projects and commercial projects as herein provided; (e) that the means and measures herein authorized for the promotion of industrial projects and commercial projects are, as a matter of public policy, for the public purpose of the several counties, municipalities and the state of West Virginia; (f) that the abatement or control of pollution of the environment of the state is necessary to protect the health and welfare of the citizens of the state, to protect the natural resources of the state and to encourage the economic development of the state; and (g) that in addition to the development of new industrial projects and commercial projects the retention of existing industrial projects and commercial projects within the state through the means and measures herein authorized is vital to the maintenance of a balanced economy and for the preservation of employment within the state and is for the public purpose of the several counties, municipalities and the state of West Virginia.

§13-2C-3 Definitions.

Unless the context clearly indicates otherwise, as used in this article:

(a) "Commercial project" means real or personal property or both, including any buildings, improvements, additions, extensions, replacements, appurtenances, lands, rights in land, water rights, franchises, machinery, equipment, furnishings, landscaping, utilities, railroad spurs and sidings, parking facilities, parking wharfs, approaches and roadways or any number or combination of the foregoing necessary or desirable in connection therewith or incidental thereto and includes, without limiting the generality of the foregoing, hotels and motels and related facilities, nursing homes and other health care facilities,
facilities for participatory or spectator sports, conventions or trade show facilities, airport facilities, shopping centers, office buildings, residential real property for family units, and mass commuting facilities.

(b) "County court" means the governmental body created by section twenty-two, article eight of the West Virginia constitution.

(c) "Governmental body" means the county court, a town or city council or any other governing body in lieu thereof.

(d) "Industrial project" means any site, structure, building, industrial park, water dock, wharf or port facilities, fixtures, machinery, equipment and related facility, including real and personal property, or any combination thereof, suitable as a factory, mill or shop, or processing, assembly, manufacturing or fabricating project, or warehouse or distribution facility, or facilities for the extraction, production or distribution of mineral resources and related facilities, or sewage or solid waste disposal facilities, or facilities for the local furnishing of electric energy or gas, or facilities for the furnishing of water, if available on reasonable demand to members of the general public, or storage or training facilities related to any of the foregoing, or research or development facility or pollution abatement or control facility and includes the reconstruction, modernization and modification of any existing industrial project for the abatement or control of industrial pollution.

(e) "Industrial pollution" means any gaseous, liquid or solid waste substances or adverse thermal effects or combinations thereof resulting from any process of industry, manufacturing, trade or business or from the development, processing or recovery of any natural resources which pollute the land, water or air of this state.


In addition to any other powers which a county or municipality may now have, each county, by and through its county court, and each municipality, by and through its council or other governing body in lieu thereof, shall have the following powers: (1) to acquire, whether by purchase, construction, or gift, one or more industrial projects or commercial projects,
or additions thereto, which shall be located within this state;
(2) to lease to others any or all of its industrial projects or
commercial projects for such rentals and upon such terms and
conditions as the governing body may deem advisable and such
governmental body may grant unto its lessee an option to pur-
chase said industrial project or commercial project, at the ex-
piration of the term of said lease, upon such terms as may be
agreed upon; (3) to issue revenue bonds for the purpose of
defraying the cost of acquiring, by construction and purchase,
or by either, an industrial project or commercial project, or an
addition, extension, or improvement thereto, and to secure the
payment of such bonds, all as hereinafter provided; and (4) to
issue and deliver revenue bonds in exchange for an industrial
project or commercial project.

§13-2C-5. Location of project.

Any industrial project or commercial project acquired by a
county, by construction and purchase, or by either, shall be
located within the county issuing such revenue bonds and any
industrial project or commercial project acquired by a munici-
pality, by construction and purchase, or by either, may be
situated without or within the corporate bounds of such munici-
pality, but it shall be located within the county in which said
municipality is situated, except where a part of such munici-
pality is situated within two or more counties, then said indus-
trial project or commercial project may be located within either
county of which said municipality forms a part and when an
industrial project or commercial project is so acquired by a
municipality the same shall not be located within the corporate
bounds of another municipality without the consent of the
governing body of such municipality and such industrial project
or commercial project shall also not be located at a distance
greater than ten miles from the corporate boundary of the
municipality acquiring the same.

§13-2C-6. Joint establishment by two or more governmental bodies.

Any two or more governmental bodies may jointly acquire
by purchase, construction or gift, one or more industrial proj-
ects or commercial projects or additions thereto by the issuance
and delivery of revenue bonds in which case such governmental
bodies shall jointly exercise all the rights, authority, power and
duties herein conferred upon a county court or a municipality when acting singly and they shall also be subject to the same limitations, restrictions and conditions as are herein imposed on a single governmental body in connection with the acquisition of an industrial project or commercial project. The respective governing bodies, acting jointly, may provide by agreement among themselves, the terms and conditions of such joint participation.

§13-2C-7. Bonds issued to finance industrial project or commercial project.

All bonds issued by a county court or by a municipality under the authority of this article shall be limited obligations of the county, or of the municipality. The principal and interest on such bonds shall be payable out of the revenues derived from the leasing of the project for which the bonds are issued, or any other revenue derived from such industrial project or commercial project. The bonds and interest coupons issued under the authority of this article shall never constitute an indebtedness of the county, or of the municipality issuing the same, within the meaning of any constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the county, or of the municipality issuing the same. Neither shall such bond nor interest thereon be a charge against the general credit or taxing powers of the county, or the municipality and such fact shall be plainly stated on the face of each such bond. Such bonds may be executed, issued and delivered at any time and from time to time, may be in such form and denomination; may be of such tenor, must be negotiable but may be registered as to the principal thereof or as to the principal and interest thereof, may be payable in such amounts and at such time or times; may be payable at such place or places, may bear interest at such rate or rates payable at such place or places and evidenced in such manner, and may contain such provisions therein not inconsistent herewith, all as shall be provided in the proceedings of the governing body whereunder the bonds shall be authorized to be issued. Said bonds may be sold by the governing body at public or private sale at, above or below par as the governing body shall authorize. The said bonds may also be issued and delivered to the owner of an in-
dustrial project or commercial project in exchange therefor and
in partial or complete payment of the purchase price thereof.

The bonds issued pursuant to this article by a county
court shall be signed by the president and attested by the
clerk of the county court under the seal of the court and
the bonds issued by a municipality shall be signed by the
mayor or other chief officer thereof and attested by the
clerk, recorder or other official custodian of the records
of said municipality and under the seal of the municipality.
The coupons attached thereto shall bear the facsimile signa-
ture of the president of the county court or the mayor or
other chief officer of the municipality. In case any of
the officials whose signatures appear on the bonds or coupons
shall cease to be such officers before the delivery of such
bonds, such signatures shall, nevertheless, be valid and
sufficient for all purposes to the same extent as if they had
remained in office until such delivery.

If the proceeds of such bonds by error of calculation
or otherwise, shall be less than the cost of the industrial
project or commercial project, additional bonds may in like
manner be issued to provide the amount of the deficiency, and
unless otherwise provided for in the trust agreement, mortgage
or deed of trust, shall be deemed to be of the same issue, and
shall be entitled to payment from the same fund, without pre-
ference or priority, and shall be of equal priority as to any
security.


There is hereby created a statutory mortgage lien upon
all real estate, buildings, structures, improvements and per-
sonal property included as a part of an industrial project
or commercial project which was acquired, purchased, con-
structed or built or improved with the proceeds of the bonds
authorized to be issued under this article, for the purpose of
securing the principal of said bonds and the interest thereon.
The principal of and interest on any bonds issued under the
authority of this article shall be secured by a pledge of the in-
come and revenues derived from the lease of the industrial proj-
et, and also be secured by a pledge of the proceeds of any sale
thereof. In the discretion and at the option of the county
court or municipality, such revenue bonds may also be
secured by a trust indenture by and between the county court
or the municipality and a corporate trustee, which may
be a trust company or bank having trust powers, within
or without the state of West Virginia. The governing body
may authorize the issuance of such revenue bonds by resolu-
tion. The resolution authorizing the revenue bonds and
fixing the details thereof may provide that such trust in-
denture may contain such provisions for the protection and
enforcing the rights and remedies of the bondholders as may
be reasonable and proper, not in violation of law, including
covenants setting forth the duties of the county court or
the municipality in relation to the construction or acquisition of
an industrial project or commercial project, or part thereof, or
an addition thereto, and the improvement, repair, maintenance
and insurance thereof, and for the custody, safeguarding and
application of all moneys, and may provide that the industrial
project or commercial project shall be constructed and paid for
under the supervision and approval of the consulting en-
gineers or architects employed and designated by the governing
body and satisfactory to the purchasers of the bonds, their suc-
cessors, assigns or nominees, and the lessee or either thereof,
who may require the security given by any contractor or any
depository of the proceeds of the bonds or the revenues received
from the lease or sale of the industrial project or commercial
project be satisfactory to such purchasers, their successors, as-
signs or nominees, or be satisfactory to the lessee or purchaser
of the industrial project or commercial project. Such indenture
may set forth the rights and remedies of the bondholders, the
county or municipality or such trustee and may provide for ac-
celerating the maturity of the revenue bonds, at the option of
the bondholders or the governmental body issuing the same, up-
on default by the lessee in the payment of rentals, or for other
cause. The governing body may also provide by resolution and
in such trust indenture for the payment of the proceeds of the
sale of the bonds and the revenues from the industrial project or
commercial project to such depository as it may determine, for
the custody thereof and for the method of distribution thereof,
with such safeguards and restrictions as it may determine to be
necessary or advisable for the protection thereof and upon the
filing of a certified copy of such resolution or of the indenture
for record in the office of the clerk of the county court of the
county in which an industrial project or commercial project is
located, the same shall have the same effect, as to notice, as the
recordation of a deed of trust or other recordable instrument.

In lieu of the indenture provided for hereinabove the principal of and interest on said bonds may be secured by a mortgage
or deed of trust covering all or any part of the industrial project
or commercial project from which the revenues so pledged may
be derived, and the same may be secured by an assignment of
the lease on said industrial project or commercial project and by
assignment or pledge of the income received by virtue of said
lease. The proceedings under which such bonds are authorized
to be issued, when secured by a mortgage or deed of trust, may
contain the same terms, conditions and provisions provided for
herein when an indenture is entered into between the governing
body and a trustee and any such mortgage or deed of trust may
contain any agreements and provisions customarily contained in
instruments securing bonds, including, without limiting the gen-
erality of the foregoing, provisions respecting the fixing and col-
lection of rents for any industrial project or commercial project
covered by such proceedings or mortgage, the terms to be incor-
porated in the lease of such industrial project or commercial
project, the improvement, repair, maintenance and insurance of
such industrial project or commercial project, the creation and
maintenance of special funds from the revenues received from
the lease of such industrial project or commercial project and
the rights and remedies available in event of default to the
bondholders, the governmental body, or to the trustee under an
agreement, indenture, mortgage, or deed of trust, all as the
governing body shall deem advisable and as shall not be in con-

{}\textit{Provided,} That in making any such agreements or provisions a
county or municipality shall not have the power to obligate it-
self by indenture, ordinance, resolution, mortgage or deed of
trust, except with respect to the industrial project or commer-
cial project and the application of the revenues therefrom, and
shall not have the power to incur a pecuniary liability or a
charge upon its general credit or against its taxing powers. The
proceedings authorizing any bonds hereunder and any inden-
ture, mortgage or deed of trust securing such bonds may provide
that, in the event of default in payment of the principal of or the
interest on such bonds or in the performance of any agreement
contained in such proceedings, indenture, mortgage or deed of
trust, such payment and performance may be enforced by the
appointment of a receiver in equity with power to charge and
collect rents and to apply the revenues from the industrial proj-
ect or commercial project in accordance with such proceedings
or the provisions of such agreement, indenture, mortgage or
deed of trust. Any such agreement, indenture, mortgage or deed
of trust may provide also that, in the event of default in such
payment or the violation of any agreement contained in the
mortgage or deed of trust, the agreement, indenture, mortgage
or deed of trust may be foreclosed either by sale at public out-
cry or by proceedings in equity and may provide that the holder
or holders of any of the bonds secured thereby may become the
purchaser at any foreclosure sale, if the highest bidder therefor.
No breach of any such agreement, indenture, mortgage or deed
of trust shall impose any pecuniary liability upon a county or
municipality or any charge upon its general credit or against its
taxing powers.

§13-2C-9. Requirements respecting lease of industrial project or
commercial project.

Prior to the issuance of any bonds, the county court or the
municipality shall lease the industrial project or commercial
project to a lessee under an agreement providing for payment to
the county court or municipality or designated depository of
such rentals as will be sufficient (a) to pay the principal of and
interest on the bonds issued to finance the project as such prin-
cipal and interest respectively mature, (b) to build up and
maintain any reserves deemed by the governing body to be ad-
visable in connection therewith, and (c) unless the agreement
of lease obligates the lessee to pay for the cost of maintaining,
repairing and insuring of the project, to pay the costs of main-
taining the project in good repair and keeping it properly in-
sured. The said lease shall contain a provision for the revision
of the lease from time to time, so as to produce sufficient
revenue to pay the interest and create a sinking fund sufficient
to pay the principal of said bonds when due and to provide for
the maintenance, repair and insurance of the industrial project
or commercial project unless the latter be assumed by the
Ch. 47] INDUSTRIAL DEVELOPMENT 427

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.


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
purpose for which the bonds were issued, then such unneeded portion of said proceeds shall be applied to the payment of the principal of or the interest on said bonds, or held in reserve for the payment thereof. The cost of acquiring any industrial project or commercial project shall be deemed to include the following: The cost of acquiring any real estate deemed necessary, the actual cost of the construction of any part of an industrial project or commercial project which may be constructed, including architects', engineers', financial or other consultants' and legal fees, the purchase price of any part of a project that may be acquired by purchase, all expense incurred in connection with the authorization, sale and issuance of the bonds to finance such acquisition, and the interest on such bonds for a reasonable time prior to construction, during construction, and for not exceeding twelve months after completion of construction and any other cost and expense reasonably necessary in the establishment and acquisition of such industrial project or commercial project and the financing thereof.

§13-2C-13. No contribution by county or municipality.

No county court or municipality shall have the power to pay out of its general funds, or otherwise contribute, any of the costs of acquiring or constructing an industrial project or commercial project, to be financed out of the proceeds from the sale of revenue bonds issued under the authority of this article: Provided, That this provision shall not be construed to prevent a county or municipality from accepting donations of property to be used as a part of an industrial project or commercial project or to be used for defraying any part of the cost of any such project. The bonds issued pursuant to this article shall be payable solely from the revenue derived from the industrial project or commercial project and shall not constitute an indebtedness of the county or of the municipality within the meaning of any constitutional provision and it shall be plainly stated on the face of each bond that it has been issued under the provisions of this article and that it does not constitute an indebtedness of the county or municipality within the meaning of the constitution of West Virginia.

No county court or municipality shall have the authority under this article to levy any taxes for the purpose of paying
any part of the cost of acquiring an industrial project or commercial project. However, all necessary preliminary expenses actually incurred by a county court or a municipality in the making of surveys, taking options, preliminary planning, and all other expenses necessary to be paid prior to the issuance, sale and delivery of the revenue bonds, may be paid by such governmental body out of any surplus contained in any item of budgetary appropriation or any revenues collected in excess of anticipated revenues, which shall be reimbursed and repaid out of the proceeds of the sale of the revenue bonds.


The revenue bonds issued pursuant to this article and the income therefrom shall be exempt from taxation except inheritance, estate and transfer taxes; and the real and personal property which a county court or a municipality may acquire to be leased to an industrial project or commercial project according to the provisions of this article, shall be exempt from taxation by the state, or any county, municipality, or other levying body, as public property, so long as the same is owned by such county or municipality.


No member of a county court or the governing body of a municipality issuing revenue bonds under the provisions of this article shall have any financial interest, directly or indirectly, in the leasing of an industrial project or commercial 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 established and located at Industrial, in Harrison County, shall be continued, and shall be exclusively charged with the care, training and reformation of girls committed to its custody. It shall be managed, directed and controlled as 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 money to defray the expenses of its organization, pro-
vide it with surplus funds, or for any purpose required by
its business, upon a written agreement that such money
is required to be repaid only out of the insurer's surplus
in excess of that stipulated in such agreement. The agree-
ment may provide for interest at the rate agreed upon by
such insurer and its lender. Such interest shall not con-
stitute a liability of the insurer as to its funds other than
such excess of surplus unless so stipulated in the agree-
ment.

(b) Money so borrowed, together with the interest
thereon if so stipulated in the agreement, shall not form
a part of the insurer's legal liabilities except as to its
surplus in excess of the amount thereof stipulated in the
agreement, or be the basis of any setoff; but until repaid,
financial statements filed or published by the insurer shall
show as a footnote thereto the amount thereof then unpaid
together with any interest thereon accrued but unpaid.

(c) Such insurer in advance of any such loan shall file
with the commissioner a statement of the purposes of the
loan and a copy of the proposed loan agreement, which
shall be subject to the commissioner's approval. The loan
and agreement shall be deemed approved thirty days after
date of filing with the commissioner, unless within such
thirty-day period the insurer is notified in writing of the
commissioner's disapproval and the reasons therefor.
The commissioner shall so disapprove any such proposed
loan or agreement if he finds that the loan is reasonably
unnecessary or excessive for the purpose intended, or that
the terms of the loan agreement are not fair and equitable
to the parties, and to other similar lenders, if any, to the
insurer, or is not fair to policyholders, or that the in-
formation so filed by the insurer is inadequate.

(d) Any such loan to a mutual insurer or substantial
portion thereof shall be repaid by the insurer when no
longer reasonably necessary for the purpose originally in-
tended. No repayment of such a loan shall be made by a
mutual insurer unless in advance approved by the com-
missioner.
(e) This section shall not apply to loans obtained by the insurer in ordinary course of business from banks and other financial institutions, nor to loans secured by pledge of assets.

CHAPTER 50

(Com. Sub. for S. B. 337—By Mr. Neely 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

13. Life Insurance.

ARTICLE 7. ASSETS AND LIABILITIES.


1. (1) The commissioner shall annually value, or cause to be valued, the reserve liabilities (hereinafter called reserves) for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurer transacting insurance in this state, except that in the case of an alien insurer such valuation shall be limited to its United States business, and may certify the amount of any such reserves, specifying the mortality table or
tables, rate or rates of interest and methods (net level premium method or other) used in the calculation of such reserves.

All valuations made by him or by his authority shall be made upon the net premium basis.

In every case the standard of valuation employed shall be stated in his annual report.

In calculating such reserves, he may use group methods and approximate averages for fractions of a year or otherwise. In lieu of the valuation of the reserves herein required of any foreign or alien insurer, he may accept any valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction when such valuation complies with the minimum standard herein provided and if the official of such state or jurisdiction accepts as sufficient and valid for all legal purposes the certificate of valuation of the commissioner when such certificate states the valuation to have been made in a specified manner according to which the aggregate reserves would be at least as large as if they had been computed in the manner prescribed by the law of that state or jurisdiction.

Any such insurer which at any time shall have adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard herein provided may, with the approval of the commissioner, adopt any lower standard of valuation, but not lower than the minimum herein provided.

(2) This subsection shall apply to only those policies and contracts issued prior to the original operative date of the Standard Nonforfeiture Law (now section thirty of article thirteen of this chapter). All valuations shall be according to the standard of valuations adopted by the insurer for the obligations to be valued. Any insurer may adopt different standards for obligations of different dates or classes, but if the total value determined by any such standard for the obligation for which it has been adopted shall be less than that determined by the legal minimum standard hereinafter prescribed, or if the insurer adopts
no standard, said legal minimum standard shall be used.

Except as otherwise provided in subdivision (a) (B) of subsection (3), the legal minimum standard for contracts issued before the first day of January, in the year one thousand nine hundred one, shall be actuaries' or combined experience table of mortality with interest at four percent per annum, and for contracts issued on or after said date shall be the "American Experience Table" of mortality with interest at three and one-half percent per annum. Policies issued by insurers doing business in this state may provide for not more than one-year preliminary term insurance: Provided, however, That if the premium charged for term insurance under a limited payment life preliminary term policy providing for the payment of all premiums thereof in less than twenty years from the date of the policy, or under an endowment preliminary term policy, exceeds that charged for like insurance under twenty payment life preliminary term policies of the same insurer, the reserve thereon at the end of any year, including the first, shall not be less than the reserve on a twenty payment life preliminary term policy issued in the same year and at the same age, together with an amount which shall be equivalent to the accumulation of a net level premium sufficient to provide for a pure endowment at the end of the premium payment period, equal to the difference between the value at the end of such period of such a twenty payment life preliminary term policy and a full reserve at such time of such a limited payment life or endowment policy.

The commissioner may vary the standards of interest and mortality in the case of alien insurers and in particular cases of invalid lives and other extra hazards.

Reserves for all such policies and contracts may be calculated, at the option of the insurer, according to any standards which produce greater aggregate reserves for all such policies and contracts than the minimum reserves required by this subsection.

(3) Except as otherwise provided in subdivision (a) (B) of this subsection, this subsection shall apply to only
those policies and contracts issued on or after the original
operative date of the Standard Nonforfeiture Law (now
section thirty of article thirteen of this chapter).

(a) (A) Except as otherwise provided in paragraph (B)
of this subdivision, the minimum standard for the valua-
tion of all such policies and contracts shall be the com-
missoners reserve valuation method defined in subdivi-
sion (b), three and one-half percent interest, or in the
case of policies and contracts, other than annuity and pure
endowment contracts, issued on or after the effective date
of this amendatory act of 1974 and prior to the first day of
January, nineteen hundred eighty-six, four percent in-
terest, and the following tables:

(i) For all ordinary policies of life insurance issued on
the standard basis, excluding any disability and accidental
death benefits in such policies—the Commissioners 1941
Standard Ordinary Mortality Table for such policies is-
ued prior to the operative date of subsection four-a of
section thirty, article thirteen of this chapter, and the
Commissioners 1958 Standard Ordinary Mortality Table
for such policies issued on or after such operative date:
Provided, That for any category of such policies issued
on female risks all modified net premiums and present
values referred to in this section may be calculated accord-
ing to an age not more than three years younger than the
actual age of the insured.

(ii) For all industrial life insurance policies issued on
the standard basis, excluding any disability and accidental
death benefits in such policies—the 1941 Standard Indus-
trial Mortality Table for such policies issued prior to the
operative date of subsection four-b of section thirty, article
thirteen of this chapter, and the Commissioners 1961
Standard Industrial Mortality Table for such policies is-
ued on or after such operative date.

(iii) For individual annuity and pure endowment con-
tracts, excluding any disability and accidental death
benefits in such policies—the 1937 Standard Annuity
Mortality Table or, at the option of the company, the
Annuity Mortality Table for 1949, ultimate, or any modi-
(iv) For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies—the Group Annuity Mortality Table for 1951, any modification of such table approved by the commissioner, or, at the option of the company, any of the tables or modification of tables specified for individual annuity and pure endowment contracts.

(v) For total permanent disability benefits in or supplementary to ordinary policies or contracts—for policies or contracts issued on or after the first day of January, one thousand nine hundred sixty-six, the tables of period two disablement rates and the one thousand nine hundred thirty to one thousand nine hundred fifty termination rates of the one thousand nine hundred fifty-two disability study of the society of actuaries, with due regard to the type of benefit; for policies or contracts issued on or after the first day of January, one thousand nine hundred sixty-one and prior to the first day of January, one thousand nine hundred sixty-six, either such tables or, at the option of the company, the Class (3) Disability Table (1926); and for policies issued prior to the first day of January, one thousand nine hundred sixty-one, the Class (3) Disability Table (1926). Any such table shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(vi) For accidental death benefits in or supplementary to policies—for policies issued on or after the first day of January, one thousand nine hundred sixty-six, the 1959 Accidental Death Benefits Table; for policies issued on or after the first day of January, one thousand nine hundred sixty-one and prior to the first day of January, one thousand nine hundred sixty-six, either such table or, at the option of the company, the Inter-Company Double Indemnity Mortality Table; and for policies issued prior to the first day of January, one thousand nine hundred sixty-one, the Inter-Company Double Indemnity Mortality Table. Either table shall be combined with a mortality
table permitted for calculating the reserves for life insurance policies.

(vii) For group life insurance, life insurance issued on the substandard basis and other special benefits—such tables as may be approved by the commissioner.

(B) The minimum standard for the valuation of all individual annuity and pure endowment contracts issued on or after the operative date of this paragraph (B), as defined herein, and for all annuities and pure endowments purchased on or after such operative date under group annuity and pure endowment contracts, shall be the commissioners reserve valuation method defined in subdivision (b) and the following tables and interest rates:

(i) For individual annuity and pure endowment contracts issued prior to the first day of January, nineteen hundred eighty-six, excluding any disability and accidental death benefits in such contracts—the 1971 Individual Annuity Mortality Table, or any modification of this table approved by the commissioner, and six percent interest for single premium immediate annuity contracts, and four percent interest for all other individual annuity and pure endowment contracts.

(ii) For individual annuity and pure endowment contracts issued on or after the first day of January, nineteen hundred eighty-six, excluding any disability and accidental death benefits in such contracts—the 1971 Individual Annuity Mortality Table, or any modification of this table approved by the commissioner, and three and one-half percent interest.

(iii) For all annuities and pure endowments purchased prior to the first day of January, nineteen hundred eighty-six under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts—the 1971 Group Annuity Mortality Table, or any modification of this table approved by the commissioner, and six percent interest.

(iv) For all annuities and pure endowments purchased on or after the first day of January, nineteen hundred eight-six under group annuity and pure endowment
contracts, excluding any disability and accidental death
benefits purchased under such contracts—the 1971 Group
Annuity Mortality Table, or any modification of this
table approved by the commissioner, and three and one-
half percent interest.

After the effective date of this amendatory act of 1974,
any company may file with the commissioner a written
notice of its election to comply with the provisions of this
paragraph (B) after a specified date before the first day
of January, nineteen hundred and seventy-nine, which
shall be the operative date of this paragraph (B) for
such company, provided that a company may elect a
different operative date for individual annuity and pure
endowment contracts from that elected for group annuity
and pure endowment contracts. If a company makes no
such election, the operative date of this paragraph (B)
for such company shall be the first day of January, nine-
teen hundred and seventy-nine.

(b) Reserves according to the commissioner's reserve
valuation method, for the life insurance and endowment
benefits of policies providing for a uniform amount of
insurance and requiring the payment of uniform pre-
miums shall be the excess, if any, of the present value,
at the date of valuation, of such future guaranteed bene-
fits provided for by such policies, over the then present
value of any future modified net premium therefor. The
modified net premiums for any such policy, shall be such
uniform percentage of the respective contract premiums
for such benefits that the present value, at the date of
issue of the policy of all such modified net premiums shall
be equal to the sum of the then present value of such
benefits provided for by the policy and the excess of (A)
over (B), as follows:

(A) A net level annual premium equal to the present
value, at the date of issue, of such benefits provided for
after the first policy year, divided by the present value,
at the date of issue, of an annuity of one per annum pay-
able on the first and each subsequent anniversary of
such policy or, which the premium falls due: Provided,
however, That such net level annual premium shall not
insurancE 439

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
benefits by more than one-half percent the insurer issuing such policies shall file with the commissioner a plan providing for such equitable increases, if any, in the cash surrender values and nonforfeiture benefits in such policies as the commissioner shall approve.

(e) If the gross premium charged by any life insurer on any policy or contract is less than the net premium for the policy or contract according to the mortality table, rate of interest and method used in calculating the reserve thereon, there shall be maintained on such policy or contracts a deficiency reserve in addition to all other reserves required by law. For each such policy or contract the deficiency reserve shall be the present value, according to such standard, of an annuity of the difference between such net premium and the premium charged for such policy or contract, running for the remainder of the premium-paying period.

ARTICLE 13. LIFE INSURANCE.


1 (1) In the case of policies issued on or after the original operative date of this provision, no policy of life insurance, except as stated in subsection six, shall be delivered or issued for delivery in this state unless it shall contain in substance the following provisions, or corresponding provisions which in the opinion of the commissioner are at least as favorable to the defaulting or surrendering policyholder:

(a) That, in the event of default in any premium payment, the insurer will grant, upon proper request not later than sixty days after the due date of the premium in default, a paid-up nonforfeiture benefit on a plan stipulated in the policy, effective as of such due date, of such value as may be hereinafter specified;

(b) That, upon surrender of the policy within sixty days after the due date of any premium payment in default after premiums have been paid for at least three full years, the insurer will pay, in lieu of any paid-up
(c) That a specified paid-up nonforfeiture benefit shall become effective as specified in the policy unless the person entitled to make such election elects another available option not later than sixty days after the due date of the premium in default;

(d) That, if the policy shall have become paid up by completion of all premium payments or if it is continued under any paid-up nonforfeiture benefit which became effective on or after the third policy anniversary the insurer will pay, upon surrender of the policy within thirty days after any policy anniversary, a cash surrender value of such amount as may be hereinafter specified;

(e) A statement of the mortality table and interest rate used in calculating the cash surrender values and the paid-up nonforfeiture benefits available under the policy, together with a table showing the cash surrender value, if any, and paid-up nonforfeiture benefits, if any, available under the policy on each policy anniversary either during the first twenty policy years or during the term of the policy, whichever is shorter, such values and benefits to be calculated upon the assumption that there are no dividends or paid-up additions credited to the policy and that there is no indebtedness to the insurer on the policy;

(f) A statement that the cash surrender values and the paid-up nonforfeiture benefits available under the policy are not less than the minimum values and benefits required by or pursuant to the insurance law of the state in which the policy is delivered; an explanation of the manner in which the cash surrender values and the paid-up nonforfeiture benefits are altered by the existence of any paid-up additions credited to the policy or any indebtedness to the company on the policy; if a detailed statement of the method of computation of the values and benefits shown in the policy is not stated therein a statement that such method of computation has been filed with the insurance supervisory official of the state
in which the policy is delivered; and a statement of the
method to be used in calculating the cash surrender value
and paid-up nonforfeiture benefit available under the
policy on any policy anniversary beyond the last an-
niversary for which such values and benefits are con-
secutively shown in the policy.

Any of the foregoing provisions or portions thereof,
not applicable by reason of the plan of insurance may,
to the extent inapplicable, be omitted from the policy.

The insurer shall reserve the right to defer the pay-
ment of any cash surrender value for a period of six
months after demand therefor with surrender of the
policy.

(2) Any cash surrender value available under the
policy in the event of default in a premium payment due
on any policy anniversary, whether or not required by
subsection one, shall be an amount not less than the
excess, if any, of the present value, on such anniversary,
of the future guaranteed benefits which would have been
provided for by the policy, including any existing paid-
up additions, if there had been no default, over the sum
of (i) the then present value of the adjusted premiums
as defined in subsections four, four-a and four-b, cor-
responding to premiums which would have fallen due on
and after such anniversary, and (ii) the amount of any
indebtedness to the insurer on the policy. Any cash
surrender value available within thirty days after any
policy anniversary under any policy paid up by com-
pletion of all premium payments or any policy con-
tinued under any paid-up nonforfeiture benefit, whether
or not required by subsection one, shall be an amount
not less than the present value, on such anniversary, of
the future guaranteed benefits provided for by the
policy, including any existing paid-up additions decreased
by any indebtedness to the insurer on the policy.

(3) Any paid-up nonforfeiture benefit available un-
der the policy in the event of default in a premium
payment due on any policy anniversary shall be such
that its present value as of such anniversary shall be
at least equal to the cash surrender value then pro-
vided for by the policy or, if none is provided for that
cash surrender value which would have been required
by this section in the absence of the condition that pre-
miums shall have been paid for at least a specific
period.

(4) Except as provided in the third paragraph of this
subsection, the adjusted premiums for any policy shall
be calculated on an annual basis and shall be such
uniform percentage of the respective premiums speci-
fied in the policy for each policy year, excluding extra
premiums on a substandard policy, that the present
value, at the date of issue of the policy, of all such ad-
justed premiums shall be equal to the sum of (i) the
then present value of the future guaranteed benefits
provided for by the policy; (ii) two percent of the amount
of insurance, if the insurance be uniform in amount, or
of the equivalent uniform amount, as hereinafter
defined, if the amount of insurance varies with dura-
tion of the policy; (iii) forty percent of the adjusted
premium for the first policy year; (iv) twenty-five per-
cent of either the adjusted premium for the first policy
year or the adjusted premium for a whole life policy
of the same uniform or equivalent uniform amount with
uniform premiums for the whole of life issued at the
same age for the same amount of insurance, whichever
is less: Provided, however, That in applying the per-
centages specified in (iii) and (iv) above, no adjusted
premium shall be deemed to exceed four percent of the
amount of insurance or uniform amount equivalent there-
to. The date of issue of a policy for the purpose of this
subsection shall be the date as of which the rated age of
the insured is determined.

In the case of a policy providing an amount of in-
surance varying with duration of the policy, the equiva-
 lent uniform amount thereof for the purpose of this
subsection shall be deemed to be the uniform amount
of insurance provided by an otherwise similar policy,
containing the same endowment benefit or benefits, if
any, issued at the same age and for the same term, the
amount of which does not vary with duration and the
benefits under which have the same present value at
the date of issue as the benefits under the policy: Pro-
vided, however, That in the case of a policy providing
a varying amount of insurance issued on the life of a
child under age ten, the equivalent uniform amount
may be computed as though the amount of insurance
provided by the policy prior to the attainment of age
ten were the amount provided by such policy at age
ten.

The adjusted premiums for any policy providing term
insurance benefits by rider or supplemental policy pro-
vision shall be equal to (a) the adjusted premiums for
an otherwise similar policy issued at the same age with-
out such term insurance benefits, increased, during the
period for which premiums for such term insurance
benefits are payable, by (b) the adjusted premiums for
such term insurance, the foregoing items (a) and (b)
being calculated separately and as specified in the first
two paragraphs of this subsection except that, for the
purposes of (ii), (iii) and (iv) of the first such paragraph,
the amount of insurance or equivalent uniform amount
of insurance used in the calculation of the adjusted pre-
miums referred to in (b) shall be equal to the excess of
the corresponding amount determined for the entire
policy over the amount used in the calculation of the
adjusted premiums in (a).

Except as otherwise provided in subsection four-a and
four-b, all adjusted premiums and present values re-
ferred to in this section shall for all policies of ordinary
insurance be calculated on the basis of the Commis-
sioners 1941 Standard Ordinary Mortality Table: Pro-
vided, That for any category of ordinary insurance is-
sued on female risks, adjusted premiums and present
values may be calculated according to an age not more
than three years younger than the actual age of the
insured, and such calculations for all policies of in-
dustrial insurance shall be made on the basis of the
1941 Standard Industrial Mortality Table. All calcula-
tions shall be made on the basis of the rate of interest,
not exceeding three and one-half percent per annum,
specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits: Provided, That in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rate of mortality assumed may be not more than one hundred and thirty percent of the rates of mortality according to such applicable table: Provided further, That for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the insurer and approved by the commissioner.

(4a) In the case of ordinary policies issued on or after the operative date of this subsection four-a as defined herein, all adjusted premiums and present values referred to in this section shall be calculated on the basis of the Commissioners 1958 Standard Ordinary Mortality Table and the rate of interest not exceeding three and one-half percent per annum specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits provided that such rate of interest shall not exceed three and one-half percent per annum except that a rate of interest not exceeding four percent per annum may be used for policies issued on or after the effective date of this amendatory act of 1974 and prior to the first day of January, one thousand nine hundred eighty-six: Provided, That for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than three years younger than the actual age of the insured: Provided, however, That in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioners 1958 Extended Term Insurance Table: Provided, further, That for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be spec-
After the third day of June, one thousand nine hundred fifty-nine, any company may file with the commissioner a written notice of its election to comply with the provisions of this subsection after a specified date before the first day of January, one thousand nine hundred sixty-six. After the filing of such notice, then upon such specified date (which shall be the operative date of this subsection for such company), this subsection shall become operative with respect to the ordinary policies thereafter issued by such company. If a company makes no such election, the operative date of this subsection for such company shall be the first day of January, one thousand nine hundred sixty-six.

(4b) In the case of industrial policies issued on or after the operative date of this subsection four-b as defined herein, all adjusted premiums and present values referred to in this section shall be calculated on the basis of the Commissioners 1961 Standard Industrial Mortality Table and the rate of interest not exceeding three and one-half percent per annum specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits provided that such rate of interest shall not exceed three and one-half percent per annum except that a rate of interest not exceeding four percent per annum may be used for policies issued on or after the effective date of this amendatory act of 1974 and prior to the first day of January, nineteen hundred eighty-six: Provided, however, That in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioners 1961 Industrial Extended Term Insurance Table: Provided further, That for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the commissioner.
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.

(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-
tional benefits, shall be disregarded in ascertaining cash surrender values and nonforfeiture benefits required by this section, and no such additional benefits shall be required to be included in any paid-up nonforfeiture benefits.

(6) This section shall not apply to any reinsurance, group insurance, pure endowment, annuity or reversionary annuity contract, nor to any term policy of uniform amount, or renewal thereof, of fifteen years or less expiring before age sixty-six, for which uniform premiums are payable during the entire term of the policy, nor to any term policy of decreasing amount on which each adjusted premium, calculated as specified in subsections four, four-a and four-b, is less than the adjusted premium so calculated on a policy issued at the same age and for the same initial amount of insurance for a term defined as follows—for ages at issue fifty and under, the term shall be fifteen years, thereafter, the terms shall decrease one year for each year of age beyond fifty, nor to any policy which shall be delivered outside this state through an agent or other representative 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.

The purpose of this article is to regulate trade practices in the business of insurance in accordance with the intent of Congress as expressed in the act of Congress of March ninth, one thousand nine hundred forty-five (Public Law fifteen, seventy-ninth Congress), by defining, or providing for the determination of, all such practices in this state which constitute unfair methods of competition or unfair or deceptive acts or practices and by prohibiting the trade practices so defined or determined.

§33-11-2. Definitions.

As used in this article:

(a) "Person" includes any individual, company, insurer, association, organization, society, reciprocal, business trust, corporation, or any other legal entity, including agents and brokers. "Person" also includes hospital service corporations, medical service corporations and dental service corporations as defined in article twenty-four of this chapter, and health care corporations as defined in article twenty-five of this chapter.

For purposes of this article hospital service corporations, medical service corporations, dental service corporations, and health care corporations shall be deemed to be in the business of insurance.

(b) "Commissioner" means the insurance commissioner of West Virginia.
(c) "Insurance policy" or "insurance contract" means the contract effecting insurance, or the certificate thereof, by whatever name called, and includes all clauses, riders, endorsements and papers attached thereto and a part thereof.

§33-11-3. Unfair methods of competition and unfair or deceptive acts or practices prohibited.

No person shall engage in this state in any trade practice which is defined in this article as, or determined pursuant to section seven of this article to be, an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

§33-11-4. Unfair methods of competition and unfair or deceptive acts or practices defined.

The following are hereby defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

(1) Misrepresentation and false advertising of insurance policies.—No person shall make, issue, circulate, or cause to be made, issued or circulated, any estimate, circular, statement, sales presentation, omission, or comparison which:

(a) Misrepresents the benefits, advantages, conditions, or terms of any insurance policy; or

(b) Misrepresents the dividends or share of the surplus to be received on any insurance policy; or

(c) Make any false or misleading statements as to the dividends or share of surplus previously paid on any insurance policy; or

(d) Is misleading or is a misrepresentation as to the financial condition of any person, or as to the legal reserve system upon which any life insurer operates; or

(e) Uses any name or title of any insurance policy or class of insurance policies misrepresenting the true nature thereof; or

(f) Is a misrepresentation for the purpose of inducing or tending to induce the lapse, forfeiture, exchange, conversion, or surrender of any insurance policy; or
(g) Is a misrepresentation for the purpose of effecting a pledge or assignment of or effecting a loan against any insurance policy; or

(h) Misrepresents any insurance policy as being shares of stock.

(2) False information and advertising generally.—No person shall make, publish, disseminate, circulate or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster or over any radio or television station, or in any other way, an advertisement, announcement or statement containing any assertion, representation or statement with respect to the business of insurance or with respect to any person in the conduct of his insurance business, which is untrue, deceptive or misleading.

(3) Defamation.—No person shall make, publish, disseminate, or circulate, directly or indirectly, or aid, abet or encourage the making, publishing, disseminating or circulating of any oral or written statement or any pamphlet, circular, article or literature which is false, or maliciously critical of or derogatory to the financial condition of any person and which is calculated to injure such person.

(4) Boycott, coercion and intimidation.—No person shall enter into any agreement to commit, or by any concerted action commit, any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance.

(5) False statements and entries.—(a) No person shall knowingly file with any supervisory or other public official, or knowingly make, publish, disseminate, circulate or deliver to any person, or place before the public, or knowingly cause directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false material statement of fact as to the financial condition of a person.

(b) No person shall knowingly make any false entry of a
material fact in any book, report or statement of any person
or knowingly omit to make a true entry of any material fact
pertaining to the business of such person in any book, report
or statement of such person.

(6) *Stock operations and advisory board contracts.*—No
person shall issue or deliver or permit agents, officers or
employees to issue or deliver, agency company stock or other
capital stock, or benefit certificates or shares in any com-
mon-law corporation, or securities or any special or advisory
board contracts or other contracts of any kind promising
returns and profits as an inducement to insurance.

(7) *Unfair discrimination.*—(a) No person shall make
or permit any unfair discrimination between individuals of
the same class and equal expectation of life in the rates
charged for any contract of life insurance or of life annuity
or in the dividends or other benefits payable thereon, or
in any other of the terms and conditions of such contract.

(b) No person shall make or permit any unfair dis-
crimination between individuals of the same class and of
essentially the same hazard in the amount of premium policy
fees, or rates charged for any policy or contract of accident
and sickness insurance or in the benefits payable thereunder,
or in any of the terms or conditions of such contract, or in
any other manner whatever.

(c) As to kinds of insurance other than life and accident
and sickness, no person shall make or permit any unfair
discrimination in favor of particular persons, or between in-
sureds or subjects of insurance having substantially like
insuring, risk and exposure factors or expense elements, in the
terms or conditions of any insurance contract, or in the rate
or amount of premium charge therefor. This paragraph shall
not apply as to any premium or premium rate in effect pursuant
to article twenty of this chapter.

(8) *Rebates.*—(a) Except as otherwise expressly provided
by law, no person shall knowingly permit or offer to make
or make any contract of life insurance, life annuity, or
accident and sickness insurance, or agreement as to such
contract other than as plainly expressed in the insurance
contract issued thereon, or pay or allow or give or offer
to pay, allow or give, directly or indirectly, as inducement
to such insurance or annuity, any rebate of premiums payable
on the contract, or any special favor or advantage in the
dividends or other benefits thereon, or any valuable con-
sideration or inducement whatever not specified in the contract;
or give or sell, or purchase or offer to give, sell or purchase
as inducement to such insurance contract or annuity or in
connection therewith, any stocks, bonds, or other securities
of any insurance company or other corporation, association,
or partnership, or any dividends or profits accrued thereon,
or anything of value whatsoever not specified in the contract.

(b) Nothing in subdivision seven or paragraph (a) of sub-
division eight of this section shall be construed as including
within the definition of unfair discrimination or rebates any
of the following practices:

(i) In the case of any contract of life insurance or life
annuity, paying bonuses to policyholders or otherwise abating
their premiums in whole or in part out of surplus accumulated
from nonparticipating insurance: Provided, That any such
bonuses or abatement of premiums shall be fair and equitable
to policyholders and for the best interests of the insurer and
its policyholders;

(ii) In the case of life insurance policies issued on the
industrial debit plan, making allowance to policyholders who
have continuously for a specified period made premium
payments directly to an office of the insurer in an amount
which fairly represents the saving in collection expenses;

(iii) Readjustment of the rate of premium for a group
insurance policy based on the loss or expense thereunder, at
the end of the first or any subsequent policy year of insurance
thereunder, which may be made retroactive only for such
policy year;

(iv) Issuing life or accident and sickness policies on a
salary savings or payroll deduction plan at a reduced rate
commensurate with the savings made by the use of such plan.

(c) With respect to insurance other than life, accident and
sickness, ocean marine or marine protection and indemnity in-
insurance, no person shall knowingly charge, demand or receive a premium for such insurance except in accordance with an applicable filing on file with the commissioner. No such person shall pay, allow or give, directly or indirectly, either as an inducement to insurance or after insurance has been effected, any rebate, discount, abatement, credit or reduction of the premium named in a policy of insurance, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any valuable consideration or inducement whatever, not specified in the policy of insurance, except to the extent provided for in an applicable filing. No insured named in a policy of insurance, nor any relative, representative or employee of such insured shall knowingly receive or accept directly or indirectly, any such rebate, discount, abatement, credit or reduction of premium, or any such special favor or advantage or valuable consideration or inducement. Nothing in this section shall be construed as prohibiting the payment of commissions or other compensation to duly licensed agents and brokers, nor as prohibiting any insurer from allowing or returning to its participating policyholders, members or subscribers, dividends, savings or unabsorbed premium deposits. As used in this section the word “insurance” includes suretyship and the word “policy” includes bond.

(9) Unfair claim settlement practices.—No person shall commit or perform with such frequency as to indicate a general business practice any of the following:

(a) Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue;

(b) Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;

(c) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;

(d) Refusing to pay claims without conducting a reasonable investigation based upon all available information;

(e) Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;
(f) Not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear;

(g) Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds, when such insureds have made claims for amounts reasonably similar to the amounts ultimately recovered;

(h) Attempting to settle a claim for less than the amount to which a reasonable man would have believed he was entitled by reference to written or printed advertising material accompanying or made part of an application;

(i) Attempting to settle claims on the basis of an application which was altered without notice to, or knowledge or consent of the insured;

(j) Making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which payments are being made;

(k) Making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;

(l) Delaying the investigation or payment of claims by requiring an insured, claimant, or the physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information;

(m) Failing to promptly settle claims, where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage;

(n) Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.
(10) **Failure to maintain complaint handling procedures.**—No insurer shall fail to maintain a complete record of all the complaints which it has received since the date of its last examination under section nine, article two of this chapter. This record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of these complaints, and the time it took to process each complaint. For purposes of this subsection, “complaint” shall mean any written communication primarily expressing a grievance.

(11) **Misrepresentation in insurance applications.**—No person shall make false or fraudulent statements or representations on or relative to an application for an insurance policy, for the purpose of obtaining a fee, commission, money or other benefit from any insurer, agent, broker or individual.

§33-11-5. **Favored agent or insurer; coercion of debtors.**

(a) No person may:

(1) Require, as a condition precedent to the lending of money or extension of credit, or any renewal thereof, that the person to whom such money or credit is extended or whose obligation the creditor is to acquire or finance, negotiate any policy or contract of insurance through a particular insurer or group of insurers or agent or broker or group of agents or brokers;

(2) Unreasonably disapprove the insurance policy provided by a borrower for the protection of the property securing the credit or lien;

(3) Require directly or indirectly that any borrower, mortgagor, purchaser, insurer, broker, or agent pay a separate charge, in connection with the handling of any insurance policy required as security for a loan on real estate, or pay a separate charge to substitute the insurance policy of one insurer for that of another; or

(4) Use or disclose information resulting from a requirement that a borrower, mortgagor or purchaser furnish insurance of any kind on real property being conveyed or used as collateral security to a loan, when such information is
to the advantage of the mortgagee, vendor, or lender, or
is to the detriment of the borrower, mortgagor, purchaser,
insurer, or the agent or broker complying with such a
requirement.

(b) (1) Subdivision (3), subsection (a) does not include
the interest which may be charged on premium loans or pre-
mium advancements in accordance with the security instrument.

(2) For purposes of subdivision (2), subsection (a) such
disapproval shall be deemed unreasonable if it is not based
solely on reasonable standards uniformly applied, relating
to the extent of coverage required and the financial soundness
and the services of an insurer. Such standards shall not dis-
 criminate against any particular type of insurer, nor shall such
 standards call for the disapproval of an insurance policy be-
cause such policy contains coverage in addition to that required.

(3) The commissioner may investigate the affairs of any
person to whom this subsection applies to determine whether
such person has violated this subsection. If a violation of
the subsection is found, the person in violation shall be
subject to the same procedures and penalties as are applicable
to other provisions of this article.

(4) For purposes of this section, “person” includes any
individual, corporation, association, partnership, or other legal
entity.

§33-11-6. Violations, cease and desist and penalty orders and modi-
fications thereof.

If, after notice and hearing, the commissioner determines
that any person has engaged in or is engaging in any method of
competition, act or practice in violation of the provisions of
this article or any rules or regulations promulgated by the com-
missioner thereunder, the commissioner shall issue an order
directing such person to cease and desist from engaging in
such method of competition, act or practice, and in addition
thereto, the commissioner may at his discretion order any one
or more of the following:

(a) Require the payment to the state of West Virginia of a
penalty in a sum not exceeding one thousand dollars for each
and every act or violation, but not to exceed an aggregate penalty of ten thousand dollars, unless the person knew or reasonably should have known he was in violation of this article, in which case the penalty shall be not more than five thousand dollars for each and every act or violation, but not to exceed an aggregate penalty of fifty thousand dollars in any six month period.

(b) Revoke or suspend the license of such person if he knew or reasonably should have known that he was in violation of this article.

(c) No order of the commissioner pursuant to this article or order of court to enforce it, or holding of a hearing, shall in any manner relieve or absolve any person affected by such order or hearing from any other liability, penalty or forfeiture under law.

§33-11-7. Undefined acts or practices.

If, after notice and hearing, the commissioner determines that any person transacting insurance is engaging in this state in any method of competition or act or practice in the transaction of such insurance which is not defined in this article, and that such method of competition is unfair or such act or practice is unfair or deceptive, the commissioner shall issue an order directing such person to cease and desist from engaging in such method of competition, act or practice.

§33-11-8. Penalty for violation of cease and desist orders.

If, after notice and hearing, the commissioner determines that any person has violated a cease and desist order issued by the commissioner and which such order is still in effect, the commissioner may at his discretion order any one or more of the following:

(a) Require the payment to the state of West Virginia of a penalty in a sum not exceeding ten thousand dollars for each and every act or violation.

(b) Revoke or suspend the license of such person.


The powers vested in the commissioner by this article, shall
be additional to any other powers to enforce any penalties, fines or forfeitures authorized by law with respect to the methods, acts and practices hereby declared to be unfair or deceptive.

§33-11-10. Severability.

In the event any provision of this article, or the application of such provision to any person or circumstance, shall be held unconstitutional or otherwise invalid by any court of competent jurisdiction, the remainder of this article or the application of the provisions to other persons or circumstances shall 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.

(a) The entire commission payable by any insurer licensed to transact insurance in this state on any insurance policy shall be paid directly to the licensed resident agent who countersigns the policy. The countersigning agent shall not pay any part of such commission to any person other than a licensed agent or broker: Provided, That the portion of such commission retained by the countersigning resident agent shall not be less than ten percent of the gross policy premium
or fifty percent of the commission payable by the insurer as provided herein, whichever is the lesser amount. The term "commission" as used herein shall include engineering fees, service fees or any other compensation incident to the issuance of a policy payable by or to any insurer, agent or broker.

(b) It shall be unlawful for any insurer or agent to pay, and any person to accept, directly or indirectly, any commission except as provided in this section: Provided, That any licensed resident agent may pay his commissions, or direct that his commissions be paid, to a partnership of which he is a member, employee or agent, or to a corporation of which he is an officer, employee or agent, if:

(1) The commissioner finds that such partnership or corporation is engaged, through its licensed resident agents, in conducting an insurance agency business with respect to the general public.

(2) If a partnership, each partner satisfies the commissioner that he meets the licensing qualifications as set forth in section two of this article.

(3) If a corporation, each officer, employee or any one or more stockholders owning, directly or indirectly, the controlling interest in such corporation satisfies the commissioner that he meets the licensing qualifications as set forth in section two of this article. The requirements set forth in this subdivision shall not apply to clerical employees, or other employees not directly engaged in the selling or servicing of insurance.

(c) This section shall not apply to reinsurance, life insurance or accident or health insurance; nor to excess line insurance procured in accordance with the provisions of this article relating thereto; nor to credit insurance, any contract of insurance covering the rolling stock of any railroad or covering any vessel, aircraft or motor carrier used in interstate or foreign commerce, any liability or other risks incident to the ownership, maintenance or operation thereof, any contract of insurance covering any property in interstate or foreign commerce, or any liability or risks incident thereto.
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.

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 scientific, nonprofit institution and as such exempt from the payment of all property and other taxes. Every such corporation, to the same extent such provisions are applicable to insurers transacting similar kinds of insurance and not inconsistent with the provisions of this article, shall be governed by and be subject to the provisions of the following articles of this chapter: Article two (insurance commissioner) except that under section nine of article two examinations shall be conducted at least once
every four years, article four (general provisions) except
that section sixteen of article four shall not be applicable
thereto, article ten (rehabilitation and liquidation), article
eleven (unfair practices and frauds), article twelve
(agents, brokers and solicitors) except that the agent's
license fee shall be one dollar and article twenty-eight (in-
dividual accident and sickness insurance minimum stan-
dards); and no other provision of this chapter shall apply
to such corporations unless specifically made applicable by
the provisions of this article. If, however, any such cor-
poration shall be converted into a corporation organized
for a pecuniary profit, or if it shall transact business with-
out having obtained a license as required by section five of
this article, it shall thereupon forfeit its right to these
exemptions.

ARTICLE 28. INDIVIDUAL ACCIDENT AND SICKNESS INSURANCE
MINIMUM STANDARDS.

§33-28-1. Short title.
§33-28-2. Purpose of article.
§33-28-3. Definition of terms used in article.
§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 Min-
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
settlement of claims and to provide for full disclosure in the sale of such coverages.

§33-28-3. Definition of terms used in article.

As used in this article, unless used in a context that clearly requires a different meaning, the term:

(a) “Form” means a policy, contract, rider, endorsement or application as provided in section eight, article six of this chapter when used to describe an individual accident and sickness policy form, and means a contract, application, rider or endorsement as provided in section six, article twenty-four of this chapter when used to describe a hospital or medical service corporation subscriber’s contract.

(b) “Accident and sickness insurance” means insurance written under article fifteen of this chapter, other than credit accident and sickness insurance, and coverages written under article twenty-four of this chapter. For purposes of this article, hospital, medical and dental service corporations shall be deemed to be engaged in the business of insurance.

(c) “Policy” means the entire contract between an insurer and an individual insured, including the policy, riders, endorsements and the application, if attached. The term “policy” shall not include coverages issued pursuant to a conversion privilege under a policy or contract of group insurance.

(d) “Subscriber contract” means the entire subscriber contract issued by a hospital, medical or dental service corporation to an individual subscriber, including the contract, riders, endorsements and the application, if attached. The term “subscriber contract” shall not include coverages issued pursuant to a conversion privilege under a policy or contract of group insurance.

(e) “Direct response insurance product” means an individual policy of accident and sickness insurance or a subscriber contract of a hospital, medical or dental service corporation, the sale of which is effected through direct contact between an insurer and an individual insured or
between a hospital, medical or dental service corporation
and a subscriber, without employing the intermediary
services of an agent, broker or solicitor.


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
to, hospital, accident, sickness, injury, physician, acciden-
tal means, total disability, permanent disability, partial
disability, nervous disorder, guaranteed renewable and
noncancelable.
(b) The commissioner may promulgate rules and regulations, in accordance with chapter twenty-nine-a of the code, specifying prohibited provisions of policies and subscriber contracts not otherwise specifically authorized by statute which in the opinion of the commissioner are unjust, unfair or unfairly discriminatory either to the policyholder, subscriber, beneficiary or any person insured under the policy.


(a) The commissioner shall promulgate rules and regulations, in accordance with chapter twenty-nine-a of the code, to establish minimum standards for benefits under each of the following categories of coverage in individual policies of accident and sickness insurance and subscriber contracts of hospital, medical, dental and service corporations:

(1) Basic hospital expense coverage;
(2) Basic medical-surgical expense coverage;
(3) Hospital confinement indemnity coverage;
(4) Major medical expense coverage;
(5) Disability income protection coverage;
(6) Accident only coverage; and
(7) Specified disease or specified accident coverage.

(b) Nothing in this section shall preclude the issuance of any policy or subscriber contract which combines two or more of the categories of coverage enumerated in subdivisions (1) through (6) of subsection (a) of this section.

(c) No policy or subscriber contract shall be delivered or issued for delivery in this state which does not meet the prescribed minimum standards for the categories of coverage listed in subdivisions (1) through (7) of subsection (a) of this section unless the commissioner finds that such policy or subscriber contract will be in the public interest and that such policy or subscriber contract contains benefits which are reasonable in relation to the premium 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;
(2) A description of the principal benefits and coverage provided in the policy or subscriber contract;

(3) A statement of the exceptions, reductions and limitations contained in the policy or subscriber contract;

(4) A statement of the renewal provisions, including any reservation by the insurer or hospital, medical or dental service corporation of a right to change premiums;

and

(5) A statement that the outline of coverage is a summary of the policy or subscriber contract issued or applied for and that the terms of the policy or subscriber contract should be consulted to determine governing contractual provisions.

§33-28-7. Preexisting conditions.

Notwithstanding the provisions of section four, article fifteen of this chapter if an insurer or a hospital, medical or dental service corporation elects to use a simplified application form containing no questions concerning the applicant's health history or medical treatment history, the policy or contract applied for must cover any loss occurring after twelve months from the inception date of coverage which loss is traceable to a preexisting condition not specifically excluded from coverage by the terms of the policy, and, except as so provided, the policy or contract shall not include wording which would permit a defense based upon preexisting conditions.

CHAPTER 54

(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.

(a) The funds of any such corporation shall be invested only as follows:

1. Fifty percent of such funds shall be in cash or government securities of the type described in section seven of article eight of this chapter.

2. The balance of such funds may be in cash or invested in the classes of investments described in the following sections of article eight of this chapter: Section nine (certificates of deposit of federally insured institutions), section eleven (corporate obligations), section twelve (building and savings and loan shares, international bank), section thirteen (preferred or guaranteed stock), section fourteen (common stock), section sixteen (real property) and section eighteen (revenue bonds).

All such investments shall be subject to all the restrictions and conditions contained in said article eight as applying to similar investments of insurers generally.

(b) Every officer or employee of any such corporation, who is entrusted with the handling of its funds, shall furnish, in such amount as may with the approval of the commissioner be fixed by the board of directors of the corporation, a bond with corporate surety, conditioned upon the faithful performance of all his duties.
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.


§33-27-3. Acquisition of control of or merger with domestic insurer.

§33-27-4. Registration of insurers.

§33-27-5. Standards.


§33-27-8. Injunctions; prohibitions against voting securities; sequestration of voting securities.


§33-27-11. Revocation, suspension or nonrenewal of insurer's license.

§33-27-12. Conflict with other laws.


1 This article may be cited as the "West Virginia Insurance Holding Company Systems Act."


1 As used in this article:

2 (a) An "affiliate" of, or person "affiliated" with, a specific person, is a person that, directly or indirectly through one
or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(b) "Commissioner" means the insurance commissioner, his deputies, or the insurance department, as appropriate.

(c) "Control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by subsection (b)(i), section four of this article that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

(d) "Insurance holding company system" consists of two or more affiliated persons, one or more of which is an insurer.

(e) "Insurer" means any person or persons or corporation, partnership or company authorized by the laws of this state to transact the business of insurance in this state, except that it shall not include agencies, authorities or instrumentalities of the United States, its possessions and territories, the commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

(f) A "person" is an individual, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert, but shall not
include any securities broker performing no more than the usual and customary broker's function.

(g) A "security holder" of a specified person is one who owns any security of such person, including common stock, preferred stock, debt obligations and any other security convertible into or evidencing the right to acquire any of the foregoing.

(h) A "subsidiary" of a specified person is an affiliate controlled by such person directly or indirectly through one or more intermediaries.

(i) "Voting security" includes any security convertible into or evidencing a right to acquire a voting security.

§33-27-3. Acquisition of control of or merger with domestic insurer.

(a) **Filing requirements.**—No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, such person would, directly or indirectly (or by conversion or by exercise of any right to acquire) be in control of such insurer, and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer unless, at the time any such offer, request or invitation is made or any such agreement is entered into, or prior to the acquisition of such securities if no offer or agreement is involved, such person has filed with the commissioner and has sent to such insurer, and, to the extent permitted by applicable federal laws, rules and regulations, such insurer has sent to its shareholders a statement containing the information required by this section and such offer, request, invitation, agreement or acquisition has been approved by the commissioner in the manner hereinafter prescribed.

For purposes of this section: A domestic insurer shall include any other person controlling a domestic insurer unless such other person is either directly or through its affiliates primarily engaged in business other than the business of insurance.
(b) **Content of statement.**—The statement to be filed with the commissioner hereunder shall be made under oath or affirmation and shall contain the following information:

(1) The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in subsection (a) is to be effected (hereinafter called "acquiring party"), and

(i) If such person is an individual, his principal occupation and all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations during the past ten years;

(ii) If such person is not an individual, a report of the nature of its business operations during the past five years or for such lesser period as such person and any predecessors thereof shall have been in existence; an informative description of the business intended to be done by such person and such person's subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of such person, or who perform or will perform functions appropriate to such positions. Such list shall include for each such individual the information required by paragraph (i) of this subsection.

(2) The source, nature and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction wherein funds were or are to be obtained for any such purpose, and the identity of persons furnishing such consideration: Provided, That where a source of such consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential, if the person filing such statement so requests.

(3) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five fiscal years of each such acquiring party (or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence), and similar unaudited information as of a date not earlier than ninety 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-
90 ferred 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
acquire or exchange any securities referred to in subsection (a), and (if distributed) of additional soliciting material relating thereto.

(11) The terms of any agreement, contract or understanding made with any broker-dealer as to solicitation of securities referred to in subsection (a) for tender, and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard thereto.

(12) Such additional information as the commissioner may by rule or regulation prescribe as necessary or appropriate for the protection of policyholders and security holders of the insurer or in the public interest.

If the person required to file the statement referred to in subsection (a) is a partnership, limited partnership, syndicate or other group, the commissioner may require that the information called for by subdivisions (1) through (12) of this subsection shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group, and each person who controls such partner or member. If any partner, member or person is a corporation or the person required to file the statement referred to in subsection (a) is a corporation, the commissioner may require that the information called for by subdivisions (1) through (12) shall be given with respect to such corporation, and each person who is directly or indirectly the beneficial owner of more than ten percent of the outstanding voting securities of such corporation.

If any material change occurs in the facts set forth in the statement filed with the commissioner and sent to such insurer pursuant to this section, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the commissioner and sent to such insurer within two business days after the person learns of such change. Such insurer shall send such amendment to its shareholders.

(c) Alternative filing materials.—If any offer, request, invitation, agreement or acquisition referred to in subsection (a) is proposed to be made by means of a registration state-
ment under the Securities Act of 1933 or in circumstances
requiring the disclosure of similar information under the
Securities Exchange Act of 1934, or under a state law
requiring similar registration or disclosure, the person required
to file the statement referred to in subsection (a) may utilize
such documents in furnishing the information called for by
that statement.

(d) Approved by commissioner; hearings.—(1) The com-
missioner shall approve any merger or other acquisition
of control referred to in subsection (a) unless, after a public
hearing thereon, he finds that any of the following con-
ditions exist:

(i) After the change of control the domestic insurer
referred to in subsection (a) would not be able to satisfy
the requirements for the issuance of a license to write the
line or lines of insurance for which it is presently authorized;

(ii) the effect of the merger or other acquisition of
control would be substantially to lessen competition in in-
surance in this state or tend to create a monopoly therein;

(iii) the financial condition of any acquiring party is such
as might jeopardize the financial stability of the insurer,
or prejudice the interest of its policyholders or the interests
of any remaining security holders who are unaffiliated with
such acquiring party;

(iv) the terms of the offer, request, invitation, agreement
or acquisition referred to in subsection (a) are unfair and
unreasonable to the security holders of the insurer;

(v) the plans or proposals which the acquiring party has
to liquidate the insurer, sell its assets or consolidate or
merge it with any person, or to make any other material
change in its business or corporate structure or management,
are unfair and unreasonable to policyholders of the insurer
and not in the public interest; or

(vi) the competence, experience and integrity of those
persons who would control the operation of the insurer are
such that it would not be in the interest of policyholders of
the insurer and of the public to permit the merger or other acquisition of control.

(2) The public hearing referred to in subdivision (1), subsection (d) of this section shall be held within sixty days after the statement required by subsection (a) is filed, and at least fifteen days’ notice thereof shall be given by the commissioner to the person filing the statement. Not less than seven days’ notice of such public hearing shall be given by the person filing the statement to the insurer and to such other persons as may be designated by the commissioner. The insurer shall give such notice to its security holders. The commissioner shall make a determination within forty-five days after the conclusion of such hearing.

(e) Mailings to shareholders; payment of expenses.—To the extent permitted by applicable federal laws, rules and regulations, all statements, amendments, or other material filed pursuant to subsections (a) or (b) of this section, and all notices of public hearings held pursuant to subsection (d) of this section, shall be mailed by the insurer to its shareholders within five business days after the insurer has received such statements, amendments, other material, or notices. The expenses of mailing shall be borne by the person making the filing. As security for the payment of such expenses, such person shall file with the commissioner an acceptable bond or other deposit in an amount to be determined by the commissioner.

(f) Exemptions.—The provisions of this section shall not apply to:

(i) Any offers, requests, invitations, agreements or acquisitions by the person referred to in subsection (a) of this section of any voting security referred to in said subsection (a) which, immediately prior to the consummation of such offer, request, invitation, agreement or acquisition, was not issued and outstanding;

(ii) any offer, request, invitation, agreement or acquisition which the commissioner by order shall exempt therefrom as (1) not having been made or entered into for the purpose and not having the effect of changing or influencing the
control of a domestic insurer, or (2) as otherwise not comp-
prehended within the purposes of this section.

(g) Violations.—The following shall be violations of this
section:

(i) The failure to file any statement, amendment or other
material required to be filed pursuant to subsection (a) or
(b) of this section; or

(ii) the effectuation or any attempt to effectuate an
acquisition of control of, or merger with, a domestic insurer
unless the commissioner has given his approval thereto.

(h) Jurisdiction; consent to service of process.—The courts
of this state are hereby vested with jurisdiction over every
person not resident, domiciled or authorized to do business
in this state who files a statement with the commissioner
under this section, and over all actions involving such person
arising out of violations of this section, and each such person
shall be deemed to have performed acts equivalent to and
constituting an appointment by such a person of the auditor
of the state to be his true and lawful attorney upon whom
may be served all lawful process in any action, suit or
proceeding arising out of violations of this section. Copies
of all such lawful process shall be served on the auditor and
transmitted by registered or certified mail by the auditor
to such person at his last known address.

§33-27-4. Registration of insurers.

(a) Registration.—Every insurer which is authorized to do
business in this state and which is a member of an insurance
holding company system shall register with the commissioner,
except a foreign insurer subject to disclosure requirements and
standards adopted by statute or regulation in the jurisdiction of
its domicile which are substantially similar to those contained
in this section. Any insurer which is subject to registration un-
der this section shall register within sixty days after the effec-
tive date of this article or fifteen days after it becomes subject
to registration, whichever is later, unless the commissioner for
good cause shown extends the time for registration, and then
within such extended time. The commissioner may require any
authorized insurer which is a member of a holding company
system which is not subject to registration under this section
to furnish a copy of the registration statement or other infor-
mation filed by such insurance company with the insurance
regulatory authority of domiciliary jurisdiction.

(b) Information and form required.—Every insurer subject
to registration shall file a registration statement on a form pro-
vided by the commissioner, which shall contain current infor-
mation about:

(i) The capital structure, general financial condition, own-
ership and management of the insurer and any person control-
ling the insurer.

(ii) The identity of every member of the insurance holding
company system.

(iii) The following agreements in force, relationships sub-
sisting, and transactions currently outstanding between such
insurer and its affiliates:

(1) Loans, other investments, or purchases, sales or ex-
changes of securities of the affiliates by the insurer or of the
insurer by its affiliates:

(2) Purchases, sales or exchanges of assets;

(3) Transactions not in the ordinary course of business;

(4) Guarantees or undertakings for the benefit of an affiliate
which result in an actual contingent exposure of the insurer's
assets to liability, other than insurance contracts entered into
in the ordinary course of the insurer's business;

(5) All management and service contracts and all cost-
sharing arrangements, other than cost allocation arrangements
based upon generally accepted accounting principals; and

(6) Reinsurance agreements covering all or substantially
all of one or more lines of insurance of the ceding company.

(iv) Other matters concerning transactions between regis-
tered insurers and any affiliates as may be included from time
to time in any registration forms adopted or approved by the
commissioner.
(c) **Materiality.**—No information need be disclosed on the registration statement filed pursuant to subsection (b) of this section if such information is not material for the purposes of this section. Unless the commissioner by rule, regulation or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, or investments, involving one half of one percent or less of an insurer's admitted assets as of the thirty-first day of December next preceding shall not be deemed material for purposes of this section.

(d) **Amendments to registration statements.**—Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions on amendment forms provided by the commissioner within fifteen days after the end of the month in which it learns of each such change or addition: *Provided,* that, subject to subsection (c) of section five of this article, each registered insurer shall so report all dividends and other distributions to shareholders within two business days following the declaration thereof.

(e) **Termination of registration.**—The commissioner shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

(f) **Consolidated filing.**—The commissioner may require or allow two or more affiliated insurers subject to registration hereunder to file a consolidated registration statement or consolidated reports amending their consolidated registration statement or their individual registration statements.

(g) **Alternative registration.**—The commissioner may allow an insurer which is authorized to do business in this state and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection (a) of this section and to file all information and material required to be filed under this section.

(h) **Exemptions.**—The provisions of this section shall not apply to any insurer, information or transaction if and to the extent that the commissioner by rule, regulation or order shall exempt the same from the provisions of this section.
(i) **Disclaimer.**—Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between such person and such insurer as well as the basis for disclaiming such affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with such person unless and until the commissioner disallows such a disclaimer. The commissioner shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support such disallowance.

(j) **Violations.**—The failure to file a registration statement or any amendment thereto required by this section within the time specified for such filing shall be a violation of this section.

§33-27-5. **Standards.**

(a) **Transactions with affiliates.**—Material transactions by registered insurers with their affiliates shall be subject to the following standards:

1. The terms shall be fair and reasonable;
2. The books, accounts and records of each party shall be so maintained as to clearly and accurately disclose the precise nature and details of the transactions; and
3. The insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(b) **Adequacy of surplus.**—For purposes of this article, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, shall be considered:

1. The size of the insurer as measured by its assets, capi-
(2) The extent to which the insurer's business is diversified among the several lines of insurance;

(3) The number and size of risks insured in each line of business;

(4) The extent of the geographical dispersion of the insurer's insured risks;

(5) The nature and extent of the insurer's reinsurance program;

(6) The quality, diversification and liquidity of the insurer's investment portfolio;

(7) The recent past and projected future trend in the size of the insurer's surplus as regards policyholders;

(8) The surplus as regards policyholders maintained by other comparable insurers; and

(9) The adequacy of the insurer's reserves.

(c) **Dividends and other distributions.**—No insurer subject to registration under section four of this article shall pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until (i) thirty days after the commissioner has received notice of the declaration thereof and has not within such period disapproved such payment, or (ii) the commissioner shall have approved such payment within such thirty-day period.

For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding twelve months exceeds the greater of (i) ten percent of such insurer's surplus as regards policyholders as of the thirty-first day of December next preceding, or (ii) the net gain from operations of such insurer, if such insurer is a life insurer, or the net investment income, if such insurer is not a life insurer, for the twelve-month period ending the thirty-first day of De-
cember next preceding, but shall not include pro rata distri-
butions of any class of the insurer's own securities.

Notwithstanding any other provision of law, an insurer may
declare an extraordinary dividend or distribution which is con-
ditional upon the commissioner's approval thereof, and such a
declaration shall confer no rights upon shareholders until (i)
the commissioner has approved the payment of such dividend
or distribution or (ii) the commissioner has not disapproved
such payment within the thirty-day period referred to above.


(a) Power of commissioner.—Subject to the limitation con-
tained in this section and in addition to the powers which the
commissioner has under other articles of this chapter relating to
the examination of insurers, the commissioner shall also have
the power to order any insurer registered under section four of
this article to produce such records, books or other informa-
tion papers in the possession of the insurer or its affiliates as
shall be necessary to ascertain the financial condition or legal-
ity of conduct of such insurer. In the event that such insurer
fails to comply with such order, the commissioner shall have
the power to examine such affiliates to obtain such informa-

(b) Purpose and limitation of examination.—The commis-
sioner shall exercise his power under subsection (a) above only
if the examination of the insurer under other articles of this
chapter is inadequate or the interests of the policyholders of
such insurer may be adversely affected.

(c) Use of consultants.—The commissioner may retain at
the registered insurer's expense such attorneys, actuaries, ac-
countants and other experts not otherwise a part of the com-
missioner's staff as shall be reasonably necessary to assist in
the conduct of the examination under subsection (a) above.
Any person so retained shall be under the direction and con-
trol of the commissioner and shall act in a purely advisory
capacity.

(d) Expenses.—Each registered insurer producing for ex-
amination records, books and papers pursuant to subsection
(a) above shall be liable for and shall pay the expense of such
examination in accordance with applicable laws of this state.


All information, documents and copies thereof obtained by
or disclosed to the commissioner or any other person in the
course of an examination or investigation made pursuant to
section six of this article and all information reported pursuant
to section four of this article, shall be given confidential treat-
ment and shall not be subject to subpoena and shall not be
made public by the commissioner or any other person, except
to insurance departments of other states, without the prior
written consent of the insurer to which it pertains unless the
commissioner, after giving the insurer and its affiliates who
would be affected thereby, notice and opportunity to be heard,
determines that the interests of policyholders, shareholders or
the public will be served by the publication thereof, in which
event he may publish all or any part thereof in such manner
as he may deem appropriate.

§33-27-8. Injunctions; prohibitions against voting securities; se-
questration of voting securities.

(a) Injunctions.—Whenever it appears to the commissioner
that any person or any director, officer, employee or agent
thereof has committed or is about to commit a violation of this
article or of any rule, regulation or order issued by the com-
missioner hereunder, the commissioner may apply to the cir-
cuit court for an order enjoining such person or such director,
officer, employee or agent thereof from violating or continuing
to violate this chapter or any such rule, regulation or order,
and for such other equitable relief as the nature of the case
and the interests of the insurer’s policyholders, creditors and
shareholders or the public may require.

(b) Voting of securities; when prohibited.—No security
which is the subject of any agreement or arrangement regard-
ing acquisition, or which is acquired or to be acquired, in
contravention of the provisions of this article or of any rule,
regulation or order issued by the commissioner hereunder may
be voted at any shareholders’ meeting, or may be counted for
quorum purposes, and any action of shareholders requiring the
affirmative vote of a percentage of shares may be taken as though such securities were not issued and outstanding; but no action taken at any such meeting shall be invalidated by the voting of such securities, unless the action would materially affect control of the insurer or unless the courts of this state have so ordered. If an insurer or the commissioner has reason to believe that any security of the insurer has been or is about to be acquired in contravention of the provisions of this article or of any rule, regulation or order issued by the commissioner hereunder the insurer or the commissioner may apply to the circuit court to enjoin any offer, request, invitation, agreement or acquisition made in contravention of section four of this article, or any rule, regulation or order issued by the commissioner thereunder to enjoin the voting of any security so acquired, to void any vote of such security already cast at any meeting of shareholders, and for such other equitable relief as the nature of the case and the interests of the insurer's policyholders, creditors and shareholders or the public may require.

(c) Sequestration of voting securities.—In any case where a person has acquired or is proposing to acquire any voting securities in violation of this article or any rule, regulation or order issued by the commissioner hereunder, the circuit court may, on such notice as the court deems appropriate, upon the application of the insurer or the commissioner seize or sequester any voting securities of the insurer owned directly or indirectly by such person, and issue such orders with respect thereto as may be appropriate to effectuate the provisions of this article. Notwithstanding any other provisions of law, for the purposes of this article, the situs of the ownership of the securities of domestic insurers shall be deemed to be in this state.


Whenever it appears to the commissioner that any person or any director, officer, employee or agent thereof has committed a willful violation of this article, the commissioner may cause criminal proceedings to be instituted against such person or the responsible director, officer, employee or agent 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.


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.

There is hereby created a judicial council for the continuous study of the organization, rules and methods of procedure and practice of the judicial system of the state. It shall be composed of one judge of the supreme court of appeals, three circuit judges, one judge of a statutory court of record and four practicing attorneys and one member of the faculty of the college of law of West Virginia University, who shall be appointed by the governor. Not more than three judges and two attorneys shall be members of any one political party.

CHAPTER 57
(H. B. 725—By Mr. Kopp and Mr. Kopolman)

[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-3. Maximum hours; overtime compensation.
§21-5C-4. Credits.

§21-5C-1. Definitions.

As used in this article:

(a) "Commissioner" means the commissioner of labor or his duly authorized representatives.

(b) "Wage and hour director" means the wage and hour director appointed by the commissioner of labor as chief of the wage and hour division.

(c) "Wage" means compensation due an employee by reason of his employment.

(d) "Employ" means to hire or permit to work.

(e) "Employer" includes the state of West Virginia, its agencies, departments and all its political subdivisions, any individual, partnership, association, public or private corporation, or any person or group of persons acting directly or indirectly in the interest of any employer in relation to an employee; and who employs during any calendar week six or more employees as herein defined in any one separate, distinct and permanent location or business establishment: _Provided, That the term "employer" shall not include any individual, partnership, association, corporation, person or group of persons or similar unit if eighty percent of the persons
employed by him are subject to any federal act relating to minimum wage, maximum hours and overtime compensation.

(f) "Employee" includes any individual employed by an employer but shall not include: (1) Any individual employed by the United States; (2) any individual engaged in the activities of an educational, charitable, religious, fraternal or nonprofit organization where the employer-employee relationship does not in fact exist, or where the services rendered to such organizations are on a voluntary basis; (3) newsboys, shoeshine boys, golf caddies, pin boys and pin chasers in bowling lanes; (4) traveling salesmen and outside salesmen; (5) services performed by an individual in the employ of his parent, son, daughter or spouse; (6) any individual employed in a bona fide professional, executive or administrative capacity; (7) any person whose employment is for the purpose of on-the-job training; (8) any person having a physical or mental handicap so severe as to prevent his employment or employment training in any training or employment facility other than a nonprofit sheltered workshop; (9) any individual employed in a boys or girls summer camp; (10) any person sixty-two years of age or over who receives old-age or survivors benefits from the social security administration; (11) any individual employed in agriculture as the word agriculture is defined in the Fair Labor Standards Act of 1938, as amended; (12) any individual employed as a firefighter by the state or agency thereof; (13) ushers in theaters; (14) any individual employed on a part-time basis who is a student in any recognized school or college; (15) any individual employed by a local or interurban motorbus carrier; (16) so far as the maximum hours and overtime compensation provisions of this article are concerned, any salesman, partsman or mechanic primarily engaged in selling or servicing automobiles, trailers, trucks, farm implements, or aircraft if employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles to ultimate purchasers; (17) any employee with respect to whom the United States Department of Transportation has statutory authority to establish qualifications and maximum hours of service.

(g) "Workweek" means a regularly recurring period of
LABOR

one hundred sixty-eight hours in the form of seven consecutive twenty-four-hour periods, need not coincide with the calendar week, and may begin any day of the calendar week and any hour of the day.

(h) "Hours worked," in determining for the purposes of sections two and three of this article, the hours for which an employee is employed, there shall be excluded any time spent in changing clothes or washing at the beginning or end of each workday, time spent in walking, riding or traveling to and from the actual place of performance of the principal activity or activities which such employee is employed to perform and activities which are preliminary to or postliminary to said principal activity or activities, subject to such exceptions as the commissioner may by rules and regulations define.


On and after the first day of July, one thousand nine hundred seventy-four and until the thirtieth day of June, one thousand nine hundred seventy-five, every employer shall pay to each of his employees wages at a rate not less than one dollar and eighty cents per hour; on and after the first day of July, one thousand nine hundred seventy-five, every employer shall pay to each of his employees wages at a rate not less than two dollars per hour.

§21-5C-3. Maximum hours; overtime compensation.

(a) On and after the first day of July, one thousand nine hundred seventy-four, and until the thirtieth day of June, one thousand nine hundred seventy-five, no employer shall employ any of his employees for a workweek longer than forty-six hours, unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed; on and after the first day of July, one thousand nine hundred seventy-five, no employer shall employ any of his employees for a workweek longer than forty-four hours, unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

(b) As used in this section the "regular rate" at which an
employee is employed shall be deemed to include all remunera-
tion for employment paid to, or on behalf of, the employee,
but shall not be deemed to include:

(1) Sums paid as gifts; payments in the nature of gifts made
at Christmas time or on other special occasions, as a reward
for service, the amounts of which are not measured by or
dependent on hours worked, production, or efficiency;

(2) Payments made for occasional periods when no work is
performed due to vacation, holiday, illness, failure of the em-
ployer to provide sufficient work, or other similar cause;
reasonable payments for traveling expenses, or other expenses,
incurred by an employee in the furtherance of his employer's
interests and properly reimbursable by the employer, and other
similar payments to an employee which are not made as com-
pensation for his hours of employment;

(3) Sums paid in recognition of services performed during
a given period if either, (a) both the fact that payment is to
be made and the amount of the payment are determined at the
sole discretion of the employer at or near the end of the period
and not pursuant to any prior contract, agreement or promise
causing the employee to expect such payments regularly; or (b)
the payments are made pursuant to a bona fide profit-sharing
plan or trust or bona fide thrift or savings plan, meeting the
requirements of the commissioner set forth in appropriate
regulation which he shall issue, having due regard among other
relevant factors, to the extent to which the amounts paid to
the employee are determined without regard to hours of work,
production or efficiency; or (c) the payments are talent fees
(as such talent fees are defined and delimited by regulations of
the commissioner) paid to performers, including announcers,
on radio and television programs;

(4) Contributions irrevocably made by an employer to a
trustee or third person pursuant to a bona fide plan for pro-
viding old-age, retirement, life, accident, or health insurance or
similar benefits for employees;

(5) Extra compensation provided by a premium rate paid
for certain hours worked by the employee in any day or work-
week because such hours are hours worked in excess of eight
in a day or in excess of the maximum workweek applicable to
such employee under subsection (a) or in excess of the em-
ployee's normal working hours or regular working hours, as
the case may be;

(6) Extra compensation provided by a premium rate paid
for work by the employee on Saturdays, Sundays, holidays or
regular days of rest, or on the sixth or seventh day of the work-
week, where such premium rate is not less than one and one-
half times the rate established in good faith for like work per-
formed in nonovertime hours on other days; or

(7) Extra compensation provided by a premium rate paid
to the employee, in pursuance of an applicable employment
contract or collective bargaining agreement, for work outside
of the hours established in good faith by the contract or agree-
ment as the basic, normal or regular workweek where such
premium rate is not less than one and one-half times the rate
established in good faith by the contract or agreement for like
work performed during such workweek.

(c) No employer shall be deemed to have violated subsec-
tion (a) by employing any employee for a workweek in excess
of the maximum workweek applicable to such employee under
subsection (a) if such employee is employed pursuant to a
bona fide individual contract, or pursuant to an agreement
made as a result of collective bargaining by representatives of
employees, if the duties of such employee necessitate irregular
hours of work, and the contract or agreement (1) specifies a
regular rate of pay of not less than the minimum hourly rate
provided in section two and compensation at not less than one
and one-half times such rate for all hours worked in excess
of such maximum workweek, and (2) provides a weekly guar-
anty of pay for not more than sixty hours based on the rates
so specified.

(d) No employer shall be deemed to have violated subsec-
tion (a) by employing any employee for a workweek in excess
of the maximum workweek applicable to such employee under
such subsection if, pursuant to an agreement or understanding
arrived at between the employer and the employee before per-
formance of the work, the amount paid to the employee for
the number of hours worked by him in such workweek in ex-
cess of the maximum workweek applicable to such employee
under such subsection:

(1) In the case of an employee employed at piece rates, is
computed at piece rates not less than one and one-half times
the bona fide piece rates applicable to the same work when
performed during nonovertime hours; or

(2) In the case of an employee performing two or more
kinds of work for which different hourly or piece rates have
been established, is computed at rates not less than one and
one-half times such bona fide rates applicable to the same
work when performed during nonovertime hours; or

(3) Is computed at a rate not less than one and one-half
times the rate established by such agreement or understanding
as the basic rate to be used in computing overtime compensa-
tion thereunder: Provided, That the rate so established shall
be authorized by regulation by the commissioner as being sub-
stantially equivalent to the average hourly earnings of the em-
ployee, exclusive of overtime premiums, in the particular work
over a representative period of time; and if (i) the employee's
average hourly earnings for the workweek exclusive of pay-
ments described in subdivisions (1) through (7) of subsection
(b) are not less than the minimum hourly rate required by ap-
licable law, and (ii) extra overtime compensation is proper-
ly computed and paid on other forms of additional pay re-
quired to be included in computing the regular rate.

(e) Extra compensation paid as described in subdivisions
(5), (6) and (7) of subsection (b) shall be creditable toward
overtime compensation payable pursuant to this section.

§21-5C-4. Credits.

In determining whether an employer is paying an employee
wages and overtime compensation as provided in sections two
and three of this article, there shall be provided in accordance
with the regulations which shall be promulgated by the com-
missioner a credit to the employer of twenty percent of the
hourly rate of the amount paid an employee customarily re-
ceiving gratuities, and a reasonable credit for board and lodging
furnished to an employee. The commissioner shall pro-
mulgate regulations relating to maximum allowances to em-
payers for room and board furnished to employees: Provided, That the employer shall be required to furnish to the commissioner upon request, documentary evidence that the employee is receiving at least twenty percent of the minimum wage in gratuities or is receiving room and lodging in accordance with the rules and regulations promulgated by the commissioner.

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.
§21-9-3. 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.


§21-9-9. Violations of article, rules or regulations; penalties.

§21-9-1. Short title.

This article shall be known as "The West Virginia Mobile Home Safety Act."


Unless clearly indicated otherwise by the context, the following words and terms when used in this article, for the purpose of this article, shall have the following meanings:

1. "Dealer" means any person, other than a manufacturer, as defined in this article, who sells three or more mobile homes in any consecutive twelve-month period.

2. "Department" means the department of labor.

3. "Manufacturer" means any person who manufactures mobile homes.

4. "Mobile home" means a moveable or portable unit, designed and constructed to be towed on its own chassis (comprised of frame and wheels), and designed to be connected to utilities for year-round occupancy. The term includes: (1) Units containing parts that may be folded, collapsed or telescoped when being towed and that may be expanded to provide additional cubic capacity, and (2) units composed of two or more separately towable components designed to be joined into one integral unit capable of being separated again into the components for repeated towing. The term includes units designed to be used for residential, commercial, educational or industrial purposes, excluding, however, recreational vehicles, as defined in this article.

5. "Mobile home dweller" shall mean one or more individuals who own a single mobile home and who are using such mobile home as their residence and dwelling.
(6) "National standards" shall mean the "standard for mobile homes" as adopted and approved by the American National Standards Institute on the eighth day of February, one thousand nine hundred seventy-two.

(7) "Person" means a person, partnership, corporation, association or other legal entity.

(8) "Recreational vehicle" means a vehicular portable structure built on a chassis designed to be used as a temporary dwelling for travel, recreational and vacation uses, permanently identified "travel trailer" by the manufacturer of the trailer and when factory equipped for the road, having a body width not exceeding eight feet and a body length not exceeding thirty-two feet.

(9) "Safety code" shall mean the safety rules and regulations adopted and promulgated by the department with respect to the body and frame design requirements and construction requirements for mobile homes, as well as the standards for the installation of plumbing, heating and electrical systems in such mobile homes, the standards for glazing and the installation of glass and other similar materials in or upon such mobile homes and the installation of insulation in the construction of such mobile homes. Nothing contained in the definition shall be construed to limit the authority of the department to promulgate rules and regulations with respect to the general subject of mobile home safety and the enumeration of subjects in this definition shall not be construed to limit the generality of that subject or of the department's authority with respect thereto.

(10) "Seal" means a device or insignia issued by the department to be displayed on the exterior of the mobile home to evidence compliance with the safety code.

§21-9-3. Duties of department, adoption of safety standards for mobile homes; rules and regulations; fees.

The department is hereby charged with the administration and enforcement of the provisions of this article and shall promulgate and adopt a safety code, which shall substantially conform to the national standards and any amendments
thereo. Nothing herein shall prevent the department from adopting a safety code of more rigid standards than those contained in the national standards. The department may adopt such other rules and regulations as it may deem necessary and appropriate for the enforcement of the provisions of this article.

All rules and regulations adopted by the department pursuant to this article shall be so adopted and promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code and the provisions of said article three shall apply to this article to the same extent as if said article three were set forth in extenso herein. The department may, from time to time, adopt such revisions in the safety code as it deems necessary to protect the health, safety and welfare of the public against unsafe and substandard mobile homes.

The department shall collect a fee of five dollars for each seal issued by it, pursuant to section five of this article, which shall be collected from each mobile home manufacturer. All sums collected by the department pursuant to this article shall be paid into the treasury of the state.

§21-9-4. Sale, rental or transfer of mobile home in violation of article prohibited; exceptions.

(a) Subject to the provisions of subsection (c) of this section, and except as provided in subsection (b) of this section, it shall be unlawful, from and after the effective date of this article, for any person to rent, sell, transfer or lease in this state or offer for rent, sale, transfer or lease in this state any mobile home unless such mobile home complies with the safety code adopted and promulgated by the department, nor shall any person so rent, sell, transfer or lease any such mobile home in this state unless it bears a seal issued by the department pursuant to section five of this article evidencing certification of the manufacturer that the mobile home so sold, rented, transferred or leased complies with the safety code.

(b) The provisions of this article shall not apply to the sale or transfer of a mobile home by a mobile home dweller if such mobile home were purchased by him in good faith in
another state, territory or foreign country which does not
have in existence at the time of the purchase by such mobile
home dweller mobile home safety statutes, rules and regula-
tions equal to those in existence in this state and such mobile
home dweller does not sell more than one mobile home in any
consecutive eighteen-month period.

(c) The provisions of this article shall not apply to any
mobile home manufactured prior to the first day of January,
one thousand nine hundred seventy-five.

§21-9-5. Department seals; issuance and requirements therefor;
form; suspension of issuance and repossesssion of seals.

The department shall issue its seals to any manufacturer upon
application upon forms approved by the department. Such
applications shall be supported by affidavit or such other
evidence as the department may deem necessary in order to
satisfy itself that such seals shall be affixed to only those
mobile homes which conform to the requirements of the
safety code. Such seals shall be in the form prescribed by
the department.

All seals shall remain the property of the department, and
may be repossessed by the department, if placed upon a mobile
home which does not conform to the safety code. Compliance
with the safety code is the responsibility of the manufacturer.

Neither the state nor the department shall be liable for
the issuance of any seal which is thereafter placed upon a
mobile home which does not conform with the safety code.

The issuance of seals may be suspended as to any manu-
facturer who manufactures mobile homes that do not conform
with the safety code and issuance of seals shall not be resumed
until such manufacturer submits proof satisfactory to the de-
partment that the conditions which caused the nonconformity
to the safety code have been remedied.

§21-9-6. Inspections by the department.

The department is authorized to perform inspections from
time to time as it may deem necessary of the facilities and
products of manufacturers and dealers. In order to carry out
such inspections the department may and is hereby authorized
to appoint nongovernmental individuals or agencies to perform
such inspections under such terms and conditions as the de-
partment deems appropriate. The department shall at all times
maintain supervisory control over all such nongovernmental
individuals or agencies performing such inspections and shall
take such steps as may be necessary to insure effective and
uniform enforcement of the safety code. Such inspections shall
be performed in accordance with the rules and regulations
promulgated by the department. No person shall interfere with
or obstruct or hinder the inspection by or on behalf of the
department.

§21-9-7. Reciprocity with other states.

If any other state has a safety code for mobile homes the
minimum requirements of which conform to the safety code of
this state and the department determines that such safety code
of such other state is being enforced by such other state, the
department shall place such other state upon a reciprocity list,
which list shall be available to any interested person. Such list
shall be conspicuously posted at the place of business of every
dealer in this state. Any mobile home which bears the seal of
any state which has been placed on the reciprocity list, or
which bears a seal approved by such state as sufficient evidence
or compliance, shall not be required to affix the seal of this
state. If any mobile home bears a seal or similar device of
another state having a safety code not meeting the minimum
requirements of the safety code of this state, such mobile home
shall not be sold, rented, leased or transferred unless it also
bears the seal of the department issued pursuant to section five
of this article.


It shall be unlawful for any person:

(1) To duplicate or create any facsimile of the seal issued
by the department or to attach any seal or similar device or
duplicate or facsimile to any mobile home in order to indicate
that such mobile home conforms with the safety code when
such is not the case; or

(2) To make any alteration of any mobile home to which
the seal of the department has been affixed or to which has
§21-9-9. Violations of article, rules or regulations; penalties.

Any person, dealer or manufacturer who shall violate any of the provisions of this article or who shall violate any rule or regulation promulgated by the department pursuant to this article, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than one thousand dollars, or imprisoned in the county jail for a term not to exceed one year, or both such fine and imprisonment. Each sale of a mobile home in violation of the provisions of this article or of such rules and regulations shall constitute a separate offense.

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.

On and after June nine, one thousand nine hundred seventy-two, except as otherwise specifically provided in
this code, no person who is eighteen years of age or older
shall lack legal capacity, by reason of his age, to enter into
contracts, sell or purchase real or personal property, create
a lien, execute any legal or other written instrument, prosecute
or defend legal actions, assert claims or deal in his own
affairs in any manner whatsoever.

The provisions of this section, and the provisions of chapter
sixty-one, acts of the Legislature, regular session, one thousand
nine hundred seventy-two, reducing various prescribed age
requirements to eighteen years of age, shall not, however,
by operation of law affect any rights, duties, obligations or
interests accruing or vesting by virtue of any statute, act,
event, transaction, order, judgment or decree prior to June
nine, one thousand nine hundred seventy-two, or any cause
of action which arose or any civil action or claim instituted
or asserted prior to such date, and any such right, duty,
obligation, interest, cause of action, civil action or claim
may be enforced, exercised, enjoyed, terminated, discharged,
consummated, prosecuted, maintained or asserted with like
effect as if said chapter sixty-one had not been enacted:

Provided, That any person who has attained the age of
eighteen years shall have full power and authority to exercise
any and all of the rights, privileges and powers granted to
him in the first paragraph of this section with respect to
any legal or equitable interest acquired by or which vested
in such person before he became eighteen years of age:

Provided, however, That under no circumstances whatever shall
any of the changes made by said chapter sixty-one have
any effect upon any of the terms or provisions of or any
conditions imposed by any last will and testament, trust
agreement or any other written instrument of any kind or
character executed prior to such date of June nine, one
thousand nine hundred seventy-two: Provided further, That
any order or mandate providing for payment of child support
for any person up to the age of twenty-one years contained
in any decree or order of divorce or separate maintenance
or in any order in any nonsupport or bastardy proceeding,
which decree or order was entered prior to June nine, one
thousand nine hundred seventy-two, may by order of the
court be terminated as to such person upon such person
attaining the age of eighteen years. Moreover, the provisions of this section shall not affect any acts performed or transactions entered into by a person under the age of twenty-one years prior to June nine, one thousand nine hundred seventy-two. No change in the general age of legal capacity or in the definitions of the words “under disability,” “infant” or “minor” contained in section ten, article two of this chapter shall alter any statute of limitations as to causes of action arising before such date of June nine, one thousand nine 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 West Virginia, one thousand nine hundred thirty-one, as 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. BLENNERHASSELT 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 extended, the Blennerhassett historical commission shall cease to exist at the adjournment sine die of both houses of the Legislature at the conclusion of its regular session 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 Blennerhassett historical commission. The council shall consist of one representative from each of the following, to be appointed as hereinafter provided: One representative to be appointed by the directors of the Blennerhassett drama association, a nonprofit corporation; one representative to be appointed by the mayor of the city of Parkersburg, a municipal corporation; one representative to be appointed by the county court of the county of Wood; one representative to be appointed by the West Virginia geological and economic survey commission; one representative to be appointed by the West Virginia American revolution bicentennial commission; and one representative to be appointed by the public land corporation of West
Virginia. Members of the advisory council shall receive no compensation for their service on the council but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties: Provided, That such expenses be first approved by the Blennerhassett historical commission to be paid from appropriations authorized to be expended by the commission. The commission may designate such additional members of the council as such commission may deem appropriate. The council shall from time to time advise the commission upon matters related to the powers and duties of the commission, and shall, upon request of the commission, 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.

In order to encourage dedicated public service, it shall be
unlawful for any private employer to discriminate against an employee who is a member of the Legislature, in connection with any employee seniority rights, employee pension coverage or benefits or employee insurance coverage or benefits, because of such employee’s absence from work to attend regular or extraordinary sessions of the Legislature: Provided, That such employee continues to contribute his share of the costs for any such coverage or benefits when such contribution is required by his employer. An employee shall have a cause of action against his employer for violation of the provisions of this section and such cause of action may be enforced in a civil action for such purpose.

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.

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. Appraisement.
§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 appraisement 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 residing in this state, or the infant children of deceased parents, may set apart and hold personal property not exceeding one thousand dollars in value to be exempt from execution or other process, except as hereinafter provided.
2 Any mechanic, artisan or laborer residing in this state, whether he be a husband, wife, parent or other head of a household, or not, may hold the working tools of his trade or occupation to the value of fifty dollars exempt from forced sale or execution: Provided, That in no case shall the exemption allowed any one person exceed one thousand dollars.

§38-8-2. Definition of value.
1 For the purpose of this article, the term "value," when used without any modifying words, means fair market value as of the date the exemption is claimed, less all
4 liens other than judicial liens obtained by legal or equitable proceedings.

§38-8-3. Method of claiming exemption on personal property.

1 When a debtor claims personal property as exempt under the provisions of this article, he shall deliver to the officer holding the execution or other process, a list by separate items with the fair market value of each item, according to the belief of the debtor, of all personal property and estate owned or claimed by him, including money, bonds, bills, notes, claims and demands, with the residence of the person against whom such bonds, bills, notes, claims and demands are. Such list shall also set forth with respect to each such item of personal property and estate the name and address of the holder of and the current amount owing on each lien thereon other than judicial liens obtained by legal or equitable proceedings. The debtor shall verify such list, valuation and lien indebtedness by affidavit, which affidavit shall also show that the debtor is entitled to such exemption, and shall specify the character in which he claims to be so entitled, as for example, that he is a husband. If the value of the property named in such list exceeds, as stated therein, one thousand dollars, the debtor shall state at the foot thereof what part of such property he claims as exempt, as aforesaid; but if such value does not exceed one thousand dollars, as so stated, the claim of exemption shall be held to extend to the whole thereof without stating more; and if no appraisement thereof be demanded, as hereinafter provided, the property so claimed shall be set apart to the debtor as exempt as aforesaid. If the husband, wife, parent or other head of a household owning such property be absent, or incapable of acting, or neglect or decline to act, the claim may be made, the list delivered, and the affidavit made by another member of the family, with the same effect as if made by the owner, and the claim may be made, the list delivered, and the affidavit made on behalf of infant children by the guardian thereof or someone standing in loco parentis thereto. The officer shall immediately, upon receipt of the list, exhibit the same to the creditor, his agent or attorney.
§38-8-5. Appraisement.

1 The appraisers shall forthwith proceed to make a list, by separate items, of the personal estate selected by the debtor, affixing to each item the fair market value they may agree on, and annexing to the list their affidavit to the following effect: "We solemnly swear that, to the best of our judgment, the above is the fair market value of the property therein described;" which affidavit shall be signed by two appraisers at least, and be certified by some person authorized to administer oaths.


1 Each appraiser shall be entitled to one dollar, to be paid by the creditor if the appraised fair market value of the property claimed by the debtor as exempt is equal to or greater than the fair market value ascribed to such property 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 this state, his surviving spouse or minor children, or such of them as there may be, may select personal estate of the deceased, not exceeding one thousand dollars in value, and hold the same exempt from any debts or liabilities of the deceased spouse or parent, contracted or incurred by the deceased in his lifetime, but the personal representative or any creditor of the deceased may have the personal estate so selected appraised as prescribed in the preceding sections of this article, and with like effect; and no greater amount than one thousand dollars of the personal estate of the deceased shall be exempt by virtue of this provision; and if during his lifetime, he had himself set apart personal estate to be exempt from execution and other process, the same shall be subject thereto after his death, so far as it is not selected as aforesaid by his surviving spouse and minor children, or such of them as there may be.
§38-8-11. No exemption from claims for purchase money or taxes.

1 No exemption claimed under the preceding sections of this article, or any of them, shall affect or impair any claim for the purchase money of the personal estate in respect to which such exemption is claimed, or any proceeding for the collection of taxes, or county or district or municipal levies. The increase in such exemption provided by this article shall not be applicable to liens and all other debts and liabilities contracted and incurred 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 by the creditor, his agent or attorney, the circuit court of the county, or judge thereof in vacation, on motion of any person aggrieved made within ten days after delivery of the appraisement list to the officer as specified in section six of this article, may set aside any appraisement made as provided in this article, order a new appraisement to be made and returned, and appoint appraisers for that purpose, and may determine the amount and validity of the liens on the items of personal property and estate set forth on the debtor’s list delivered to the officer as specified in section three of this article, and make such order respecting the costs as may be deemed just. Any determination under this section of the amount and validity of liens shall be binding only as between the debtor and the creditor at whose instance the execution or other process has issued.

§38-8-15. Waiver of exemption void.

1 Any waiver of the rights conferred by this article shall be void and unenforceable.

ARTICLE 9. HOMESTEAD EXEMPTIONS.

§38-9-1. Persons entitled to homestead; value.
§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.

Any husband, wife, parent or other head of a household residing in this state, or the infant children of deceased or insane parents, owning a homestead shall by operation of law have a homestead exemption therein to the value of five thousand dollars, subject to the provisions of section forty-eight, article six of the constitution of this state.


As used in this article:

(1) "Homestead" means property owned and used as the principal home for the debtor, his spouse or a dependent, or any or all of them, whether classified as real property, chattel real, a fixture or personal property; and

(2) "Value," without any modifying words, means fair market value as of the date the exemption is asserted, less all liens other than judicial liens obtained by legal or equitable proceedings.

§38-9-3. Debts enforceable against homestead.

As of the effective date of this article, a homestead shall be exempt up to the value of five thousand dollars from all debts and liabilities, except debts incurred for the purchase money thereof, or for the erection of permanent improvements thereon, and claims for taxes or county or district or municipal levies due thereon: Provided, That the exemption herein granted by operation of law shall not render the homestead exempt from liens and all other debts and liabilities contracted and incurred prior to the effective date of this article: Provided further, That with respect to a homestead exemption up to one thousand dollars perfected by execution and recordation of a written instrument as required under the former provisions of this article, such exemption shall for all purposes continue to be governed by such former provisions of this article.

§38-9-4. Proceedings to reach excess value of homestead.

Any creditor of the person owning such homestead may assert a claim in a civil action, alleging that the value of the homestead is of greater value than five thousand dol-
lars, and if the court shall be satisfied, from the proofs in the cause, that the allegations are true, it shall make such order or decree as may be necessary to subject such excess of value, above the sum of five thousand dollars, to the payment of the debt, or demand of such creditor. If more than one creditor shall join in such judicial proceeding, and their debts or claims be of equal priority, such excess shall be paid pro rata upon the debt or claim of each.

§38-9-5. Descent of homestead to infant children.
1 In case of the death of a husband, wife or parent owning such homestead, the benefit thereof shall descend to his or her minor children, and shall be held and enjoyed by them as such homestead, until all of such infants attain the age 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 be void and unenforceable except to the extent that (1) such waiver is accompanied by a consensual security interest in the property in which the homestead exemption is asserted and (2) such security interest cannot be satisfied without encroaching upon the homestead exemption so asserted.

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.

§43-2-2. Rule of calculation.
§43-2-4. Method of computing value of inchoate right of dower.
§43-2-5. Examples.


When a party as a tenant for life, or in dower, or otherwise, is entitled to the annual interest on a sum of money, or is entitled to the use of any estate, or any part thereof, or of the proceeds arising therefrom by a sale or otherwise, and is willing to accept a gross sum in lieu thereof, or the party liable for such interest, or affected by such claim, has the right to pay a gross sum in lieu thereof, or if a court in any proceeding decrees a gross sum to be paid in lieu thereof, or if it shall be desirable for any purpose to ascertain the value thereof, the sum to be paid or the present value thereof shall be estimated according to the then value of an annuity of five percent on the principal sum during the probable life of such person, according to the following table showing the present value, on the basis of interest at five percent, of an
annuity of one dollar, payable at the end of each year that
a person of a given age shall live:

1958 Commissioners Standard Ordinary (C.S.O.)
Table of Mortality, With Interest at
Five Percent Per Annum

<table>
<thead>
<tr>
<th>Age</th>
<th>Present Value of $1 per Annunm</th>
<th>Age</th>
<th>Present Value of $1 per Annunm</th>
</tr>
</thead>
<tbody>
<tr>
<td>20</td>
<td>18.65027</td>
<td>25</td>
<td>17.13029</td>
</tr>
<tr>
<td>21</td>
<td>18.72242</td>
<td>26</td>
<td>17.02159</td>
</tr>
<tr>
<td>22</td>
<td>18.69320</td>
<td>27</td>
<td>16.90777</td>
</tr>
<tr>
<td>23</td>
<td>18.65774</td>
<td>28</td>
<td>16.78855</td>
</tr>
<tr>
<td>24</td>
<td>18.61927</td>
<td>29</td>
<td>16.66384</td>
</tr>
<tr>
<td>25</td>
<td>18.57764</td>
<td>30</td>
<td>16.53350</td>
</tr>
<tr>
<td>26</td>
<td>18.53289</td>
<td>31</td>
<td>16.39723</td>
</tr>
<tr>
<td>27</td>
<td>18.48487</td>
<td>32</td>
<td>16.25488</td>
</tr>
<tr>
<td>28</td>
<td>18.43359</td>
<td>33</td>
<td>16.10611</td>
</tr>
<tr>
<td>29</td>
<td>18.37911</td>
<td>34</td>
<td>15.95074</td>
</tr>
<tr>
<td>30</td>
<td>18.32144</td>
<td>35</td>
<td>15.78857</td>
</tr>
<tr>
<td>31</td>
<td>18.26082</td>
<td>36</td>
<td>15.61972</td>
</tr>
<tr>
<td>32</td>
<td>18.19748</td>
<td>37</td>
<td>15.44411</td>
</tr>
<tr>
<td>33</td>
<td>18.13146</td>
<td>38</td>
<td>15.26185</td>
</tr>
<tr>
<td>34</td>
<td>18.06319</td>
<td>39</td>
<td>15.07333</td>
</tr>
<tr>
<td>35</td>
<td>17.99275</td>
<td>40</td>
<td>14.87860</td>
</tr>
<tr>
<td>36</td>
<td>17.92001</td>
<td>41</td>
<td>14.67787</td>
</tr>
<tr>
<td>37</td>
<td>17.84504</td>
<td>42</td>
<td>14.47117</td>
</tr>
<tr>
<td>38</td>
<td>17.76769</td>
<td>43</td>
<td>14.25836</td>
</tr>
<tr>
<td>39</td>
<td>17.68766</td>
<td>44</td>
<td>14.03941</td>
</tr>
<tr>
<td>40</td>
<td>17.60441</td>
<td>45</td>
<td>13.81426</td>
</tr>
<tr>
<td>41</td>
<td>17.51778</td>
<td>46</td>
<td>13.58299</td>
</tr>
<tr>
<td>42</td>
<td>17.42739</td>
<td>47</td>
<td>13.34578</td>
</tr>
<tr>
<td>43</td>
<td>17.33286</td>
<td>48</td>
<td>13.10276</td>
</tr>
<tr>
<td>44</td>
<td>17.23397</td>
<td>49</td>
<td>12.85419</td>
</tr>
<tr>
<td>Age</td>
<td>Present Value of $1 per Annum</td>
<td>Age</td>
<td>Present Value of $1 per Annum</td>
</tr>
<tr>
<td>-----</td>
<td>--------------------------------</td>
<td>-----</td>
<td>--------------------------------</td>
</tr>
<tr>
<td>45</td>
<td>12.60026</td>
<td>75</td>
<td>5.53981</td>
</tr>
<tr>
<td>46</td>
<td>12.34127</td>
<td>76</td>
<td>5.27737</td>
</tr>
<tr>
<td>47</td>
<td>12.07747</td>
<td>77</td>
<td>5.01772</td>
</tr>
<tr>
<td>48</td>
<td>11.80892</td>
<td>78</td>
<td>4.76245</td>
</tr>
<tr>
<td>49</td>
<td>11.53588</td>
<td>79</td>
<td>4.51368</td>
</tr>
<tr>
<td>50</td>
<td>11.25855</td>
<td>80</td>
<td>4.27293</td>
</tr>
<tr>
<td>51</td>
<td>10.97718</td>
<td>81</td>
<td>4.04097</td>
</tr>
<tr>
<td>52</td>
<td>10.69219</td>
<td>82</td>
<td>3.81806</td>
</tr>
<tr>
<td>53</td>
<td>10.40402</td>
<td>83</td>
<td>3.60362</td>
</tr>
<tr>
<td>54</td>
<td>10.11314</td>
<td>84</td>
<td>3.39659</td>
</tr>
<tr>
<td>55</td>
<td>9.81994</td>
<td>85</td>
<td>3.19585</td>
</tr>
<tr>
<td>56</td>
<td>9.52502</td>
<td>86</td>
<td>3.00022</td>
</tr>
<tr>
<td>57</td>
<td>9.22876</td>
<td>87</td>
<td>2.80842</td>
</tr>
<tr>
<td>58</td>
<td>8.93163</td>
<td>88</td>
<td>2.61877</td>
</tr>
<tr>
<td>59</td>
<td>8.63420</td>
<td>89</td>
<td>2.42965</td>
</tr>
<tr>
<td>60</td>
<td>8.33705</td>
<td>90</td>
<td>2.23938</td>
</tr>
<tr>
<td>61</td>
<td>8.04095</td>
<td>91</td>
<td>2.04635</td>
</tr>
<tr>
<td>62</td>
<td>7.74687</td>
<td>92</td>
<td>1.84880</td>
</tr>
<tr>
<td>63</td>
<td>7.45587</td>
<td>93</td>
<td>1.64458</td>
</tr>
<tr>
<td>64</td>
<td>7.16916</td>
<td>94</td>
<td>1.44028</td>
</tr>
<tr>
<td>65</td>
<td>6.88736</td>
<td>95</td>
<td>1.23632</td>
</tr>
<tr>
<td>66</td>
<td>6.61066</td>
<td>96</td>
<td>1.03468</td>
</tr>
<tr>
<td>67</td>
<td>6.33858</td>
<td>97</td>
<td>0.83838</td>
</tr>
<tr>
<td>68</td>
<td>6.07017</td>
<td>98</td>
<td>0.64868</td>
</tr>
<tr>
<td>69</td>
<td>5.80411</td>
<td>99</td>
<td>0</td>
</tr>
</tbody>
</table>
§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.


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
determined by finding the present value of an annuity, for the
life of the spouse entitled to dower, equal to the interest at
five percent on one third of the value of the property or prin-
cipal sum in which he or she is entitled to dower, and then
subtracting from such value the present value of an annuity of
the same amount for the joint lives of the husband and wife.
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-
division (a) to the younger of the husband's and wife's ages. The resulting number is the equivalent "equal ages" of a husband and wife of different ages.

(c) From Table II (Present Value of an Annuity of One Dollar for the Joint Existence of Two Lives of Equal Ages) hereto appended, find the present value of an annuity of one dollar payable during the joint existence of two lives at the age which is next younger than the "equal ages" computed in subdivision (b).

(d) Subtract from the value found as directed in subdivision (c) the value for the next higher "equal ages" as given in Table II.

(e) Multiply the remainder obtained as directed in subdivision (d) by the fractional part of the "equal ages" found as directed in subdivision (b).

(f) Subtract the product obtained as directed in subdivision (e) from the value obtained from Table II as directed in subdivision (c).

(g) Subtract the remainder obtained as directed in subdivision (f) from the value of an annuity of one dollar on the life of the spouse entitled to the inchoate right of dower according to the figures given for his or her age by the table in section one of this article.

(h) Multiply the remainder obtained as directed in subdivision (g) by five percent of one third of the value of the property or principal sum in which such spouse has an inchoate right of dower, and the result thus obtained is the present value of the inchoate dower right.
**TABLE I.**

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

<table>
<thead>
<tr>
<th>Difference of Age</th>
<th>Addition to Younger Age</th>
<th>Difference of Age</th>
<th>Addition to Younger Age</th>
</tr>
</thead>
<tbody>
<tr>
<td>49</td>
<td>1</td>
<td>.512</td>
<td>21</td>
</tr>
<tr>
<td>50</td>
<td>2</td>
<td>1.046</td>
<td>22</td>
</tr>
<tr>
<td>51</td>
<td>3</td>
<td>1.603</td>
<td>23</td>
</tr>
<tr>
<td>52</td>
<td>4</td>
<td>2.183</td>
<td>24</td>
</tr>
<tr>
<td>53</td>
<td>5</td>
<td>2.785</td>
<td>25</td>
</tr>
<tr>
<td>54</td>
<td>6</td>
<td>3.409</td>
<td>26</td>
</tr>
<tr>
<td>55</td>
<td>7</td>
<td>4.055</td>
<td>27</td>
</tr>
<tr>
<td>56</td>
<td>8</td>
<td>4.721</td>
<td>28</td>
</tr>
<tr>
<td>57</td>
<td>9</td>
<td>5.407</td>
<td>29</td>
</tr>
<tr>
<td>58</td>
<td>10</td>
<td>6.113</td>
<td>30</td>
</tr>
<tr>
<td>59</td>
<td>11</td>
<td>6.837</td>
<td>31</td>
</tr>
<tr>
<td>60</td>
<td>12</td>
<td>7.580</td>
<td>32</td>
</tr>
<tr>
<td>61</td>
<td>13</td>
<td>8.340</td>
<td>33</td>
</tr>
<tr>
<td>62</td>
<td>14</td>
<td>9.116</td>
<td>34</td>
</tr>
<tr>
<td>63</td>
<td>15</td>
<td>9.907</td>
<td>35</td>
</tr>
<tr>
<td>64</td>
<td>16</td>
<td>10.714</td>
<td>36</td>
</tr>
<tr>
<td>65</td>
<td>17</td>
<td>11.534</td>
<td>37</td>
</tr>
<tr>
<td>66</td>
<td>18</td>
<td>12.368</td>
<td>38</td>
</tr>
<tr>
<td>67</td>
<td>19</td>
<td>13.214</td>
<td>39</td>
</tr>
<tr>
<td>68</td>
<td>20</td>
<td>14.072</td>
<td>40</td>
</tr>
<tr>
<td>Difference of Age</td>
<td>Addition to Younger Age</td>
<td>Difference of Age</td>
<td>Addition to Younger Age</td>
</tr>
<tr>
<td>------------------</td>
<td>-------------------------</td>
<td>------------------</td>
<td>-------------------------</td>
</tr>
<tr>
<td>69</td>
<td>41</td>
<td>33.720</td>
<td>59</td>
</tr>
<tr>
<td>70</td>
<td>42</td>
<td>34.699</td>
<td>60</td>
</tr>
<tr>
<td>71</td>
<td>43</td>
<td>35.679</td>
<td>61</td>
</tr>
<tr>
<td>72</td>
<td>44</td>
<td>36.661</td>
<td>62</td>
</tr>
<tr>
<td>73</td>
<td>45</td>
<td>37.645</td>
<td>63</td>
</tr>
<tr>
<td>74</td>
<td>46</td>
<td>38.630</td>
<td>64</td>
</tr>
<tr>
<td>75</td>
<td>47</td>
<td>39.617</td>
<td>65</td>
</tr>
<tr>
<td>76</td>
<td>48</td>
<td>40.604</td>
<td>66</td>
</tr>
<tr>
<td>77</td>
<td>49</td>
<td>41.593</td>
<td>67</td>
</tr>
<tr>
<td>78</td>
<td>50</td>
<td>42.582</td>
<td>68</td>
</tr>
<tr>
<td>79</td>
<td>51</td>
<td>43.573</td>
<td>69</td>
</tr>
<tr>
<td>80</td>
<td>52</td>
<td>44.564</td>
<td>70</td>
</tr>
<tr>
<td>81</td>
<td>53</td>
<td>45.556</td>
<td>71</td>
</tr>
<tr>
<td>82</td>
<td>54</td>
<td>46.549</td>
<td>72</td>
</tr>
<tr>
<td>83</td>
<td>55</td>
<td>47.543</td>
<td>73</td>
</tr>
<tr>
<td>84</td>
<td>56</td>
<td>48.537</td>
<td>74</td>
</tr>
<tr>
<td>85</td>
<td>57</td>
<td>49.531</td>
<td>75</td>
</tr>
<tr>
<td>86</td>
<td>58</td>
<td>50.526</td>
<td></td>
</tr>
</tbody>
</table>
### TABLE II.

**Present Value of an Annuity of One Dollar per Annum for the Joint Existence of Two Lives of Equal Ages, According to the 1958 Commissioners Standard Ordinary (C.S.O.) Table of Mortality, with Interest at Five Percent Per Annum**

<table>
<thead>
<tr>
<th>Equal Ages</th>
<th>Present Value (Dollars)</th>
<th>Equal Ages</th>
<th>Present Value (Dollars)</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>17.84678</td>
<td>20</td>
<td>16.55681</td>
</tr>
<tr>
<td>1</td>
<td>18.00731</td>
<td>21</td>
<td>16.44706</td>
</tr>
<tr>
<td>2</td>
<td>17.97440</td>
<td>22</td>
<td>16.33279</td>
</tr>
<tr>
<td>3</td>
<td>17.93063</td>
<td>23</td>
<td>16.21341</td>
</tr>
<tr>
<td>4</td>
<td>17.88226</td>
<td>24</td>
<td>16.08861</td>
</tr>
<tr>
<td>5</td>
<td>17.82905</td>
<td>25</td>
<td>15.95776</td>
</tr>
<tr>
<td>6</td>
<td>17.77115</td>
<td>26</td>
<td>15.82051</td>
</tr>
<tr>
<td>7</td>
<td>17.70832</td>
<td>27</td>
<td>15.67685</td>
</tr>
<tr>
<td>8</td>
<td>17.64068</td>
<td>28</td>
<td>15.52640</td>
</tr>
<tr>
<td>9</td>
<td>17.56837</td>
<td>29</td>
<td>15.36911</td>
</tr>
<tr>
<td>10</td>
<td>17.49151</td>
<td>30</td>
<td>15.20491</td>
</tr>
<tr>
<td>11</td>
<td>17.41061</td>
<td>31</td>
<td>15.03338</td>
</tr>
<tr>
<td>12</td>
<td>17.32620</td>
<td>32</td>
<td>14.85442</td>
</tr>
<tr>
<td>13</td>
<td>17.23844</td>
<td>33</td>
<td>14.66756</td>
</tr>
<tr>
<td>14</td>
<td>17.14824</td>
<td>34</td>
<td>14.47265</td>
</tr>
<tr>
<td>15</td>
<td>17.05581</td>
<td>35</td>
<td>14.26949</td>
</tr>
<tr>
<td>16</td>
<td>16.96101</td>
<td>36</td>
<td>14.05846</td>
</tr>
<tr>
<td>17</td>
<td>16.86404</td>
<td>37</td>
<td>13.83963</td>
</tr>
<tr>
<td>18</td>
<td>16.76475</td>
<td>38</td>
<td>13.61334</td>
</tr>
<tr>
<td>19</td>
<td>16.66264</td>
<td>39</td>
<td>13.38044</td>
</tr>
<tr>
<td>Age</td>
<td>Equal Ages</td>
<td>Equal Ages</td>
<td>Value</td>
</tr>
<tr>
<td>------</td>
<td>------------</td>
<td>------------</td>
<td>--------</td>
</tr>
<tr>
<td>114</td>
<td>40</td>
<td>13.14123</td>
<td>71</td>
</tr>
<tr>
<td>115</td>
<td>41</td>
<td>12.89623</td>
<td>72</td>
</tr>
<tr>
<td>116</td>
<td>42</td>
<td>12.64564</td>
<td>73</td>
</tr>
<tr>
<td>117</td>
<td>43</td>
<td>12.38935</td>
<td>74</td>
</tr>
<tr>
<td>118</td>
<td>44</td>
<td>12.12749</td>
<td>75</td>
</tr>
<tr>
<td>119</td>
<td>45</td>
<td>11.86009</td>
<td>76</td>
</tr>
<tr>
<td>120</td>
<td>46</td>
<td>11.58742</td>
<td>77</td>
</tr>
<tr>
<td>121</td>
<td>47</td>
<td>11.30991</td>
<td>78</td>
</tr>
<tr>
<td>122</td>
<td>48</td>
<td>11.02791</td>
<td>79</td>
</tr>
<tr>
<td>123</td>
<td>49</td>
<td>10.74196</td>
<td>80</td>
</tr>
<tr>
<td>124</td>
<td>50</td>
<td>10.45247</td>
<td>81</td>
</tr>
<tr>
<td>125</td>
<td>51</td>
<td>10.16002</td>
<td>82</td>
</tr>
<tr>
<td>126</td>
<td>52</td>
<td>9.86508</td>
<td>83</td>
</tr>
<tr>
<td>127</td>
<td>53</td>
<td>9.56780</td>
<td>84</td>
</tr>
<tr>
<td>128</td>
<td>54</td>
<td>9.26863</td>
<td>85</td>
</tr>
<tr>
<td>129</td>
<td>55</td>
<td>8.96788</td>
<td>86</td>
</tr>
<tr>
<td>130</td>
<td>56</td>
<td>8.66595</td>
<td>87</td>
</tr>
<tr>
<td>131</td>
<td>57</td>
<td>8.36347</td>
<td>88</td>
</tr>
<tr>
<td>132</td>
<td>58</td>
<td>8.06108</td>
<td>89</td>
</tr>
<tr>
<td>133</td>
<td>59</td>
<td>7.75942</td>
<td>90</td>
</tr>
<tr>
<td>134</td>
<td>60</td>
<td>7.45897</td>
<td>91</td>
</tr>
<tr>
<td>135</td>
<td>61</td>
<td>7.16051</td>
<td>92</td>
</tr>
<tr>
<td>136</td>
<td>62</td>
<td>6.86446</td>
<td>93</td>
</tr>
<tr>
<td>137</td>
<td>63</td>
<td>6.57132</td>
<td>94</td>
</tr>
<tr>
<td>138</td>
<td>64</td>
<td>6.28170</td>
<td>95</td>
</tr>
<tr>
<td>139</td>
<td>65</td>
<td>5.99623</td>
<td>96</td>
</tr>
<tr>
<td>140</td>
<td>66</td>
<td>5.71571</td>
<td>97</td>
</tr>
<tr>
<td>141</td>
<td>67</td>
<td>5.44127</td>
<td>98</td>
</tr>
<tr>
<td>142</td>
<td>68</td>
<td>5.17412</td>
<td>99</td>
</tr>
<tr>
<td>143</td>
<td>69</td>
<td>4.91568</td>
<td>100</td>
</tr>
<tr>
<td>144</td>
<td>70</td>
<td>4.66658</td>
<td></td>
</tr>
</tbody>
</table>
§43-2-5. Examples.

1 Suppose it is desired to find the present value of the wife's inchoate right of dower in real estate worth $150,000 where the husband's age is forty and the wife's age is thirty-five. Pursuing the method prescribed in section four 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, which added to 35 gives 37.785, the equivalent "equal ages" of a husband aged 40 and wife aged 35.

10 (c) From Table II it is found that the present value of an annuity of one dollar payable during the joint existence of two lives aged 37, the age next younger than 37.785, is $13.83963.

14 (d) From Table II it is found that the present value of such an annuity for two lives aged 38 is $13.61334, which subtracted from $13.83963 leaves $0.22629.

17 (e) $0.22629, the result obtained in subdivision (d), multiplied by 0.785, the fractional part of the "equal ages" found in subdivision (b), gives $0.17764.

20 (f) $0.17764 subtracted from $13.83963, the figures taken from Table II as directed in subdivision (c), leaves $13.66199, which is the present value of an annuity of one dollar payable during the joint existence of two lives aged 37.785 years.

25 (g) $13.66199 subtracted from $15.78857, the value of an annuity of one dollar on the life of the wife at age thirty-five with interest at five percent, as found in the table in section one of this article, leaves $2.12658.

29 (h) $2.12658 multiplied by five percent of one third of $150,000 or $2500, equals $5316.45, which is the present value of the inchoate right of dower of the wife in the example given.
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.


§27-16-4. Limitations of article.

§27-16-5. Legal counsel; compensation; costs.

§27-16-1. Persons subject to sterilization; procedure.

Whenever any parent, guardian, committee or authority responsible for a person who has been declared mentally incompetent shall be of the opinion that it is in said person's best interest and the best interest of society that the said person be sterilized, such parent, guardian, committee or authority shall apply to the circuit court of the county of which such incompetent person is a resident or where he may be found, by petition setting forth, under oath, all of the facts of the case and the grounds of his opinion, and praying that an order may be entered by said court authorizing and requiring him to have performed, by a duly licensed physician to be designated in the petition and order, upon such incompetent per-
son named in such petition, sterilization procedures as medically indicated.

The court in which such petition is filed, or the judge thereof in vacation or a referee appointed by the court for this purpose shall review the circumstances under which the individual was declared incompetent and shall take evidence to determine that the circumstances warrant continuation of the incompetent status of the individual.

If, as a result of such review it is determined that the incompetent status should be continued, a further hearing shall be scheduled.

A copy of such petition shall be served upon such incompetent person, together with a notice, in writing, designating the date and time when the court, or the judge thereof in vacation, will hear the matters arising upon such petition. Such notice shall be served not less than fifteen days prior to the date of such hearing.

After the notice required by this article to be served shall have been given, as herein provided, the court, or the judge thereof in vacation or referee appointed for this purpose shall proceed to hear and consider the petition and the evidence offered in support of and against the same. For every such incompetent person who is not represented by counsel the court shall appoint competent legal counsel who shall represent the rights and interests of such incompetent person who shall have the right, but shall not be required to be present at such hearings in person, and shall have the opportunity to present evidence in his own behalf and cross-examine witnesses. A transcript of all testimony at such hearing shall be made a part of the record filed with the clerk and shall be made available to the incompetent person or his counsel.

However, prior to such hearing the court shall order a complete medical-social evaluation by one licensed physician and one licensed psychologist or by two licensed physicians, at least one of whom shall be qualified in the field of psychiatry, neurology or genetics. Such examiners shall be present at the hearing and may be examined and cross-examined.

Upon consideration of the full record, the court, the judge thereof in vacation or the referee may find:
(1) That sterilization is unwarranted and the proceedings shall be dismissed;

(2) That the individual is mentally impaired and that such defect is of a genetic nature that is likely to be passed on to any children; or

(3) That the individual is mentally impaired to such a degree as to be unable to care for a child and that the individual is unlikely to recover from such mental impairment.

If the finding is made as enumerated in (2) or (3) above, and it is further determined that no alternative method of birth control is feasible, the court or the judge thereof in vacation may order that medically appropriate sterilization procedures shall be performed, and for a female, that such procedures be performed in a medical facility licensed by the state board of health. In no case shall such procedures be carried out until sixty days have elapsed from the date of such order.

§27-16-2. Appeal from court order.

From any such order so entered by the court, or the judge thereof in vacation, any party thereto shall have, within sixty days after the entry of such order, the right to apply for an appeal to the supreme court of appeals, which may grant or refuse such appeal and shall have jurisdiction to hear and to determine the same upon the record of the hearing in the circuit court and to enter such order as it may deem appropriate. The filing of such an appeal in the supreme court of appeals shall operate as a stay of proceedings under any such order of the circuit court until such appeal shall be determined by the supreme court of appeals.


Except as to the laws governing negligence, no such physician shall be liable either civilly or criminally by reason of having performed any procedure authorized by the provisions of this article upon any person in this state.

§27-16-4. Limitations of article.

Nothing in this article shall be construed to authorize the operation of castration nor the removal of sound organs from
the body; but this provision shall not be construed so as to prevent the medical or surgical treatment for sound therapeutic reasons of any person in this state, by a physician licensed by this state, in such a way as may incidentally involve the nullification or destruction of the reproductive functions.

§27-16-5. Legal counsel; compensation; costs.

When, in any case, the court, or judge thereof in vacation, is satisfied that the counsel appointed by the court has rendered substantial service to the mental incompetent, it may allow him reasonable compensation therefor, and his actual expenses, if any, to be paid by the petitioners.

The costs of any proceeding pursuant to this article shall 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; appraisement 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.
ARTICLE 1. WORDS AND PHRASES DEFINED.


"Mental illness" means a manifestation in a person of significantly impaired capacity to maintain acceptable levels of functioning in the areas of intellect, emotion and physical well-being.

§27-1-3. Mental retardation.

"Mental retardation" means significantly subaverage intellectual functioning which manifests itself in a person during his developmental period and which is characterized by his inadequacy in adaptive behavior.


"State hospital" means any hospital, center or institution, or part thereof, established, maintained and operated by the department of mental health or by the department of mental health in conjunction with a political subdivision of the state to provide inpatient or outpatient care and treatment for the mentally ill, mentally retarded or addicted.


"Mental health facility" means any inpatient, residential or outpatient facility for the care and treatment of the mentally ill, mentally retarded or addicted which is operated, or licensed to operate, by the department of mental health and shall include state hospitals as defined in section six of this article. The term shall also include a veterans administration hospital.

§27-1-10. Psychologist.

"Psychologist" means any person licensed under the laws of this state to engage in the practice of psychology.

"Addiction" means the frequent or constant use of alcohol, narcotic or other intoxicating or stupefying substance which renders the person using such substance incapable of exercising reasonable judgment in the conduct of his affairs or which causes such person to be dangerous to himself or others.

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

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

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

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


"Chief medical officer" means the physician responsible for medical programs within a mental health facility and shall include the clinical director of a state hospital.

ARTICLE 2. MENTAL HEALTH FACILITIES.

§27-2-3. Rules as to patients.

The director of mental health shall make rules, not contrary to law, regulating the admission of patients to mental health facilities, the care, maintenance and treatment of inpatients, residents and outpatients of such facilities and the release, trial visit and discharge of patients therefrom. No patient under eighteen years of age in any state hospital shall be housed in any area also occupied by any patient over eighteen years of age. Any patient adjudged by the chief medical officer to have a likelihood of seriously harming others shall be confined in a secure 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, subject to the availability of suitable accommodations and to the rules and regulations promulgated by the director of mental health, shall admit for diagnosis, care and treatment any individual:

(a) Over eighteen years of age who is mentally ill, mentally retarded or addicted or who has manifested symptoms of mental illness, mental retardation or addiction and who makes application for hospitalization; or

(b) Under eighteen years of age who is mentally ill, mentally retarded or addicted or who has manifested symptoms of mental illness, mental retardation or addiction and there is application for hospitalization therefor in his behalf (1) by the parents of such person, or (2) if only one parent is living, then by such parent, or (3) if the parents are living separate and apart, by the one who has the custody of such person, or (4) if there is a guardian who has custody of such person, then by such guardian. Such admission shall be conditioned upon the consent of the prospective patient if the patient is sixteen years of age or over.

(c) No person under eighteen years of age shall be admitted under this section to any state hospital unless said person has first been reviewed and evaluated by a local 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 release any voluntary patient who, in his opinion, has recovered or whose hospitalization is no longer advisable but he shall make every effort to assure that any further supportive services required to meet the patient's need upon his release will be provided.
§27-4-3. Right to release on application.

A voluntary patient who requests his release or whose release is requested in writing, by his parents, parent, guardian, spouse or adult next of kin shall be released forthwith except that:

(a) If the patient was admitted on his own application, and request for release is made by a person other than the patient, release shall be conditioned upon the agreement of the patient thereto;

(b) If the patient is under eighteen years of age, his release prior to becoming eighteen years of age may be conditioned upon the consent of the person or persons who applied for his admission; or

(c) If, within ninety-six hours of the receipt of the request, the chief medical officer of the mental health facility in which the patient is hospitalized files with the clerk of the circuit court or mental hygiene commissioner of the county where the facility is situated, an application for involuntary hospitalization as provided in section four, article five of this chapter, release may be postponed for twenty days pending a finding in accordance with the legal proceedings prescribed therein.

Legal proceedings for involuntary hospitalization shall not be commenced with respect to a voluntary patient unless release of the patient has been requested by him or the individual 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.


§27-5-4. Legal proceedings for involuntary hospitalization.


§27-5-6. Examination of newly admitted patients; failure to examine; disposition of patients after examination; demands for release.


§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.

No individual shall be involuntarily committed to a mental health facility except by order of the circuit court of the county wherein such person resides or was found and then only after a full hearing on the issues relating to the necessity of committing an individual to a mental health facility. The circuit court of each county may appoint a competent attorney in each county to preside over such hearings, who shall be designated "mental hygiene commissioner." He shall be a person of good moral character, of standing in his profession and a resident of the county for which he is appointed, and he shall, before assuming the duties of such commissioner, take the oath required of other special commissioners as provided in article one, chapter six of this code. The county court shall pay the commissioner a reasonable sum commensurate with his services. He shall discharge his duties and hold his office at the pleasure of the circuit court by which he is appointed and may be removed at any time by the court. It shall be the duty of the mental hygiene commissioner to conduct orderly inquiries into the mental health of any individual brought before him concerning the advisability of committing the individual to a mental health facility. The mental hygiene commissioner shall safeguard, at all times, the rights and interests of the individual as well as the interests of the state. The mental hygiene commissioner shall make a written report of his findings to the circuit court. In any proceedings before any court of record as set forth in this article, the court of record shall appoint an interpreter for any individual who is deaf or cannot speak or who speaks a foreign language and who may be subject to involuntary commitment to a mental health facility.

In all proceedings under this article, it shall be the duty of the prosecuting attorney to represent the applicants.

As used in this article, the term "caseworker" means a person employed by a mental health facility, state hospital, county health department, or the state department of welfare, as an
agent for the providing of the social or medical services, or both, of such facility, hospital or department.

§27-5-2. Involuntary hospitalization; admission by medical certification; emergency procedure; examination; hearing; release.

(a) Any individual may be admitted to a mental health facility upon:

(1) Written application under oath to the facility by his parents or parent, guardian, spouse, adult next of kin or friend, a health officer or caseworker familiar with the case of the individual, or the head of any institution where such individual may be and certification by two physicians that they have examined the individual and that they are of the opinion that he is mentally ill, mentally retarded or addicted and because of his mental illness, mental retardation or addiction he is likely to cause serious harm to himself or others if he is allowed to remain at liberty; admission to a mental health facility in accordance with the procedure set forth in this subdivision shall be referred to as a medical certification admission, or

(2) Written application under oath to the facility by a health officer, caseworker or law-enforcement officer stating his belief that the individual, because of symptoms of mental illness, mental retardation or addiction, is likely to cause serious harm to himself or others if not immediately restrained and the grounds for such belief and certification by at least one physician that he has examined the individual and that he is of the opinion the individual is mentally ill, mentally retarded or addicted and because of his mental illness, mental retardation or addiction he is likely to cause serious harm to himself or others if not immediately restrained. Admission to a mental health facility in accordance with the procedures set forth in this subdivision (2) shall be referred to as an emergency admission.

(b) Any individual with respect to whom such certification has been issued may not be admitted on the basis thereof at any time after the expiration of three days from the date of such examination in the case of emergency admission with one physician’s certificate in accordance with subdivision (2),
subsection (a) of this section or fifteen days from the first exam-
ination in the case of medical certification admission in ac-
cordance with subdivision (1), subsection (a) of this section. A
certification under this section must include findings and con-
clusions of the mental examination, the date, time and place
thereof, and the facts upon which the conclusion of likelihood
of causing serious harm is based. The chief medical officer may,
with the approval of the director of mental health, transfer such
individual to a state hospital or to another similar type of men-
tal health facility after determining that no less restrictive treat-
ment alternative is suitable or available. The chief medical of-
icer of the mental health facility admitting the individual shall
forthwith make a report thereof to the director of mental
health.

When an individual is admitted to a mental health facility
pursuant to the provisions of this section, the chief medical
officer thereof shall immediately give notice of the individual's
admission to the individual's spouse, if any, and the individual's
parents or parent or guardian, or if there be no such spouse,
parents, parent or guardian, to two of the individual's adult
next of kin. The notice shall be in writing and shall be trans-
mitted to such person or persons at his, her or their last
known address by certified or registered mail, return receipt
requested.

(c) After the individual's admission to a mental health
facility, he shall not be detained more than three days unless,
within such period, the individual is examined by two staff
physicians and the likelihood that the individual will cause
serious harm to himself or others is confirmed by such phy-
icians. The physicians may jointly examine the individual
but must make separate, independent and signed evaluations
of his condition.

(d) If, on the basis of the examination by the two staff
physicians, the chief medical officer determines that the in-
dividual should continue to be hospitalized, a written request
for a hearing shall be sent to the clerk of the circuit court of
the county of the individual's residence or to the clerk of the
circuit court of the county where he was found within five days
after the person's admission. Within a reasonable time after
receipt of the request, the circuit court or mental hygiene
MENTALLY ILL PERSONS

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 voluntary
81 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 prescribed therein on the question of the individual's mental
99 condition.


1 When any person, health officer, casework or law-enforcement officer has reason to believe that an individual is
2 mentally ill, mentally retarded or addicted and because of his
3 mental illness, mental retardation or addiction is likely to cause
4 serious harm to himself or others if allowed to remain at liberty
5 while awaiting an examination and certification by a physician,
6 or physicians, as the case may be, pursuant to section two
7 of this article, such person, health officer, caseworker or law-
8 enforcement officer may make application under oath, to the
9 circuit court or mental hygiene commissioner of the county
10 of which the individual is a resident or to the circuit court
or mental hygiene commissioner of the county where he may
be found, giving such information and stating such facts there-
in as may be required, upon the form provided by the depart-
ment of mental health and the circuit court or mental hy-
giene commissioner shall thereupon enter an order for the
individual named in such application to be taken into custody
and detained, but not incarcerated in a jail or penal institu-
tion, for the purpose of an examination by at least one phy-
sician to take place within fourteen hours after the individual
is taken into custody. Not later than fourteen hours after the
individual is taken into custody, the individual shall be released
from custody, unless proceedings have been instituted pur-
suant to section two of this article.

§27-5-4. Legal proceedings for involuntary hospitalization.

(a) Proceedings for the involuntary hospitalization of an
individual may be commenced by the filing of a written appli-
cation under oath and the certificate or affidavit as herein-
after provided with the clerk of the circuit court or mental
hygiene commissioner of the county of which the individual is
a resident or with the clerk of the circuit court or mental
hygiene commissioner of the county where he may be found,
by his parents or parent, guardian, spouse, adult next of kin
or friend, or by a physician, a health officer or caseworker
familiar with the case of the individual, or the head of any
institution in which such individual may be.

Such application shall be made under oath and shall state
the belief of the applicant that because of symptoms of mental
illness, mental retardation or addiction, the individual is likely
to cause serious harm to himself or others and the grounds for
such belief. The written application, certificate, affidavit and
any warrants issued pursuant thereto, including any papers and
document related thereto, filed with any circuit court or men-
tal hygiene commissioner for the involuntary hospitalization of
any individual shall not be open to inspection by any person
other than the individual, except upon authorization of the
individual or his legal representative or by order of the cir-
cuit court and such records shall not be published except upon
the authorization of the individual or his legal representative.
Such applicant shall file with his application the certificate of
a physician stating that in his opinion the individual is mentally ill, mentally retarded or addicted and that because of his mental illness, mental retardation or addiction, the individual is likely to cause serious harm to himself or others if he is allowed to remain at liberty and therefore he should be hospitalized or, in lieu of said certificate, an affidavit by the applicant showing facts that the individual has refused to submit to examination by a physician.

(b) Upon receipt of an application, the clerk of the circuit court shall give notice thereof to the individual and to the individual's spouse, parents or parent or guardian, or, if the individual does not have a spouse, parents or parent or guardian, to the individual's adult next of kin. Such notice shall be given within ten days after receipt of the application by the clerk of the circuit court and shall be served on such person or persons at his or their last known address by certified or registered mail, return receipt requested.

The notice served on the individual shall specify the nature of the charges against him, the facts underlying and supporting the application for his involuntary commitment, and shall advise him of his right to have counsel appointed for him and to consult with counsel at every stage of the proceedings.

Within a reasonable time after notice of the commencement of proceedings is given, the circuit court or mental hygiene commissioner shall appoint two physicians or a physician and psychologist, other than the physician whose certification may have accompanied the application to the circuit court or mental hygiene commissioner, to examine the individual and report to the circuit court or mental hygiene commissioner their findings as to the mental condition of the individual and the likelihood of his causing serious harm to himself or others. The physicians or physician and psychologist may jointly examine the individual, but must make separate, independent and signed evaluations of his condition stating the facts upon which the conclusions therein are based.

If the designated physicians or physician and psychologist report to the circuit court or mental hygiene commissioner that the individual has refused to submit to an examination, the circuit court or mental hygiene commissioner shall order him
to submit to such examination. The circuit court may enter an
order directing the individual to be taken into custody, but not
incarcerated in a jail or penal institution, for the purpose of an
immediate examination by the designated physicians or phy-
sician and psychologist. All such orders shall be directed to
the sheriff of the county or other appropriate law-enforcement
officer. After such examination has been completed, the indi-
vidual shall be released from custody unless such custody is
in a mental health facility pursuant to an emergency hospitali-
zation as provided for in section two of this article. If the re-
ports of the appointed physicians or physician and psycholo-
gist do not confirm that the individual is mentally ill, men-
tally retarded or addicted and might be harmful to himself or
others, then the proceedings for his involuntary hospitalization
shall be dismissed.

The circuit court or mental hygiene commissioner shall
forthwith fix a date for and have the clerk of the circuit court
give notice of the hearing to (1) the individual, (2) to the appli-
cant or applicants, and (3) to the individual's spouse, parents
or parent or guardian, or if the individual does not have a
spouse, parents or parent or guardian, to the individual's
adult next of kin, and (4) to the mental health facility serving
the area. Such notice shall be served on such persons as process
in civil actions not less than ten days prior to the date of the
hearing. Such notice shall specify the nature of the charges
against him; the facts underlying and supporting the appli-
cation of his involuntary commitment; his right to have coun-
sel appointed for him; his right to consult with counsel at
every stage of the proceedings and the time and place of the
hearing.

(c) The individual shall be present at the hearing and he,
the applicant and all persons entitled to notice of such hear-
ing shall be afforded an opportunity to testify and to present
and cross-examine witnesses. In the event that the individual
has not retained counsel, the court or mental hygiene
commissioner at least seven days prior to hearing shall
appoint a competent attorney, who shall be present at
the hearing and protect the interest of the individual,
and the circuit court, by order of record, shall allow
the attorney a fee not to exceed two hundred dollars.
MENTALLY ILL PERSONS

Any counsel representing an individual shall be entitled to copies of all medical reports, psychiatric or otherwise. The individual shall have the right to have an examination by an independent expert of his choice and testimony from such expert as a medical witness on his behalf. The circuit court or mental hygiene commissioner shall hear evidence from all interested parties in chambers, including testimony from representatives of the community mental health facility. The individual shall not be compelled to be a witness against himself. The circuit court or mental hygiene commissioner shall receive all relevant and material evidence which may be offered. The circuit court or mental hygiene commissioner shall be bound by the rules of evidence except that statements made to physicians by the individual may be admitted into evidence by the physician's testimony notwithstanding failure to inform the individual that this statement may be used against him. A transcript shall be made of all proceedings, whether before the circuit court or mental hygiene commissioner, and made available to the individual or his counsel within thirty days, if the same is requested for purposes of an appeal. In any case where an indigent person seeks an appeal, the circuit court shall, by order entered of record, authorize and direct the court reporter to furnish a transcript of the hearing and the costs of such transcript shall be paid by the county wherein the hearing was held.

(d) Upon completion of the hearing, and the evidence presented therein, the circuit court or mental hygiene commissioner shall make findings as to whether or not (1) the individual is mentally ill, mentally retarded or addicted and because of his illness, retardation or addiction is likely to cause serious harm to himself or to others if allowed to remain at liberty and (2) is a resident of the county in which the hearing is held or currently is a patient at a mental health facility in such county. The circuit court or mental hygiene commissioner shall also make a finding as to whether or not there is a less restrictive alternative than commitment appropriate for the individual. The burden of proof of the lack of a less restrictive alternative than commitment shall be on the person or persons seeking the commitment of the individual.
The findings of fact shall be incorporated into the order entered by the circuit court and must be based upon clear, cogent and convincing proof. Upon the requisite findings, the circuit court may order the individual to a mental health facility for an indeterminate period or for a temporary observatory period not exceeding six months. If the order is for a temporary observation period, the circuit court or mental hygiene commissioner may, at any time prior to the expiration of such period on the basis of a report by the chief medical officer of the mental health facility in which the patient is confined and such further inquiry as may seem appropriate, order indeterminate hospitalization of the patient or dismissal of the proceedings. An order for an indeterminate period shall expire of its own terms at the expiration of two years from the date of the last order of commitment.

If the circuit court or mental hygiene commissioner finds that the individual is not mentally ill, mentally retarded or addicted, the proceeding shall be dismissed. If the circuit court or mental hygiene commissioner finds that the individual is mentally ill, mentally retarded or addicted but is not because of such illness, retardation or addiction likely to cause serious harm to himself or others if allowed to remain at liberty, the proceedings shall be dismissed.

(e) The clerk of the circuit court in which an order directing hospitalization is entered, if not in the county of the individual's residence, shall immediately upon entry thereof forward a certified copy of same to the clerk of the circuit court of the county of which the individual is a resident.

If the circuit court or mental hygiene commissioner is satisfied that hospitalization should be ordered but finds that the individual is not a resident of the county in which the hearing is held, and the individual is not currently a resident of a mental health facility, a transcript of the evidence adduced at the hearing of such individual, properly certified by the clerk of the circuit court, shall forthwith be forwarded to the clerk of the circuit court of the county of which such individual is a resident, who shall immediately present such transcript to the circuit court or mental hygiene commissioner of said county.

If the circuit court or mental hygiene commissioner of the
county of the residence of the individual is satisfied from the
evidence contained in such transcript that such individual
should be hospitalized as determined by the standards set forth
above, the circuit court shall order the appropriate hospital-
ization as though the individual had been brought before the
circuit court or its mental hygiene commissioner in the first
instance. This order shall be transmitted forthwith to the clerk
of the circuit court of the county in which the hearing was held
who shall execute said order promptly.

(f) In lieu of ordering the patient to a mental health facil-
ity, the circuit court may order the individual delivered to
some responsible person who will agree to take care of the
individual and the circuit court may take from such responsible
person a bond in an amount to be determined by the circuit
court, with condition to restrain and take proper care of such
individual until further order of the court.

(g) If the individual found to be mentally ill, mentally re-
tarded or addicted by the circuit court or mental hygiene com-
missioner is a resident of another state, this information shall
be forthwith given to the director of mental health, who shall
make appropriate arrangements for his transfer to the state
of his residence conditioned on the agreement of the individual
except as qualified by the interstate compact on mental health.

(h) The chief medical officer of a mental health facility ad-
mitting a patient pursuant to proceedings under this section
shall forthwith make a report of such admission to the direc-
tor of mental health.

(i) All expenses incurred in a hearing conducted under the
provisions of this article, whether or not hospitalization is
ordered, including any fee awarded for the individual's
attorney and the fees of the physicians and psychologists
and other witnesses, shall be borne by the county of which the
individual is a resident. The amount of the fees, other than
any fee awarded to the individual's attorney, shall be pre-
scribed by the county court and all such fees, including any
fee awarded to the individual's attorney, shall be paid out of
the county treasury.

Any individual adversely affected by any order of commitment entered by the circuit court under this article may seek review thereof by appeal to the state supreme court of appeals and jurisdiction is hereby conferred upon such court to hear and entertain such appeals upon application made therefor in the manner and within the time provided by law for civil appeals generally.

This section shall not be construed to in any way limit or precondition the right to seek release of such individual by habeas corpus.

§27-5-6. Examination of newly admitted patients; failure to examine; disposition of patients after examination; demands for release.

The chief medical officer of the mental health facility shall arrange for psychiatric examination of every patient hospitalized pursuant to the provisions of section two of this article. If such examination is not completed within three days after the date of admission, or if the physician designated by the chief medical officer cannot certify that in his opinion the patient is mentally ill, mentally retarded or addicted and is likely to injure himself or others if allowed to be at liberty, the patient shall be discharged immediately or permitted to change his status to that of voluntary hospitalization and be thereafter treated according to the provisions of article four of this chapter.

If, in the opinion of the designated examining physician, the patient is mentally ill, mentally retarded or addicted and because of such mental illness, mental retardation or addiction he is likely to injure himself or others if allowed to be at liberty, the chief medical officer shall, within five days from the date of such determination by the designated examining physician, institute legal proceedings as provided in section four of this article. If such proceedings are not instituted within such five-day period, the patient shall be immediately released or permitted to change his status to that of voluntary hospitalization and thereafter treated according to the provisions of article four of this chapter. If such
proceedings are not completed within twenty days from the date of admittance, the patient shall be immediately released, unless he chooses to change his status to that of voluntary hospitalization and thereafter treated according to the provisions of article four of this chapter.

Notwithstanding any other provisions of this article, when any individual is hospitalized pursuant to the provisions of section two of this article, such person or his spouse, relative, guardian or friend may demand in writing that such person be released from the mental health facility. Upon receipt of such demand, the chief medical officer shall either release such person or forthwith institute legal proceedings as specified in section four of this article. The chief medical officer of the facility shall make arrangements for informing each person hospitalized therein, under the provisions of section two of this article, of his rights under this section. The chief medical officer shall also assist any such person in making such written demand.


If an individual ordered to be hospitalized pursuant to section four of this article is eligible for hospital care or treatment by any agency of the United States, then, upon receipt of a certificate from such agency showing that facilities are available and that the individual is eligible for care or treatment therein, the circuit court or mental hygiene commissioner may order him to be placed in the custody of such agency for hospitalization. When any such individual is admitted pursuant to the order of such circuit court or mental hygiene commissioner to any hospital or institution established, maintained or operated by any agency of the United States within or without the state, he shall be subject to the rules and regulations of such agency. The chief officer of any hospital or institution operated by such agency and in which the individual is so hospitalized shall, with respect to such individual, be vested with the same powers as the chief medical officers of mental health facilities or the director of mental health within this state with respect to detention, custody, transfer, conditional release or discharge of patients. Jurisdiction is retained in the appropriate circuit court or mental hy-
the mental condition of an individual so hospitalized, and to
determine the necessity for continuance of his hospitaliza-
tion, and every order of hospitalization issued pursuant to this
section is so conditioned.

§27-5-8. Periodic examination and review of patient's hospitaliza-
tion; appeal procedures for release of patient from
hospitalization.

(a) The chief medical officer of each mental health facility
shall cause periodic psychiatric examinations to be made
of each individual committed to a facility pursuant to section
four of this article as frequently as the chief medical officer
considers desirable, but intervals between examinations shall
not exceed three months. A report of the conclusions from
each examination shall be given promptly to the chief medical
officer. A copy of each report shall be placed in the patient's
clinical record and the chief medical officer shall notify the
patient as to his continued hospitalization or release based
upon the report. If the patient is not released he may appeal
and demand his discharge.

(b) Appeal shall be made to the chief medical officer of
the mental health facility wherein the patient is confined. The
chief medical officer shall review the report of the examination
and the conclusions resulting therefrom and he shall either af-
firm the patient's continued hospitalization or discharge the
patient from confinement within three days from the date
of his appeal.

If, within three days from the date of the patient's appeal,
the chief medical officer has not taken action or has taken
action unfavorable to the patient, the patient may appeal to a
review board of appeal which shall be appointed by the direc-
tor of mental health. The review board shall consist of three
members, one of whom shall be a psychiatrist. The review
board shall consider the patient's clinical record, the report
of the examination and conclusions therefrom and any evidence
offered by the patient and by the chief medical officer of
such facility. The review board shall either order the pa-
tient's continued hospitalization or shall order the chief medi-
mentally ill persons

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
to the review board, the review board has taken no action
or has taken action unfavorable to the patient, the patient
may appeal to the circuit court of the county of the patient's
residence or to the circuit court of the county where the pa-
tient is hospitalized. The circuit court or its mental hygiene
commissioner shall hold a hearing to review the hospitalization
of the patient. If the patient has appealed to the circuit court
within one year prior to the present appeal, it shall be within
the circuit court's discretion to deny the appeal. A hearing
under this section shall be conducted in the matter prescribed
in subsections (c) and (d), section four of this article.

45 The administrative and appeal remedies available by vir-
tue of this section shall not be construed to in any way limit
or precondition the right to seek release of the patient by
habeas corpus.


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.
Every patient shall have the following rights regardless of adjudication of incompetency:

(1) Treatment by trained personnel;

(2) Careful and periodic psychiatric reevaluation no less frequently than once every three months;

(3) Periodic physical examination by a physician no less frequently than once every six months; and

(4) Treatment based on appropriate examination and diagnosis by a staff member operating within the scope of his professional license.

The chief medical officer shall cause to be developed within the clinical record of each patient a written treatment plan based on initial medical and psychiatric examination not later than seven days after he is admitted for treatment. The treatment plan shall be updated periodically, consistent with reevaluation of the patient. Failure to accord the patient the requisite periodic examinations or treatment plan and reevaluations shall entitle the patient to release.

A clinical record shall be maintained at a mental health facility for each patient treated by the facility. The record shall contain information on all matters relating to the admission, legal status, care and treatment of the patient and shall include all pertinent documents relating to the patient. Specifically, the record shall contain results of periodic examinations, individualized treatment programs, evaluations and reevaluations, orders for treatment, orders for application for mechanical restraint and accident reports, all signed by the personnel involved.

A patient's clinical record shall be confidential and shall not be released by the department of mental health or its facilities or employees to any person or agency outside of the department except as follows:

(1) Pursuant to an order of a court of record.

(2) To the attorney of the patient, whether or not in connection with pending judicial proceedings.

(3) With the written consent of the patient or of someone 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-
1 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-1. Determination of competency of defendant to stand trial; examination; commitment.

(a) Whenever a court of record believes that a defendant in a criminal case may be incompetent to stand trial or is not criminally responsible by reason of mental illness, mental retardation or addiction, it may at any state of the proceedings after the return of an indictment or the issuance of a warrant against the defendant, order an examination of such defendant to be conducted by one or more psychiatrists, or a psychiatrist and a psychologist.

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

(c) At the conclusion of each examination or observation period provided for herein, the examining psychiatrist, or psychiatrist and psychologist, shall forthwith give to the court of record a written signed report of their findings on the
MENTALLY ILL PERSONS

issue of competence to stand trial or criminal responsibility. Such reports shall contain an opinion, supported by clinical findings, as to whether or not the defendant is in need of care and treatment.

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

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

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

(f) In like manner, in accordance with procedures set forth in subsections (a), (b) and (c) of this section, a juvenile court may order a psychiatric examination or a period of observation for an alleged delinquent or neglected juvenile in a mental health facility to aid the court in its disposition. The period of observation shall not exceed forty days.
§27-6A-2. Hearing on competency to stand trial; findings.

(a) At a hearing to determine a defendant's competency to stand trial, the defendant shall be present and he shall have the right to be represented by counsel and introduce evidence and cross-examine witnesses. The defendant shall be afforded timely and adequate notice of the issues of the hearing and shall have access to a summary of the medical evidence to be presented by the state. The defendant shall have the right to an examination by an independent expert of his choice and testimony from such expert as a medical witness on his behalf. All rights generally afforded a defendant in criminal proceedings shall be afforded to a defendant in such competency proceedings.

(b) At the termination of such hearing the court of record shall make a finding of fact upon a preponderance of the evidence as to the individual's competency to stand trial based on whether or not the individual is capable of participating substantially in his defense and understanding the nature and consequences of a criminal trial. If the individual is found competent, the court of record shall forthwith proceed with the criminal proceedings. If the individual is found incompetent to stand trial, the court of record shall upon the evidence make further findings as to whether or not there is a substantial likelihood that the individual will attain competency within the next ensuing six months, and if the court of record so finds, the individual may be committed to a mental health facility for an improvement period not to exceed six months. If requested by the chief medical officer of the mental health facility on the grounds that additional time is necessary for the individual to attain competency, the court of record may, prior to the termination of the six-month period, extend the period for an additional three months. Within ten days of the termination of such period, the court of record shall ascertain by hearing in accordance with subsection (a) of this section whether or not the individual has attained competency to stand trial.

(c) If the individual is found initially to be incompetent to stand trial with no substantial likelihood of obtaining competency, or if after such improvement period the individual is
found to be incompetent to stand trial, the criminal charges shall be dismissed. The dismissal order may be stayed for ten days to allow civil commitment proceedings to be instituted pursuant to article five of this chapter.

§27-6A-3. Hospitalization of defendants found not guilty by reason of mental illness; notice to prosecuting attorney.

(a) The court of record may order that a person who has been found not guilty by reason of mental illness, mental retardation or addiction be hospitalized in a mental health facility for a period not to exceed forty days for observation and examination.

(b) During the observation period of a person found not guilty of any crime by reason of mental illness, mental retardation or addiction, procedures for civil commitment may be initiated before the court having jurisdiction pursuant to article five of this chapter.

(c) The prosecuting attorney of the county within which the alleged crime or crimes occurred shall be notified of any hearing conducted for a person under the provisions of this section or any subsequent hearing for such person within five years of the alleged crime conducted under the provisions of this chapter relating to the commitment of the mentally ill, mentally retarded or addicted and shall have a right to be heard at such hearings.

§27-6A-4. Discharge.

No person initially committed to a mental health facility under this article shall be discharged from a mental health facility unless the physician in charge communicates his intention to discharge such person to the committing court and to the prosecuting attorney of the county within which the alleged crime occurred. If within twenty days after the receipt of such communication the committing court makes no written objection to such discharge, the physician in charge may discharge such person. In the event of a written objection by the committing court, a hearing shall be held by a court of record within ten days thereafter and the person shall be discharged unless the court of record conducts a hearing and makes the findings required by section four, article five of this chapter.
§27-6A-5. Periodic review of person found incompetent to stand trial.

The periodic review of a person who has been found incompetent to stand trial shall include a clinical opinion with regard to the person's competence to stand trial, which opinion shall be made a part of the patient's medical record. If any person previously found incompetent to stand trial is later determined to be competent, the director of mental health shall notify the court of record, which shall promptly hold a hearing on the person's competency to stand trial. Any person found incompetent to stand trial may at any time petition the court of record for a hearing on his competency. Whenever a hearing is held and the court of record finds that the person is competent to stand trial, his commitment, if any, to a mental health facility shall be terminated and the court of record shall order his return to the custody of the sheriff for trial. However, if the person requests continued care and treatment during the pendency of the criminal proceedings against him and the mental health facility agrees to provide such care and treatment, the court of record may order the further hospitalization of such person.

§27-6A-6. Judicial hearing of defendant's defense other than not guilty by reason of mental illness.

If a defendant who has been found incompetent to stand trial believes that he can establish a defense of not guilty to the charges pending against him, other than the defense of not guilty by reason of mental illness, mental retardation or addiction, he may request an opportunity to offer a defense thereto on the merits before the court which has criminal jurisdiction. If the person is unable to obtain legal counsel, the court of record shall appoint counsel for the defendant to assist him in supporting the request by affidavit or other evidence. If the court of record in its discretion grants such a request, the evidence of the defendant and of the state shall be heard by the court of record sitting without a jury. If after hearing such petition the court of record finds insufficient evidence to support a conviction, it shall dismiss the indictment and order the release of the defendant from criminal custody. The order may be stayed for ten days to
allow institution of civil proceedings pursuant to article five of this chapter.


Notwithstanding any finding of incompetence to stand trial under the provisions of this article, the court of record may at any stage of the criminal proceedings allow a defendant to be released with or without bail.

§27-6A-8. Credit for time; expenses.

(a) If a person is convicted of a crime, any time spent in involuntary confinement in a mental health facility as a result of being charged with such crimes, shall be credited to this sentence.

(b) All medical and psychological expenses attendant upon these proceedings shall be paid by the county court of the 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. Appraisement 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.

(a) The county court of a person’s residence may appoint a committee for a person found to be incompetent. Any finding of incompetency under this article shall be made separately and at a different proceeding from any finding of mental illness, mental retardation or addiction under article four or five of this chapter.

(b) Proceedings for the appointment of a committee for an alleged incompetent may be commenced by the filing of a verified petition of a person setting forth the facts showing the incompetency of an individual with the county court. Upon receipt of the petition, the clerk of the county court shall give notice of the hearing thereon to the individual and to the in-
MENTALLY ILL PERSONS

13 individual's spouse, or if the individual does not have a spouse, to the individual's adult next of kin. Such notice and petition shall be served upon the individual at least ten days prior to hearing thereon and shall state the purpose of the hearing and advise the individual of his rights with respect thereto. The individual shall appear at the hearing, to testify, to present and cross-examine witnesses. In the event that the individual cannot retain counsel, the county court shall appoint a competent attorney for the individual. The individual shall have the right to an examination by an independent expert of his choice and testimony from such expert as a medical witness on his behalf. A transcript shall be made of all proceedings and made available to the individual or his counsel within thirty days, if the same is requested for purposes of appeal. In any case wherein an indigent person seeks an appeal, the circuit court shall, by order entered of record, authorize and direct the court reporter to furnish a transcript of the hearing and the costs of such transcript shall be paid by the county wherein the hearing was held.

(c) Upon completion of the hearing and upon the evidence presented therein the county court may find that (i) the individual is unable to manage his business affairs, or (ii) the individual is unable to care for his physical well-being, or (iii) both, and is therefore incompetent; or (iv) that the person is competent. Evidence of mere poor judgment or of a different life style shall not be competent evidence upon which to base a finding of incompetency.

(1) "Unable to manage one's business affairs" means the inability to know and appreciate the nature and effect of his business transactions, notwithstanding the fact that he may display poor judgment.

(2) "Unable to care for one's physical well-being" means the substantial risk of physical harm to himself as evidenced by conduct demonstrating that he is dangerous to himself, notwithstanding the fact that he may display poor judgment.

If the county court finds the person to be competent, the proceedings shall be dismissed. No appointment of a committee shall be made on evidence which is uncorroborated by the testimony of a medical expert.
(d) The extent of the committee's authority shall be specified in the order of the county court. No authority of a committee shall extend beyond what is necessary for the protection of the individual. A finding of inability to care for one's physical well-being shall entitle the committee to custody of the individual, except when the individual is under a commitment order to a mental health facility, but only to the extent as is necessary for the protection of the individual.

(e) An individual found incompetent pursuant to subsection (c) of this section shall have the right to an appeal and hearing thereon in the circuit court of the county. The judge shall hear the matter on appeal as provided in article three, chapter fifty-eight of this code or order a hearing de novo on the matter.

(f) The individual or any person may apply to the county court in the manner provided by subsection (b) of this section for termination of his committee at any time and appeal from a determination thereon in the manner provided by this section; or in the alternative, the individual may seek such termination by habeas corpus.

§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 committee, shall take from the appointee a bond in such penalty and with such surety as it shall deem sufficient, with condition that the person so appointed will well and truly account for and pay over to the person entitled thereto all property and moneys which may come into his hands by virtue of such appointment and with such other conditions as the county court may require. The committee shall be entitled to reasonable compensation for all services performed on behalf of the individual. If any person so appointed as a committee refuses the trust or shall fail for ten days succeeding his appointment to give bond, as aforesaid, the county court on the motion of any party interested, or at its own instance, may appoint some other person as committee, taking from him bond as above provided, or may commit the estate of the person to the sheriff of the county, who shall act as committee
§27-11-3. Appraisement of estate.

The county court, whenever any committee is appointed for a person unable to manage his business affairs, shall appoint appraisers and cause to be made, returned and recorded, an appraisement of the property, both real and personal, of any such person in the same manner, to the same extent, within the same time, and subject to the same regulations and conditions as required by law for the estate of a deceased person.

§27-11-4. Powers and duties of committee generally.

The committee appointed for any such person unable to manage his business affairs shall take possession of his estate, and may sue or be sued in respect thereto, and for the recovery of debts due to and from such person. The committee shall preserve such estate and manage it to the best advantage, shall apply the personal estate, or so much thereof as may be necessary to the payment of the debts of such person, and the rents and profits of the residue of his estate, real and personal, and the residue of the personal estate, or so much as may be necessary, to the maintenance of such person, and of his family, if any, and shall make due accounting as required by law, and surrender the estate, or as much as he may be accountable for, to such person in case he shall be deemed competent, or, in case of his death, without having been restored to competence, the real estate to his heirs or devisees, and the personal estate to his executors or administrators.

§27-11-5. Authority of committee to mortgage, lease or sell realty.

If the personal estate of such person be insufficient for the discharge of his debts, or if such estate or the residue thereof after payment of the debts, and the rents and profits of his real estate, be insufficient for his maintenance and that of his family, if any, the committee of such person may 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 hun-
dred 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 cer-

tification 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; re-
quirements 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 pen-
alties; establishing a board of miner training, education
and certification; declarations of legislative findings and
purposes; board powers; methods of appointment; meet-
ings; 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.

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 seventy-six, certification shall be required of all surface miners in accordance with the provisions of articles six and six-a, chapter twenty-two of this code.

CHAPTER 22. MINES AND MINERALS.

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 persons are employed in a period of twenty-four hours, the operator shall employ at least one person certified in accordance with the provisions of article six-a of this chapter as a mine foreman—fire boss. Each applicant for certification as a mine foreman—fire boss shall, at the time he is issued a certificate of competency: (1) Be a resident or employed in a mine in this state; (2) have had
at least five years' experience in the underground working, ventilation, and drainage of a coal mine, which shall include at least eighteen months' experience on or at a working section of an underground mine or be a graduate of the School of Mines at West Virginia University or of another accredited mining engineering school and have had at least two years' practical experience in an underground mine, which shall include at least eighteen months' experience on or at a working section of an underground mine; and (3) have demonstrated his knowledge of dangerous mine gases and their detection, mine safety, first aid, safety appliances, state and federal mining laws and regulations and other subjects by completing such training, education and examinations as may be required of him under article six-a of this chapter.

(b) In mines in which the operations are so extensive that the duties devolving upon the mine foreman—fire boss cannot be discharged by one man, one or more assistant mine foreman—fire boss may be designated. Such persons shall act under the instruction of the mine foreman—fire boss, who shall be responsible for their conduct in the discharge of their duties. Each assistant so designated shall be certified under the provisions of article six-a of this chapter. Each applicant for certification as assistant mine foreman—fire boss shall, at the time he is issued a certificate of competency, possess all of the qualifications required of a mine foreman—fire boss: Provided, That he shall at the time he is certified be required to have at least three years' experience in the underground working, ventilation and drainage of coal mines, which shall include eighteen months on or at a working section of an underground mine or be a graduate of the School of Mines at West Virginia University or of another accredited mining engineering school and have had twelve months' practical experience in an underground mine, all of which shall have been on or at a working section.

(c) Until the first day of January, one thousand nine hundred seventy-seven, in mines in which the operations are so extensive that all the duties devolving upon the
mine foreman—fire boss cannot be discharged by one man, competent persons having had at least three years' experience in coal mines may be designated as assistants, who shall act under the mine foreman—fire boss instructions and the mine foreman—fire boss shall be responsible for their conduct in the discharge of their duties under such designation.

(d) Any person holding a mine foreman's certificate issued by any other state may act in the capacity of mine foreman—fire boss in any mine in this state until the next regular mine foreman—fire boss examination held by the department, but not to exceed a maximum of ninety days.

(e) After the effective date of this act, all duties heretofore performed by persons certified as mine foreman, assistant mine foreman or fire boss shall be performed by persons certified as underground mine foreman—fire boss or an assistant underground mine foreman—fire boss.

After the effective date of this act, every certificate heretofore issued to an assistant mine foreman or fire boss shall be deemed to be of equal value to a certificate issued hereafter to an assistant mine foreman—fire boss, and every certificate heretofore issued to a mine foreman shall be deemed to be of equal value to a certificate 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 apprenticeship 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 surface 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 underground miners.

1 Except as hereinafter provided, no person shall work
or be employed for the purpose of performing normal duties as a surface or underground miner in any mine in this state unless he holds at the time he performs such duties a certificate of competency and qualification or a permit of apprenticeship issued under the provisions of this article.

§22-6-2. Definitions.

For purposes of this article the term "surface miner" means a person employed at a "surface mine," as that term is defined in section two, article six, chapter twenty of this code.

For purposes of this article, the term "underground miner" means an underground worker in a bituminous coal mine, except as hereinafter provided.

For purposes of this article, the term "board of miner training, education and certification" means that board established in article six-a of this chapter.

§22-6-3. Permit of apprenticeship—Underground miner.

A permit of apprenticeship—underground miner shall be issued by the director to any person who has demonstrated by examination a knowledge of the subjects and skills pertaining to employment in underground mines, including, but not limited to general safety, first aid, miner and operator rights and responsibilities, general principles of electricity, general mining hazards, roof control, ventilation, mine health and sanitation, mine mapping, state and federal mining laws and regulations and such other subjects as may be required by the board of miner training, education and certification: Provided, that each applicant for said permit shall complete a program of education and training of at least eighty hours, which shall be determined by the board of miner training, education and certification and provided for and implemented by the director of the department of mines: Provided further, That if a sufficient number of qualified applicants having successfully completed the state training provided by the state department of mines are not available, the operator may request approval from the di-
rector to conduct his own preemployment training program so long as such training adequately covers the minimum criteria determined by the board and such trainees shall be eligible for the same certification as provided for trainees undergoing training provided by the state.

§22-6-4. Permit of apprenticeship—Surface miner.

A permit of apprenticeship—surface miner, shall be issued by the director to any person who has demonstrated by examination a knowledge of the subjects and skills pertaining to employment in the surface mining industry, including, but not limited to general safety, first aid, miner and operator rights and responsibilities, general principles of electricity, health and sanitation, heavy equipment safety, high walls and spoil banks, haulage, welding safety, tipple safety, state and federal mining laws and regulations and such other subjects as may be required by the board of miner training, education and certification: Provided, That each applicant for said permit shall complete a program of education and training of at least forty hours, which program shall be determined by the board of miner training, education and certification and provided for and implemented by the director of the department of mines: Provided further, That if a sufficient number of qualified applicants having successfully completed the state training provided by the state department of mines are not available, the operator may request approval from the director to conduct his own preemployment training program so long as such training adequately covers the minimum criteria determined by the board and such trainees shall be eligible for the same certification as provided for trainees undergoing training provided by the state.

§22-6-5. Supervision of apprentices.

Each holder of a permit of apprenticeship shall be known as an apprentice. Any miner holding a certificate of competency and qualification may have one person working with him, and under his direction, as an apprentice, and any mine foreman—fire boss or assistant mine foreman—fire boss may have not more than five persons
working with him and under his immediate supervision
and direction, as apprentices, for the purpose of learning
and being instructed in the duties and calling of mining.

Every apprentice working at a surface mine shall be at
all times under the supervision and control of at least one
person who holds a certificate of competency and qualifi-
cation: Provided, That whenever the director determines
that a person trained, qualified or certified by the federal
government to act in a supervisory capacity is competent
to supervise five or more surface mine apprentices, such
person may have not more than five apprentices working
with him and under his supervision and direction.

In all cases, it shall be the duty of every mine operator
who employs apprentices to insure that such persons are
effectively supervised and to instruct such persons in safe
mining practices. Each apprentice shall wear a red hat
which identifies him as such while employed at or near
a mine. No person shall be employed as an apprentice
for a period in excess of eight months, except that in the
event of illness or injury, time extensions shall be per-
mitted as established by the director of the department
of mines.

§22-6-6. Certificate of competency and qualification—Under-
ground or surface miner.

A certificate of competency and qualification as an un-
derground miner or as surface miner shall be issued by
the director to any person who has at least six months’
total experience as an apprentice and demonstrated his
competence as a miner by successful completion of an
examination given by the director or his representative
in a manner and place to be determined by the board of
miner training, education and certification: Provided,
That all examinations shall be conducted in the English
language and shall be of a practical nature, so as to
determine the competency and qualifications of the appli-
cant to engage in the mining of coal with reasonable
safety to himself and his fellow employees: Provided
further, That notice of the time and place of such exami-
nation shall be given to management at the mine, to the
local union thereat if there is a local union, and notice shall also be posted at the place or places in the vicinity of the mine where notices to employees are ordinarily posted. Examinations shall also be held at such times and places, and after such notice, as the board finds necessary to enable all applicants for certificates to have an opportunity to qualify for certification.

§22-6-7. Refusal to issue certificate; appeal.

1 If the director or his representative finds that an applicant is not qualified and competent, he shall so notify the applicant not more than ten days after the date of examination.

5 Any applicant aggrieved by an action of the director in failing or refusing to issue a certificate of qualification and competency may, within ten days of notice of the action complained of, appeal to the director who shall promptly give the applicant a hearing and either affirm 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 by the department of mines of this state, entitling them to act as mine foreman—fire bosses; or assistant mine foreman—fire bosses; shall be eligible to engage at any time as miners in the mines of this state. Supervisory and technically trained employees of the operator, whose work contributes only indirectly to mine operations, shall not be required to possess a miners' certificate.

9 Notwithstanding the provisions of this article, every person working as a surface miner in this state on or before the first day of July, one thousand nine hundred and seventy-four shall, upon application to the director, be issued a certificate of competency and qualification.

§22-6-9. Violations; penalties.

1 Any person who knowingly works in or at a mine without a certificate issued under the provisions of this article, any person who knowingly employs an uncertified miner to work in or at a coal mine in this state, or, any operator who fails to insure the supervision of miners
holding a certificate of apprenticeship as provided for in section five of this article, shall be guilty of a mis-
demeanor, and, upon conviction thereof, shall be fined not less than fifty dollars nor more than five hundred
dollars.

ARTICLE 6A. BOARD OF MINER TRAINING, EDUCATION AND CERTIFICATION.


§22-6A-2. Declaration of legislative findings and policy.


§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.


This article shall be cited as "The West Virginia Miner Training, Education and Certification Act."

§22-6A-2. Declaration of legislative findings and policy.

The Legislature hereby finds and declares that:

(a) The continued prosperity of the coal industry is of primary importance to the state of West Virginia;

(b) The highest priority and concern of this Legislature and all in the coal mining industry must be the health and safety of the industry's most valuable resource —the miner;

(c) A high priority must also be given to increasing the productivity and competitiveness of the mines in this state;

(d) An inordinate number of miners, working on both the surface in surface mining and in and at underground mines, are injured during the first few months of their experience in a mine;

(e) These injuries result in the loss of life and serious injury to miners and are an impediment to the future growth of West Virginia's coal industry;

(f) Injuries can be avoided through proper miner training, education and certification;
(g) Mining is a technical occupation with various specialties requiring individualized training and education; and

(h) It is the general purpose of this article to:

1. Require adequate training, education and meaningful certification of all persons employed in coal mines;
2. Establish a board of miner training, education, and certification and empower it to require certain training and education of all prospective miners and miners certified by the state;
3. Authorize a stipend for prospective miners enrolled in this state's miner training, education and certification program;
4. Direct the director of the department of mines to apply and implement the standards set by the board of miner training, education and certification by establishing programs for miner and prospective miner education and training; and
5. Provide for a program of continuing miner education for all categories of certified miners.


Unless the context in which a word or phrase appears clearly requires a different meaning, the words defined in section one, article one of this chapter shall have when used in this article the meaning therein assigned to them. These words include but are not limited to the following:

Department, director of the department of mines, mine inspector, operator, miner, shot firer and certified electrician.

"Board" means the board of miner training, education and certification established by section four of this article.

"Mine" means any mine, including a "surface mine," as that term is defined in subsection (k), section two, article six, chapter twenty and a "mine" as that term is defined in section one, article one, chapter twenty-two of this code.
§22-6A-4. Board of miner training, education and certification created; membership, method of appointment, terms.

(a) There is hereby created a board of miner training, education and certification, which shall consist of seven members, who shall be appointed in the following manner:

(1) One member shall be appointed to represent the viewpoint of surface mine operators in this state. When such member is to be appointed, the governor shall request from the major association representing surface coal operators in this state a list of three nominees to the board. The governor shall select from said nominees one person to serve on the board. For purposes of this subsection, the major association representing the surface coal operators in this state shall be deemed to be that association, if any, which represents surface mine operators accounting for over one half of the coal produced in surface mines in this state in the year prior to that year in which the appointment is made.

(2) Two members shall be appointed to represent the interests of the underground operators of this state. When said members are to be appointed, the governor shall request from the major association representing the underground coal operators in this state a list of six nominees to the board. The governor shall select from said nominees two persons to serve on the board. For purposes of this subsection, the major association representing the underground operators in this state shall be deemed to be that association, if any, which represents underground operators accounting for over one half of the coal produced in underground mines in this state in the year prior to that year in which the appointments are made.

(3) Three members shall be appointed who can reasonably be expected to represent the interests of the working miners in this state. If the major employee organization representing coal miners in this state is divided into administrative districts, the employee orga-
nization of each district shall, upon request by the governor, submit a list of three nominees for membership on
the board. If such major employee organization is not so
divided into administrative districts, such employee or-
ganization shall, upon request by the governor, submit
a list of twelve nominees for membership on the board.
The governor shall make such appointments from the
persons so nominated: Provided, That in the event nom-
inations are made by administrative districts, not more
than one member shall be appointed from the nominees
of any one district unless there are less than three such
districts in this state.

(4) The seventh member of the board, who shall
serve as chairman, shall be a person selected and agreed
upon by the six persons appointed by the governor.

(5) All appointments made by the governor under this
section shall be with the advice and consent of the
Senate: Provided, That persons so appointed while the
Senate of this state is not in session shall be permitted
to serve up to one year in an acting capacity, or until
the next session of the Legislature, whichever is less.

(b) The board hereby established shall be appointed
by the governor within three months of the effective
date of this act. As soon as the members of the board are
appointed, the director of the department of mines shall
call an organizational meeting of the board. At said
meeting, all of the board members then appointed shall
select a seventh member of the board to serve as chair-
man and draw lots to determine the length of the term
they and the chairman shall serve. Three members shall
serve for three years; two members shall serve for two
years; and two members shall serve for one year. There-
after, members shall serve for a term of three years. As
so organized, the board shall meet at the call of the
chairman, at the call of the director, or upon the request
of any two members of the board: Provided, That no
meeting of the board for any purpose shall be conducted
unless the board members are notified at least five days
in advance of a proposed meeting. In cases of an 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-
ground mine foreman—fire boss, shot firer, mine electrician and belt examiner.

(b) The board may require certification in other miner occupational specialties: Provided, That no new specialty may be created by the board unless certification in a new specialty is made desirable by action of the federal government requiring certification in a specialty not enumerated in this code.

(c) The board may establish criteria and standards for a program of pre-employment education and training to be required of miners working on the surface at underground mines who are not certified under the provisions of this article or any other provision of this code.

(d) The board shall set minimum standards for a program of continuing education and training of certified persons and other miners on an annual basis. Prior to issuing said standards, the board shall conduct public hearings at which the parties that may be affected by its actions may be heard. Such education and training shall be provided in a manner determined by the director to be sufficient to meet the standards established by the board.

(e) The board may, in conjunction with any state, local or federal agency or any other person or institution, provide for the payment of a stipend to prospective miners enrolled in one or more of the programs of miner education, training and certification provided for in this article or any other provision of this code.

(f) The board may also from time to time conduct such hearings and other oversight activities as may be required to insure full implementation of programs established by it.

(g) Nothing in this article shall be deemed to empower the board to revoke or suspend any certificate issued by the director or the department of mines.

(h) The board may, upon its own motion or whenever requested so to do by the director, deem two certificates issued by this state to be of equal value or deem training provided or required by federal agencies to be sufficient
§22-6A-6. Duties of director and department.

The director shall be empowered to promulgate, pursuant to chapter twenty-nine-a of this code, such reasonable rules and regulations as are necessary to establish a program to implement the provisions of this article. Such program shall include, but not be limited to implementation of a program of instruction in each of the miner occupational specialties and the conduct of examinations to test each applicant's knowledge and understanding of the training and instruction which he is required to have prior to the receipt of a certificate.

The director is authorized and directed to utilize state mine inspectors, mine safety instructors, the state mine foreman examiner, private and public institutions of education and such other persons as may be available to him in implementing the program of instruction and examinations.

The director may, at any time, make such recommendations or supply such information to the board as he may deem appropriate.

The director is authorized and directed to utilize such state and federal moneys and personnel as may be available to the department for educational and training purposes in the implementation of the provisions of this article.

CHAPTER 68

(H. B. 692—By Mr. Kopp and Mr. Potter)

[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 law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

INTERSTATE MINING COMPACT

Article I. Findings and Purposes.

(a) The party states find that:

(1) Mining and the contributions thereof to the economy and well-being of every state are of basic significance.

(2) The effects of mining on the availability of land, water and other resources for other uses present special problems which properly can be approached only with due consideration for the rights and interests of those engaged in mining, those using or proposing to use these resources for other purposes and the public.

(3) Measures for the reduction of the adverse effects of mining on land, water and other resources may be costly and the devising of means to deal with them are of both public and private concern.

(4) Such variables as soil structure and composition, physiography, climatic conditions and the needs of the public make impracticable the application to all mining areas of a single standard for the conservation, adaption or restoration of mined land, or the development of mineral and other natural resources, but justifiable requirements of law and practice relating to the effects of mining on land, water and other resources may be reduced in equity or effectiveness
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.

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
so as to make them suitable for commercial, industrial or
construction use; but shall not include those aspects of
deep mining not having significant effect on the surface,
and shall not include excavation or grading when conducted
solely in aid of on-site farming or construction.

(b) "State" means a state of the United States, the
District of Columbia, the commonwealth of Puerto Rico or a
territory or possession of the United States.

Article III. State Programs.

Each party state agrees that within a reasonable time
it will formulate and establish an effective program for the
conservation and use of mined land, by the establishment of
standards, enactment of laws or the continuing of the same
in force, to accomplish:

(a) The protection of the public and the protection of
adjoining and other landowners from damage to their lands
and the structures and other property thereon resulting from
the conduct of mining operations or the abandonment or
neglect of land and property formerly used in the conduct of
such operations.

(b) The conduct of mining and the handling of refuse
and other mining wastes in ways that will reduce adverse
effects on the economic, residential, recreational or aesthetic
value and utility of land and water.

(c) The institution and maintenance of suitable programs
for adaption, restoration and rehabilitation of mined lands.

(d) The prevention, abatement and control of water, air
and soil pollution resulting from mining, present, past and
future.

Article IV. Powers.

In addition to any other powers conferred upon the
interstate mining commission, established by Article V of
this compact, such commission shall have power to:

(a) Study mining operations, processes and techniques
for the purpose of gaining knowledge concerning the effects
of such operations, processes and techniques on land, soil,
(b) Study the conservation, adaptation, improvement and restoration of land and related resources affected by mining.

(c) Make recommendations concerning any aspect or aspects of law or practice and governmental administration dealing with matters within the purview of this compact.

(d) Gather and disseminate information relating to any of the matters within the purview of this compact.

(e) Cooperate with the federal government and any public or private entities having interests in any subject coming within the purview of this compact.

(f) Consult, upon the request of a party state and within resources available therefor, with the officials of such state in respect to any problem within the purview of this compact.

(g) Study and make recommendations with respect to any practice, process, technique or course of action that may improve the efficiency of mining or the economic yield from mining operations.

(h) Study and make recommendations relating to the safeguarding of access to resources which are or may become the subject of mining operations to the end that the needs of the economy for the products of mining may not be adversely affected by unplanned or inappropriate use of land and other resources containing minerals or otherwise connected with actual or potential mining sites.

Article V. The Commission.

(a) There is hereby created an agency of the party states to be known as the “Interstate Mining Commission,” hereinafter called “the commission.” The commission shall be composed of one commissioner from each party state who shall be the governor thereof. Pursuant to the laws of his party state, each governor shall have the assistance of an advisory body (including membership from mining industries, conservation interests and such other public and private
interests as may be appropriate) in considering problems relating to mining and in discharging his responsibilities as the commissioner of his state on the commission. In any instance where a governor is unable to attend a meeting of the commission or perform any other function in connection with the business of the commission, he shall designate an alternate from among the members of the advisory body required by this paragraph, who shall represent him and act in his place and stead. The designation of an alternate shall be communicated by the governor to the commission in such manner as its bylaws may provide.

(b) The commissioners shall be entitled to one vote each on the commission. No action of the commission making a recommendation pursuant to Articles IV (c), IV (g) and IV (h) or requesting, accepting or disposing of funds, services or other property pursuant to this paragraph, Articles V (g), V (h) or VII shall be valid unless taken at a meeting at which a majority of the total number of votes on the commission is cast in favor thereof. All other action shall be by a majority of those present and voting: Provided, That action of the commission shall be only at a meeting at which a majority of the commissioners, or their alternates, is present. The commission may establish and maintain such facilities as may be necessary for the transacting of its business. The commission may acquire, hold and convey real and personal property and any interest therein.

(c) The commission shall have a seal.

(d) The commission shall elect annually, from among its members, a chairman, a vice chairman, and a treasurer. The commission shall appoint an executive director and fix his duties and compensation. Such executive director shall serve at the pleasure of the commission. The executive director, the treasurer and such other personnel as the commission shall designate shall be bonded. The amount or amounts of such bond or bonds shall be determined by the commission.

(e) Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director with the approval of the commission, shall appoint, remove or discharge such personnel as may be necessary for
the performance of the commission's functions, and shall fix the duties and compensation of such personnel.

(f) The commission may establish and maintain, independently or in conjunction with a party state, a suitable retirement system for its employees. Employees of the commission shall be eligible for social security coverage in respect of old age and survivor's insurance: Provided, That the commission take such steps as may be necessary pursuant to the laws of the United States to participate in such program of insurance as a governmental agency or unit. The commission may establish and maintain or participate in such additional programs of employee benefits as it may deem appropriate.

(g) The commission may borrow, accept or contract for the services of personnel from any state, the United States or any other governmental agency, or from any person, firm, association or corporation.

(h) The commission may accept for any of its purposes and functions under this compact any and all donations and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any state, the United States or any other governmental agency, or from any person, firm, association or corporation, and may receive, utilize and dispose of the same. Any donation or grant accepted by the commission pursuant to this paragraph or services borrowed pursuant to paragraph (g) of this article shall be reported in the annual report of the commission. Such report shall include the nature, amount and conditions, if any, of the donation, grant or services borrowed and the identity of the donor or lender.

(i) The commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto with the appropriate agency or officer in each of the party states.

(j) The commission annually shall make to the governor, Legislature and advisory body required by Article V (a) of each party state or report covering the activities of the com-
mission for the preceding year, and embodying such recom-
mandations as may have been made by the commission.
The commission may make such additional reports as it may
deem desirable.

Article VI. Advisory, Technical and Regional Committees.
The commission shall establish such advisory, technical
and regional committees as it may deem necessary, membership
on which shall include private persons and public officials,
and shall cooperate with and use the services of any such
committees and the organizations which the members represent
in furthering any of its activities. Such committees may be
formed to consider problems of special interest to any party
states, problems dealing with particular commodities or types
of mining operations, problems relating to reclamation, devel-
opment or use of mined land or any other matters of concern
to the commission.

Article VII. Finance.
(a) The commission shall submit to the governor or de-
signated officer or officers of each party state a budget of
its estimated expenditures for such periods as may be re-
quired by the laws of that party state for presentation to
the legislature thereof.
(b) Each of the commission’s budgets of estimated ex-
penditures shall contain specific recommendations of the
amount or amounts to be appropriated by each of the party
states. The total amount of appropriations requested under
any such budget shall be apportioned among the party states
as follows: One half in equal shares, and the remainder in
proportion to the value of minerals, ores and other solid
matter mined. In determining such values, the commission
shall employ such available public source or sources of
information as, in its judgment, present the most equitable
and accurate comparisons among the party states. Each of
the commission’s budgets of estimated expenditures and re-
quests for appropriations shall indicate the source or sources
used in obtaining information concerning value of minerals,
ores and other solid matter mined.
(c) The commission shall not pledge the credit of any
party state. The commission may meet any of its obligations
(d) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the commission shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become part of the annual report of the commission.

(e) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

(f) Nothing contained herein shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

Article VIII. Entry Into Force and Withdrawal.

(a) This compact shall enter into force when enacted into law by any four or more states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.
Article IX. Effect on Other Laws.

Nothing in this compact shall be construed to limit, repeal or supersede any other law of any party state.

Article X. Construction and Severability.

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating herein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

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.

(a) After the effective date of this section, no mine shall be opened or reopened unless prior approval has been obtained from the director of the department of mines, which approval shall not be unreasonably withheld. The operator shall pay for such approval a fee of ten dollars, which payment shall be tendered with the operator's application for such approval: Provided, That mines producing coal solely for the operator's use shall be issued a permit without charge if coal production will be less than fifty tons a year.

(b) Within thirty days after January first of each year, the operator of each mine holding a certificate evidencing approval of the director to open a mine, shall apply for the extension of such certificate of approval for an additional year. Such approval, evidenced by a certificate of the director, shall be granted as a matter of right and without charge if, at the time such application is made, the operator is in compliance with the provisions of section seventy-two of this article. Applications for extension of such certificates of approval not submitted within the time required shall be processed as an application to open or reopen a mine and shall be accompanied by a fee of ten dollars.

(c) Certificates of approval issued pursuant to this section shall not be transferable.

(d) The provisions of this section shall be printed on the reverse side of every certificate issued hereunder.

(e) On or after the first day of July, one thousand nine hundred seventy-one, no mine shall be opened or reopened unless a surface disturbed reclamation bond in the amount of five hundred dollars per acre is submitted to the department of mines for the removal of unused surface structures and the sealing of abandoned mine openings. The district mine inspector shall be contacted for a preinspection of the area proposed for underground mining prior to the issuance of
any new opening approval. The above-mentioned bond shall
go into a separate fund and must be submitted separate,
when application is made for the issuance of a deep-mine
permit.

(f) On or after the first day of July, one thousand nine
hundred seventy-four, no mine shall be opened or reopened
where the total area of surface disturbance at the outcrop
of the coal seam is greater than four hundred lineal feet
and where coal is removed or to be removed commercially
or for commercial purposes from this area unless a surface-
mine reclamation bond as required in articles six and six-a,
chapter twenty of the code be first obtained covering the
area to be disturbed.

CHAPTER 70
(H. B. 1178—By Mr. Kinsaid 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 regis-
tration; and providing for the temporary use of a facsimile of a
vehicle registration plate in the event the registration plate origi-
nally 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 SU-
SPENSION 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-
mit to be operated, upon any highway any vehicle required to
be registered hereunder unless there shall be attached thereto
and displayed thereon or shall be in the possession of the
operator when and as required by this chapter a valid registration card and registration plate or plates issued therefor by the department for the current registration year except as otherwise expressly permitted in this chapter. Any violation of this section is a misdemeanor.

In the event that the registration plate or plates originally issued are lost, destroyed or stolen, a temporary facsimile of the plate or plates, showing the number of the same, may be attached to the vehicle by the owner for a period of not more than fifteen days, or until a new plate or plates are issued by the department whichever is earlier: Provided, That no such facsimile shall be used and no such vehicle shall be driven upon the highways of this state, until the owner shall have notified in writing the department of public safety of the loss of such registration plate or plates.

CHAPTER 71

(H. B. 686—By Mr. Shafer 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.

The United States government, the state, or any political subdivision thereof, shall be exempted from the payment of any fee on account of registration of any vehicle owned or
operated by the United States government, the state, or any political subdivision thereof, as the case may be. The proper representative of the federal government, the state, or any such political subdivision thereof, shall make, or cause to be made, on the form provided for that purpose, an application for registration of such vehicle so owned and operated, and the registration plate or plates issued for such vehicle shall be displayed or caused to be displayed as provided in this chapter. Fire apparatus owned by the United States government, the state, or any political subdivision thereof, or by an incorporated volunteer fire department organized for protection of community property shall be exempt from all the provisions of this article, pertaining to the payment of registration fees. Any ambulance used exclusively for charitable purposes, for which use there is no charge, shall be exempt from the payment of all registration fees required by this article. Any disabled veteran owning an automobile or other conveyance under the provisions of Public Law 663 of the 79th Congress of the United States or Public Law 187 of the 82nd Congress of the United States, or Public Law 77 of the 90th Congress of the United States shall be exempt from the payment of any such fee on account of registration of any motor vehicle owned by such disabled veteran. This exemption shall not apply to such disabled veterans owning motor vehicles used for hire, but such exemption shall be in force and effect for such motor vehicles owned by such disabled veterans 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.

There is hereby created a drivers' licensing advisory board, which shall consist of five members to be appointed by the governor, by and with the advice and consent of the Senate, for terms of three years, except that as to the members first appointed, two shall be appointed for a term of three years, two shall be appointed for a term of two years, and one shall be appointed for a term of one year, all from the first day of July, one thousand nine hundred seventy-four. All vacancies occurring on the board shall be filled by the governor, by and with the advice and consent of the Senate. One member of the board shall be an optometrist duly registered to practice optometry in this state and the other four members of the board shall be physicians or surgeons duly licensed to practice medicine or surgery in this state. The governor shall appoint persons qualified to serve on the board who, in his opinion, will best serve the work and function of the board.

The board shall advise the commissioner of motor vehicles as to vision standards and all other medical criteria of whatever kind or nature relevant to the licensing of persons to operate motor vehicles under the provisions of this chapter. The board shall, upon request, advise the commissioner of motor vehicles as to the mental or physical fitness of an applicant for, or the holder of, a license to operate a motor vehicle. The board shall furnish the commissioner with all such medical standards, statistics, data, professional information and advice as he may reasonably request.
The members of the board shall receive an honorarium of thirty-five dollars for each day actually devoted to the business of the board, and shall be reimbursed for all reasonable and necessary expenses actually incurred by them in the discharge of their official duties.

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.

When any motor vehicle driver or adult pedestrian dies in a motor vehicle accident in this state or dies within four hours after having been involved in a motor vehicle accident in this state, the physician in attendance, or law-enforcement officer having knowledge of such death, or the funeral director, or any other person present when such death occurred shall immediately report such death to the medical examiner of the county in which such death occurred.

Upon receipt of such notice, the medical examiner shall take charge of the dead body and shall conduct, or shall cause to be conducted, within twelve hours after receiving such notice and before the dead body is embalmed, a blood test to determine the presence and percentage concentration of alcohol in the blood of such dead body.

The blood test required under this section shall be conducted only by a person qualified to conduct an autopsy under article twelve, chapter sixty-one of this code, or by a doctor of medicine, doctor of osteopathy, registered nurse, trained medical technician at the place of his employment, or county coroner who is deemed qualified by the commission on post-mortem examinations to conduct such blood test.

Any person who is to conduct a blood test under the provisions of this section is hereby expressly authorized to withdraw blood from the dead body in the quantity necessary to conduct such blood test. Any person withdrawing blood from the dead body and testing such blood and any hospital or clinic in which such blood is withdrawn and tested under the provisions of this section shall be immune from all civil and criminal liability which might otherwise be imposed.

Any person conducting a blood test under the provisions
of this section shall receive a standardized fee in the amount
determined by the commission on post-mortem examinations,
which fee shall be paid from funds appropriated to the com-
mission on post-mortem examinations.

Nothing contained in this section shall be construed to
preclude the taking of a blood test by any other person having
the right to take such test or cause such test to be taken
while the medical examiner has charge of the body.

§17C-5B-2. To whom and how county medical examiners report
results of blood tests; such reports not admissible as
evidence; use of reports only for statistical and high-
way safety purposes.

Each county medical examiner shall immediately report the
results of each blood test conducted under the authority of
section one of this article by him, or conducted at his request,
to the chief medical examiner of the office of medical exami-
nations and to the department of public safety. The results of
such blood test and report thereof shall be used only for
record-keeping and statistical purposes. No results of such
blood test or any report thereof shall be admissible in evi-
dence in any action or proceeding of any kind in any court or
before any tribunal, board, agency or person.

The department of public safety shall compile the data from
all such reports submitted to it on a monthly basis. The de-
partment shall forward such compilations to the governor's
highway safety administration and the department of motor
vehicles. Such compilations shall be only for statistical pur-
poses and highway safety information and shall not disclose
or reveal in any manner the identity of any dead person whose
blood was tested under the provisions of section one of this
article.

The department of public safety, the governor's highway
safety administration and department of motor vehicles shall
make use of such compilations in a manner to provide accurate
and useful statistical information to government and the public
relative to achieving a reduction in motor vehicle accidents
arising in whole or in part from the imbibing of alcohol by
motor vehicle drivers and adult pedestrians.
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.

(a) All farm machinery and other machinery including all road construction machinery except when guarded by flagmen or flares, designed to operate at twenty-five miles per hour or less, traveling on a public highway during day or night shall display a triangular slow moving emblem on the rear of the vehicle.

(b) The commissioner shall adopt standards and specifications for design and the position of mounting the slow moving vehicle emblem, as well as requirements for certification of conformance. The requirements of such emblem shall be in addition to any lighting devices required by law.

(c) The use of this emblem shall be restricted to the use specified in subsection (a) and its use on any other type of vehicle or as a clearance marker on wide machinery or on stationary objects on the highway is prohibited.
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.

(a) Spot lamps.—Any motor vehicle except a public utility company maintenance vehicle may be equipped with not to exceed one spot lamp and every lighted spot lamp shall be so aimed and used upon approaching another vehicle that no part of the high-intensity portion of the beam will be directed to the left of the prolongation of the extreme left side of the vehicle nor more than one hundred feet ahead of the vehicle. A public utility company maintenance vehicle may be equipped with more than one spot lamp but all lighted spot lamps shall be aimed and used in conformity to the requirements of this subsection.

(b) Fog lamps.—Any motor vehicle may be equipped with not to exceed two fog lamps mounted on the front at a height not less than twelve inches nor more than thirty inches above the level surface upon which the vehicle stands and so aimed that when the vehicle is not loaded none of the high-intensity portion of the light to the left of the center of the vehicle shall at a distance of twenty-five feet ahead project higher than a level of four inches below the level of the center of the lamp from which it comes.
(c) **Auxiliary passing lamp.**—Any motor vehicle may be equipped with not to exceed one auxiliary passing lamp mounted on the front at a height not less than twenty-four inches nor more than forty-two inches above the level surface upon which the vehicle stands and every auxiliary passing lamp shall meet the requirements and limitations set forth in this article.

(d) **Auxiliary driving lamp.**—Any motor vehicle may be equipped with not to exceed one auxiliary driving lamp mounted on the front at a height not less than sixteen inches nor more than forty-two inches above the level surface upon which the vehicle stands and every such auxiliary driving lamp shall meet the requirements and limitations set forth 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 such vehicle to an inspection and test when required to do so by the department of public safety.

2 (b) Every owner or driver, upon receiving a notice as provided in section two of this article shall comply therewith.
and shall within five days secure an official certificate of
inspection and approval which shall be issued in duplicate,
one copy to be retained by the owner or driver and the
other copy to be forwarded to the department. In lieu of
compliance with this paragraph the vehicle shall not be
operated, except as provided in the next succeeding paragraph.

(c) No person shall operate any vehicle after receiving a
notice with reference thereto as above provided, except as
may be necessary to return such vehicle to the residence or
place of business of the owner or driver, or to a garage,
until said vehicle and its equipment has been placed in
proper repair and adjustment and otherwise made to conform
to the requirements of this chapter and a certificate of inspec­
tion and approval shall be obtained as promptly as possible
thereafter.

(d) In the event repair or adjustment of any vehicle or
its equipment is found necessary upon inspection, the owner
of said vehicle may obtain, such repair or adjustment at any
place he may choose, but in every event an official certificate
of inspection and approval must be obtained, otherwise such
vehicle shall not be operated upon the highways of this
state.

(e) "Inspection and test," as used in this article, shall
mean inspections and tests as related to the actual mechanical
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 sec­
tion 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 lawful ordinance provision authorizing, relating to or requiring a special municipal election, the governing body of a municipality shall, upon receipt of a proper petition, as hereinafter in this section specified, requesting a special municipal election for a proper governmental purpose, as specified in such petition, forthwith adopt a resolution or ordinance, where procedure by ordinance is required, calling and providing for a special municipal election for such purpose. Such petition must bear the signatures, written in their own handwriting, of not less than twenty percent of the qualified voters of such municipality. Such special municipal election shall be held, superintended and conducted, and the results thereof ascertained, certified, returned and canvassed in the same manner and by the same individuals as elections for municipal officers.

2 In any instance where there is a statutory, charter or lawful ordinance provision authorizing, relating to or requiring a special municipal election upon petition or otherwise, the provisions of this section shall not be applicable and such statutory, charter or lawful ordinance provision shall govern and control in all respects, including without limiting the generality of the foregoing, the requisites of any petition for such special municipal election.
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 munici-  
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-
ing this information shall be published as a Class II-0
legal advertisement in compliance with the provisions of
article three, chapter fifty-nine of this code, and the pub-
llication area for such publication shall be such municipal-
ity. Such election shall be held in all respects in compli-
ance with the provisions of chapter three of this code,
so far as the same are applicable and not inconsistent
herewith, and the provisions of article five of this chapter.
If a majority of the legal votes cast at such election upon
such question be in favor of the proposed sale or lease of
such utility, the governing body, upon the ascertainment
of the result of such election, shall have full power and
authority to proceed to execute or effect such sale or
lease in accordance with the terms and conditions pre-
scribed in the ordinance as aforesaid, and shall have power
to do any and all things necessary or incident thereto:
Provided, That if at any time after such election and be-
fore the execution of the authority under the ordinance,
any person should present to the governing body an offer
to buy such public utility at a price which exceeds by at
least five percent the sale price which shall have been so
voted upon and authorized or to lease the same upon terms
which the governing body, in its discretion, shall consider
more advantageous to the municipality than the terms of
the lease which shall have been authorized by vote as
aforesaid, the governing body shall have the power to
accept such subsequent offer, and to make such sale or
such lease to the person making the offer, without resub-
mitting the question to a vote; but, if a sale shall have
been authorized by vote as aforesaid, and such subsequent
proposition be for a lease, or, if a lease shall have been so
authorized, and the subsequent proposition shall be for a
sale, the governing body shall have no power to accept the
same without submitting the question thereof to a vote of
the people as first above provided. Before any such second
or subsequent proposition shall be submitted to a vote, af-
ter a sale or lease shall have been authorized at an election
held hereunder, the person making such proposition shall
furnish bond, with security to be approved by the gov-
erning body, in a penalty of not less than twenty-five
percent of such proposed bid, conditioned to carry such
propoition into execution, if the same shall be approved
at the election to be called thereon. In any case where
any such public utility shall be sold or leased by the
governing body as hereinabove provided, no part of the
moneys derived from such sale or lease shall be applied
to the payment of current expenses of the municipality,
but the proceeds of such sale or lease shall be applied in
payment and discharge of any bonded indebtedness cre-
ated in respect to such public utility, and in case there be
no bonded indebtedness, the governing body, in its dis-
cretion, shall have the power and authority to expend
all such moneys when received for the purchase or con-
struction of fire-fighting equipment and buildings for
housing such equipment, a municipal building or city
hall, and the necessary land upon which to locate the
same, or for the construction of paved streets, avenues,
roads, alleys, ways, sidewalks, sewers and other like per-
manent improvements, and for no other purposes. In case
there be a surplus after the payment of such bonded
indebtedness, the surplus shall be used as aforesaid.

The requirements of this section shall not apply to the
sale or lease of any part of the properties of any such
public utility determined by the governing body to be
unnecessary for the efficient rendering of the service of
such utility.

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 mem-
bers 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 to the civil service provisions of this article shall be removed, discharged, suspended or reduced in rank or pay except for just cause, which shall not be religious or political, except as hereinbefore provided in section nineteen of this article; and no such member shall be removed, discharged, suspended or reduced except as provided by the civil service provisions of this article, and in no event until he shall have been furnished with a written statement of the reasons for such action. In every case of such removal, discharge, suspension or reduction, a copy of the statement of reasons therefor and of the written answer thereto, if the member sought to be removed, discharged, suspended or reduced desires to file such written answer, shall be furnished to the police-men's civil service commission and entered upon its rec-
ords. If the member sought to be removed, discharged, suspended or reduced shall demand it, the commission shall grant him a public hearing, which hearing shall be held within a period of ten days from the filing of the charges in writing or the written answer thereto, whichever shall last occur. At such hearing the burden shall be upon the removing, discharging, suspending or reducing officer, hereinafter in this section referred to as "removing officer," to show just cause for his action, and in the event the removing officer fails to show just cause for his action before the commission, then the member removed, discharged, suspended or reduced shall be reinstated with full pay, forthwith and without any additional order, for the entire period during which he may have been prevented from performing his usual employment, and no charges shall be officially recorded against his record. A written record of all testimony taken at such hearing shall be kept and preserved by the commission, which record shall be sealed and not be open to public inspection, if no appeal be taken from the action of the commission.

(b) In the event that the commission shall sustain the action of the removing officer, the member removed, discharged, suspended or reduced shall have an immediate right of appeal to the circuit court of the county wherein the city or the major portion of the territory thereof is located. In the event that the commission shall reinstate the member removed, discharged, suspended or reduced, the removing officer shall have an immediate right of appeal to said circuit court. Any appeal must be taken within ninety days from the date of entry by the commission of its final order; upon an appeal being taken and docketed with the clerk of the circuit court of said county, the circuit court shall proceed to hear the appeal upon the original record made before the commission and no additional proof shall be permitted to be introduced. The circuit court's decision shall be final, but the member or removing officer, as the case may be, against whom the decision of the circuit court is rendered shall have the right to petition the supreme court of appeals for a review of the circuit court's decision,
as in other civil cases. Such member or removing officer shall also have the right, where appropriate, to seek in lieu of an appeal, a writ of mandamus.

(c) The removing officer and the member sought to be removed, discharged, suspended or reduced shall at all times, both before the commission and upon appeal, be given the right to employ counsel to represent them.

(d) If for reasons of economy or other reasons it shall be deemed necessary by any Class I or Class II city to reduce the number of paid members of its paid police department, said city shall follow the procedure set forth in this subsection (d). The reduction in members of the said paid police department of said city shall be effected by suspending the last man or men, including probationers, who have been appointed to said paid police department. Such removal shall be accomplished by suspending the number desired in the inverse order of their appointment: Provided, That in the event the said paid police department shall again be increased in numbers to the strength existing prior to such reduction of members the said members suspended under the terms of this subsection shall be reinstated in the inverse order of their suspension before any new appointment to said paid police department shall be made.

ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.

§8-15-25. Removal, discharge, suspension or reduction in rank or pay; appeal; reduction in number of members.

(a) No member of any paid fire department subject to the civil service provisions of this article shall be removed, discharged, suspended or reduced in rank or pay except for just cause, which shall not be religious or political, except as hereinbefore provided in section twenty-four of this article; and no such member shall be removed, discharged, suspended or reduced except as provided by the civil service provisions of this article, and in no event until he shall have been furnished with a written statement of the reasons for such action. In every
case of such removal, discharge, suspension or reduction, a copy of the statement of reasons therefor and of the written answer thereto, if the member sought to be removed, discharged, suspended or reduced desires to file such written answer, shall be furnished to the firemen's civil service commission and entered upon its records. If the member sought to be removed, discharged, suspended or reduced shall demand it, the commission shall grant him a public hearing, which hearing shall be held within a period of ten days from the filing of the charges in writing or the written answer thereto, whichever shall last occur. At such hearing the burden shall be upon the removing, discharging, suspending or reducing officer, hereinafter in this section referred to as "removing officer," to show just cause for his action, and in the event the removing officer fails to show just cause for his action before the commission, then the member removed, discharged, suspended or reduced shall be reinstated with full pay, forthwith and without any additional order, for the entire period during which he may have been prevented from performing his usual employment, and no charges shall be officially recorded against his record. A written record of all testimony taken at such hearing shall be kept and preserved by the commission, which record shall be sealed and not be open to public inspection, if no appeal be taken from the action of the commission.

(b) In the event that the commission shall sustain the action of the removing officer the member removed, discharged, suspended or reduced shall have an immediate right of appeal to the circuit court of the county wherein the municipality or the major portion of the territory thereof is located. In the event that the commission shall reinstate the member removed, discharged, suspended or reduced, the removing officer shall have an immediate right of appeal to said circuit court. Any appeal must be taken within ninety days from the date of entry by the commission of its final order; upon an appeal being taken and docketed with the clerk of the circuit court of said county, the circuit court shall proceed to hear the appeal upon the original record made before the commission and
no additional proof shall be permitted to be introduced. The circuit court's decision shall be final, but the member or removing officer, as the case may be, against whom the decision of the circuit court is rendered shall have the right to petition the supreme court of appeals for a review of the circuit court's decision, as in other civil cases. Such member or removing officer shall also have the right, where appropriate, to seek in lieu of an appeal, a writ of mandamus.

(c) The removing officer and the member sought to be removed, discharged, suspended or reduced shall at all times, both before the commission and upon appeal, be given the right to employ counsel to represent them.

(d) If for reasons of economy or other reasons it shall be deemed necessary by any such municipality to reduce the number of paid members of its paid fire department, said municipality shall follow the procedure set forth in this subsection (d). The reduction in members of the said paid fire department of said municipality shall be effected by suspending the last man or men, including probationers, who have been appointed to said paid fire department. Such removal shall be accomplished by suspending the number desired in the inverse order of their appointment: Provided, That in the event the said paid fire department shall again be increased in numbers to the strength existing prior to such reduction of members the said members suspended under the terms of this subsection shall be reinstated in the inverse order of their suspension before any new appointment to said paid fire department shall be made.

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 public or nonprofit health institutions dedicated to making available to the general public health and mental health services is for the general welfare of the public and is a public purpose for which funds of a municipality may be lawfully expended. This section is enacted in view of this finding and shall be liberally construed in the light thereof. As used in this section, the term "health institution" means a hospital, health or mental health clinic, regional or community health or mental health center, mental retardation facility, extended care facility, nursing home, or other health or mental health institution, which is open to the general public.

14 (b) Notwithstanding any statutory or charter provision to the contrary, a municipality is hereby empowered and authorized to appropriate funds, subject to the conditions and limitations set forth in this section, for the establishment, cost, operation, maintenance and projects of any health institution, whether such health institution be
situate within or without the corporate limits of such
municipality. Funds may not be appropriated by a munic-
ipality for the benefit and use of any health institution
unless such health institution is either owned and operated
by a unit of government, or is owned and operated by a
nonstock, nonprofit corporation chartered under the laws
of this state which provides in its charter that no member
trustee or member of the board of directors (by what-
ever name the same may be called) shall receive any
compensation, gain or profit from such corporation and
which is operated in compliance with such charter pro-
visions. Any such appropriation shall be made from the
general funds of such municipality not otherwise appro-
priated or from federal revenue sharing funds received
by such municipality.

(c) The recipient of any funds appropriated under the
provisions of this section shall upon demand at any time
make a full and complete accounting of all such funds to
the governing body of the municipality which made such
appropriation and shall in every event without demand
make to such governing body an annual accounting
thereof.

(d) Under no circumstances whatever shall any action
taken by any municipality under the authority of this
section give rise to or create any indebtedness on the part
of such municipality, the governing body of such munici-

dality, any member of such governing body or any mu-
nicipal official or employee.

\[\text{CHAPTER 81}\]

\[(H. B. 913—By Mr. Butcher and Mr. Hawse)\]

[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.

Except as authorized by the director, it shall be unlawful
at any time for any person to:

(1) Shoot at or to shoot any wild bird or animal unless
it is plainly visible to him;

(2) Dig out, cut out, or smoke out, or in any manner
take or attempt to take any live wild animal or wild bird
out of its den or place of refuge, except as may be authorized
by regulations promulgated by the director or by law;

(3) Make use of, or take advantage of, any artificial light in
hunting, locating, attracting, taking, trapping, or killing any
wild bird or wild animal, or to attempt to do so, while having
in his possession or subject to his control, or for any person
accompanying him to have in his possession or subject to his
control, any firearm, whether cased or uncased, bow, arrow, or
both, or other implement or device suitable for taking, killing
or trapping a wild bird or animal: Provided, That it shall not
be unlawful to hunt or take raccoon, opossum or skunk by the
use of artificial lights. No person shall be guilty of a violation
of this subdivision merely because he looks for, looks at,
attracts or makes motionless a wild bird or wild animal with or
by the use of an artificial light, unless at such time he shall
have in his possession a firearm, whether cased or uncased,
bow, arrow, or both, or other implement or device suitable for
taking, killing or trapping a wild bird or wild animal, or unless
such artificial light (other than the head lamps of an automo-
bile or other land conveyance) is attached to, a part of, or used
from within or upon an automobile or other land conveyance.

Any person violating the provisions of this subdivision shall
be guilty of a misdemeanor, and, upon conviction thereof, shall for each offense be fined not less than one hundred dollars nor more than five hundred dollars and shall be imprisoned in the county jail for not less than ten days nor more than one hundred days;

(4) Hunt for, take, kill, wound or shoot at wild animals or wild birds from an airplane, or other airborne conveyance, an automobile, or other land conveyance, or from a motor-driven water conveyance, except as may be authorized by regulations promulgated by the director;

(5) Take any beaver or muskrat by any means other than by trap;

(6) Catch, capture, take or kill by seine, net, bait, trap or snare or like device of any kind, any wild turkey, ruffed grouse, pheasant or quail;

(7) Destroy or attempt to destroy needlessly or willfully the nest or eggs of any wild bird or have in his possession such nest or eggs unless authorized to do so under regulations or under a permit by the director;

(8) Except as provided in section six of this article, carry an uncased or loaded gun in any of the woods of this state except during the open firearms hunting season for game animals and nonmigratory game birds within any county of the state, unless he has in his possession a permit in writing issued to him by the director: Provided, That this section shall not prohibit hunting or taking of unprotected species of wild animals and wild birds and migratory game birds, during the open season, in the open fields, open water and open marshes of the state;

(9) Except as provided in section six of this article, carry an uncased or loaded gun after the hour of five o’clock antemeridian on Sunday in any woods or on any highway, railroad right-of-way, public road, field or stream of this state, except at a regularly used rifle, pistol, skeet, target or trapshooting ground or range and nothing contained in section eighteen, article eight, chapter sixty-one of this code shall prohibit the use of a gun by a licensed hunter before the hour of five o’clock antemeridian on Sunday;
(10) Have in his possession a loaded firearm or a firearm from the magazine of which all shells and cartridges have not been removed, in or on any vehicle or conveyance, or its attachments, within the state, except as may otherwise be provided by law or regulation. Except as hereinafter provided, between five o'clock postmeridian of one day and seven o'clock antemeridian, eastern standard time of the day following, any unloaded firearm, being lawfully carried in accordance with the foregoing provisions, shall be so carried only when in a case or taken apart and securely wrapped. During the period from July first to September thirtieth, inclusive, of each year, the foregoing requirements relative to carrying certain unloaded firearms shall be permissible only from eight-thirty o'clock postmeridian to five o'clock antemeridian, eastern standard time;

(11) Hunt, catch, take, kill, trap, injure or pursue with firearms or other implement by which wildlife may be taken after the hour of five o'clock antemeridian on Sunday any wild animals or wild birds: Provided, That traps previously and legally set may be tended after the hour of five o'clock antemeridian on Sunday, if the person so doing shall not have firearms or long bow of any description in his possession;

(12) Hunt with firearms or long bow while under the influence of intoxicating liquor;

(13) Possess a ferret;

(14) Buy raw furs, pelts or skins of fur-bearing animals unless licensed to do so;

(15) Have in his possession or about his premises, without the written permission of the director, any hunting or fishing paraphernalia which cannot be used lawfully in this state for hunting or fishing, and any conservation officer shall remove and destroy such hunting and fishing paraphernalia, whenever found in this state, and the person or persons claiming ownership shall have no recourse at law against such confiscation and destruction;

(16) Catch, take, kill, or attempt to catch, take or kill any fish at any time by any means other than by rod, line, and hooks with natural or artificial lures unless otherwise authorized by law or regulation issued by the director:
Provided, That snaring of any species of suckers, carp, fallfish and creek chubs shall at all times be lawful;

(17) Employ or hire, or induce or persuade, by the use of money or other things of value, or by any means, any person to hunt, take, catch or kill, any wild animal or wild bird except those species on which there is no closed sea-
son, or to fish for, catch, take or kill any fish, amphibian or aquatic life which is protected by the provisions of this chapter or regulations of the director, or the sale of which is prohibited;

(18) Hunt, catch, take, kill, capture, pursue, transport, possess or use any migratory game or nongame birds in-
cluded in the terms of conventions between the United States and Great Britain and between the United States and United Mexican States for the protection of migratory birds and game mammals concluded, respectively, August sixteen, one thousand nine hundred sixteen, and February seven, one thousand nine hundred thirty-six, except during the time and in the manner and numbers prescribed by the Federal Migratory Bird Treaty Act and regulations made thereunder;

(19) Kill, take, catch, or have in his possession living or dead, any wild bird, other than a game bird; or expose for sale, or transport within or without the state any such bird, except as aforesaid. No part of the plumage, skin or body of any protected bird shall be sold or had in possession for sale, except mounted or stuffed plumage, skin, bodies or heads of such birds legally taken and stuffed or mounted, irrespective of whether such bird was captured within or without this state, except the English or European sparrow (Passer domesticus), starling (Sturnus vulgaris), crow (Corvus brachyrhynchos) and cowbird (Molothrus ater), which shall not be protected and the killing thereof at any time is lawful;

(20) Use dynamite or any like explosive or poisonous mixture placed in any waters of the state for the purpose of killing or taking fish. Any person violating the provisions of this subdivision shall be guilty of a felony, and, upon conviction thereof, shall be fined not more than five hundred
dolars or imprisoned for not less than six months nor more
than three years, or both fined and imprisoned;

(21) Have a bow and gun, or have a gun and any arrow or
arrows, in the fields or woods at the same time;

(22) Have a crossbow in the woods or fields or use a
crossbow to hunt for, take or attempt to take any wildlife;

(23) Take or attempt to take turkey, bear, elk or deer
with any arrow unless the same is equipped with a point
having at least two sharp cutting edges measuring in excess of
three fourths of an inch wide;

(24) Take or attempt to take any wildlife with an arrow
having an explosive head or shaft, a poisoned arrow, or an
arrow which would affect wildlife by any chemical action;

(25) Shoot an arrow across any public highway or from
aircraft, motor-driven watercraft, motor vehicle or other
land conveyance;

(26) Permit any dog owned by him or under his control
to chase, pursue or follow upon the track of any game animal
or game bird, either day or night, between the first day of
May and the fifteenth day of August next following: Pro-
vided, That dogs may be trained on game animals and game
birds, except deer and wild turkeys, and field trials may be
held or conducted on the grounds or lands of the owner or by
his bona fide tenant or tenants or upon the grounds or lands
of another person with his written permission or on public
lands, at any time: Provided, however, That the person
training said dogs does not have firearms or other implements
in his possession during the closed season on such game
animals and game birds, whereby game animals or game
birds could be taken or killed;

(27) Conduct or participate in a field trial, water race
or wild hunt hereafter referred to as trial: Provided, That any
person, group of persons, club or organization may hold
such trial at any time of the year upon obtaining such permit
as is provided for in section fifty-six of this article. The
person responsible for obtaining said permit shall prepare
and keep an accurate record of the names and addresses
of all persons participating in said trial, and make same
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.

(a) No person in any county of this state shall hunt, capture, or kill any bear, or have in his possession any
bear, or any part thereof, including fresh pelt, except during the hunting season for bear designated by rules and regulations to be promulgated by the department of natural resources and at no other time nor in any other way than as herein and therein provided. A person on killing a bear shall within twenty-four hours after killing, deliver the bear or fresh skin to a conservation officer or checking station for tagging. The bear shall have affixed thereto an appropriate tag provided by the department before any part of the bear may be transported more than seventy-five miles from the point of kill. Any bear not properly tagged, or any part of such bear, shall be forfeited to the state for disposal to a charitable institution, or school, or as otherwise designated by the department of natural resources.

It shall be unlawful:

1. To hunt bear without a bear damage stamp as prescribed in section forty-four-b of this article, in addition to a hunting license as prescribed in this article;

2. To hunt a bear with (a) a shotgun using ammunition loaded with more than one solid ball, or (b) a rifle of less than twenty-five caliber using rimfire ammunition or (c) a crossbow;

3. To kill or attempt to kill any bear through the use of poison, or explosives, or through the use of snares, steel traps or deadfalls other than as authorized herein;

4. To shoot at or kill a cub bear weighing less than one hundred pounds or to kill any bear accompanied by such cub;

5. To have in possession any part of a bear not tagged in accordance with the provisions of this section;

6. To enter a state game refuge with firearms for the purpose of pursuing or killing a bear except under the direct supervision of department personnel;

7. To hunt bear with dogs during seasons other than those designated for such purpose by the department of natural resources; after a bear is spotted and the chase has begun, to pursue the bear with other than the pack of dogs in use at the beginning of the hunt;
(8) To train bear hunting dogs on bear or to cause
dogs to chase bear at times other than those designated
by the department of natural resources for the hunting
of bear;

(9) Notwithstanding the provisions of sections twenty-
three and twenty-four of this article, for any person to
organize for commercial purposes, or to professionally
outfit a bear hunt or to give or receive any consideration
whatsoever or any donation in money, goods or services
in connection with a bear hunt;

(10) For any person, who is not a resident of this state,
to hunt bear with dogs or to use dogs in any fashion for
the purpose of hunting bear in this state, except in legally
authorized hunts.

(b) The following shall apply to bear destroying prop-
erty:

Any property owner including a lessee, who has suffered
damage to real or personal property including loss occa-
sioned by the death of livestock or the injury thereto or
the unborn issue thereof, caused by an act of a bear may
complain to any conservation officer of the department of
natural resources, for the protection against such bear.
Upon receipt of the complaint, such officer shall imme-
diately proceed to investigate the circumstances giving
rise to such complaint, and if such officer is unable to
personally investigate the complaint, he shall designate
a wildlife biologist to investigate on his behalf and if the
complaint is found to be justified, such officer or desig-
nated person, may, together with the owner and other
residents, proceed to hunt and destroy or capture the bear
which is determined to have caused the property damage:
Provided, That only the conservation officer or the wild-
life biologist shall determine whether the bear shall be
destroyed or captured. Notwithstanding any provision of
this article, if it is determined that the complaint is justi-
fied, the officer or designated person may summon or use
dogs from within or without this state to effectuate the
hunting and destruction or capture of such bear: Provided,
That in the event dogs from without this state are used
in such hunt, the owners thereof shall be the only non-
residents permitted to participate in hunting such bear.

(c) When a property owner has suffered damage as the
result of an act by a bear, such owner shall file a report
with the director of the department of natural resources,
stating whether or not such bear was hunted and destr-
yed and if so, the sex, weight and estimated age of
subject bear, and also submit to the department an ap-
craisal of the property damage occasioned by subject bear
duly signed by three competent appraisers, fixing the val-
ue of the property lost. Such report shall be ruled upon
and the alleged damages examined by a commission to
which it shall be referred by the department. The com-
mission shall be composed of the complaining property
owner, an officer of the department, and a person to be
selected by the officer of the department and the complain-
ing property owner. The department shall by rules and
regulations to be promulgated, establish the procedures
to be followed in presenting and deciding claims under
this section and all such claims shall be paid in the first
instance from the bear damage fund provided in section
forty-four-b of this article, and in the event such fund is
insufficient to pay all claims determined by the commis-
sion to be just and proper the remainder due to owners of
lost or destroyed property shall be paid from the special
revenue account of the department of natural resources.

In all cases where the act of the bear complained of by
the property owner is the killing of livestock, the value
to be established is the fair market value of the livestock
at the date of death, and in cases where livestock killed
is pregnant, the total value shall be the sum of the values
of the mother and the unborn issue, with the value of the
unborn issue to be determined on the basis of the fair
market value of the issue, had it been born.

(d) Any person who kills a bear in violation of the
provisions of this section shall be guilty of a misde-
meanor, and, upon conviction thereof, shall be fined not
less than two hundred dollars nor more than five hundred
dollars, or imprisoned in the county jail not less than
thirty nor more than one hundred days, or both fined and
imprisoned.

§20-2-44b. Bear damage stamp; proceeds to be paid into bear
damage fund; purposes, etc.

Any hunter licensed to hunt bear in this state shall in
addition to a hunting license of either Class A or AB,
in the case of a resident, or C, E, L or M, in the case of a
nonresident, have a bear damage stamp which shall be
issued by the department of natural resources and which
shall be sold at places where hunting and fishing licenses
are sold. The fee for a bear damage stamp shall be four
dollars and all proceeds from the sale of such stamps
shall be paid into the bear damage fund which shall be
maintained by the department of natural resources for
the purposes of paying claims of property owners for
damages to real and personal property caused by acts of
bear and to cover the expense of hunting, capturing and
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; empow-
ering 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 require-
ment 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, ar-
ticle 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.


§20-2-25. Same—License applications; national forest requirements.

§20-2-23. Outfitters and guides—Generally; definitions.

1 Services of outfitters and guides for the benefit and convenience of hunters, fishermen and others in this state are recognized as essential, and such outfitters and guides may be licensed and authorized to serve as provided in this article. The director is hereby authorized to promulgate rules and regulations on services of outfitters and guides as herein defined.

8 The word “outfitter,” as used herein, shall mean and include any person who, operating from any temporary or permanent camp, private or public lodge, or private or incorporated home situate within this state, provides for monetary profit or gain, saddle or pack animals or other animals, vehicles, boats, conveyances or equipment, or guide services for any person or persons hunting game animals, game birds, fishing or taking expeditions, both land and water, in this state. The term “outfitter” shall not include, however, any person who occasionally for accommodation or favor rather than profit or gain, rents equipment to hunters, fishermen or others as a service incidental to his principal occupation or business without advertising outfitter or guide services or holding out to the public his offering of such services. The terms “guide,” as used herein, shall be construed to include and embrace outfitter services and the term “outfitter” shall be construed to include and embrace guide services, but the applicant for any license hereunder may in his application elect whether he wishes to be designated as an outfitter or as a guide.


1 Each outfitter and guide licensed under the provisions hereof shall be a financially responsible citizen of the
United States of America. He shall possess and inventory proper and adequate materials and equipment to provide for hunters, fishermen and others the services and conveniences he advertises. All such materials and equipment shall be safe and free of infection and conditions inimical to the health and well-being of hunters, fishermen, their traveling, camping and lodging companions.

The director shall cause all outfitter and guide applicants to be investigated and shall make a determination of their qualifications prior to the issuance or refusal of licenses thereto.

§20-2-25. Same—License applications; national forest requirements.

Each applicant for an outfitter or guide license shall file with the director a verified application setting forth the applicant's name, his address, the property possessed and to be used in the proposed outfitter and guide services, the area within which he proposes to serve, his citizenship, his age and such other data and information as may be prescribed and required by the director on the application forms to be furnished by the department. Each such application, when filed by the applicant, shall be approved and signed by three resident real property owners of the county in which such applicant resides.

Before any outfitter or guide license shall be issued for serving hunters, fishermen or others in any national forest areas within this state, the applicant shall obtain from the supervisor of such national forest area a designation of the camp site or other site from which the outfitter or guide proposes to operate therein and shall likewise obtain from such supervisor any other authority or permit to so operate in such national forest area, together with copies of any rules and regulations of the forest incident to maintenance of camps, sanitary conditions, and prevention of forest fires and water pollution. The applicant shall satisfy the director that he has obtained such designation, permit, authority and rules and regulations, as may be required, as a prerequisite to the director's consideration of the applicant's license application.
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 to obtain licenses or permits as indicated:

2 (a) Bona fide resident landowners or their resident children, or bona fide resident tenants of such land, may hunt, trap or fish on their own land during open seasons in accordance with the laws and regulations applying to such hunting, trapping and fishing without obtaining a license to do so unless such lands have been designated as a wildlife refuge or preserve.

3 (b) Any bona fide resident of this state who is totally blind may fish in this state without obtaining a fishing license to do so. A written statement or certificate from a duly licensed physician of this state showing the said resident to be totally blind shall serve in lieu of a fishing license and shall be carried on the person of said resident at all times while he is fishing in this state.

4 (c) Any resident or in-patient in any state mental health, health or benevolent institution or facility may fish in this state.

*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.
(d) All residents of West Virginia on active duty in the armed forces of the United States of America, while on leave or furlough, shall have the right and privilege to hunt, trap or fish in season in West Virginia without obtaining a license to do so. Leave or furlough papers shall serve in lieu of any such license and shall be carried on the person at all times while trapping, hunting or fishing.

(e) In accordance with the provisions of section twenty-seven of this article, any resident sixty-five years of age or older shall not be required to have a license to hunt, trap or fish during the legal seasons in West Virginia, but in lieu of such license any such person shall at all times while hunting, trapping or fishing, carry on his person a card issued by the director stating his name, address and date of birth.

(f) Residents of the state of Maryland who carry hunting or fishing licenses valid in that state may hunt or fish from the West Virginia banks of the Potomac river without obtaining licenses to do so, but such hunting or fishing shall be confined to the fish and waterfowl of the river proper and not on its tributaries: Provided, That the state of Maryland shall first enter into a reciprocal agreement with the director extending a like privilege of hunting and fishing on the Potomac river from the Maryland banks of said river to licensed residents of West Virginia, without requiring said residents to obtain Maryland hunting and fishing licenses.

(g) Residents of the state of Ohio who carry hunting or fishing licenses valid in that state may hunt or fish on the Ohio river or from the West Virginia banks of said river without obtaining licenses to do so, but such hunting or fishing shall be confined to fish and waterfowl of the river proper and not on its tributaries: Provided, however, That
the state of Ohio shall first enter into a reciprocal agreement
with the director extending a like privilege of hunting and
fishing from the Ohio banks of said river to licensed residen-

ties of West Virginia without requiring said residents to obtain
Ohio hunting and fishing licenses. In the event the state of
Ohio accords this privilege to residents of West Virginia, such
Ohio residents will not be required to obtain the license pro-
vided for by section forty-two of this article.

CHAPTER 85*
(H. B. 922—By Mr. Lohr)

[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 re-
sources; wildlife resources; when licenses or permits not re-
quired; 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 dis-
abled 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.

Persons in the following categories shall not be required
to obtain licenses or permits as indicated:

* Clerk's note. See note to Chapter 84.
(a) Bona fide resident landowners or their resident children, or bona fide resident tenants of such land, may hunt, trap or fish on their own land during open season in accordance with the laws and regulations applying to such hunting, trapping and fishing without obtaining a license to do so unless such lands have been designated as a wildlife refuge or preserve.

(b) Any bona fide resident of this state who is totally blind may fish in this state without obtaining a fishing license to do so. A written statement or certificate from a duly licensed physician of this state showing the said resident to be totally blind shall serve in lieu of a fishing license and shall be carried on the person of said resident at all times while he is fishing in this state.

(c) All residents of West Virginia on active duty in the armed forces of the United States of America, while on leave or furlough, shall have the right and privilege to hunt, trap or fish in season in West Virginia without obtaining a license to do so. Leave or furlough papers shall serve in lieu of any such license and shall be carried on the person at all times while trapping, hunting or fishing.

(d) In accordance with the provisions of section twenty-seven of this article, any resident sixty-five years of age or older shall not be required to have a license to hunt, trap or fish during the legal seasons in West Virginia, but in lieu of such license any such person shall at all times while hunting, trapping or fishing, carry on his person a card issued by the director stating his name, address and date of birth.

(e) Residents of the state of Maryland who carry hunting or fishing licenses valid in that state may hunt or fish from the West Virginia banks of the Potomac river without obtaining licenses to do so, but such hunting or fishing shall be confined to the fish and waterfowl of the river proper and not on its tributaries: Provided, That the state of Maryland shall first enter into a reciprocal agreement with the director extending a like privilege of hunting and fishing on the Potomac river from the Maryland banks of said river to licensed residents of West Virginia, without requiring said residents to obtain Maryland hunting and fishing licenses.
(f) Residents of the state of Ohio who carry hunting or fishing licenses valid in that state may hunt or fish on the Ohio river or from the West Virginia banks of said river without obtaining licenses to do so, but such hunting or fishing shall be confined to fish and waterfowl of the river proper and not on its tributaries: Provided, That the state of Ohio shall first enter into a reciprocal agreement with the director extending a like privilege of hunting and fishing from the Ohio banks of said river to licensed residents of West Virginia without requiring said residents to obtain Ohio hunting and fishing licenses. In the event the state of Ohio accords this privilege to residents of West Virginia, such Ohio residents will not be required to obtain the license provided for by section forty-two of this article.

(g) Any resident of West Virginia who was honorably discharged from the armed forces of the United States of America, and who receives a veteran's pension based on total service connected or nonservice connected disability as certified to by the veterans administration, shall be permitted to hunt, trap or fish in this state without obtaining a license therefor. The director shall promulgate rules and regulations setting forth the procedure for the certification of the veteran, manner of applying for and receiving the certification and requirements as to identification while said veteran is hunting, trapping or fishing.

(h) Any disabled veteran, who is a resident of West Virginia, and who, as certified to by the commissioner of motor vehicles, is eligible to be exempt from the payment of any fee on account of registration of any motor vehicle owned by such disabled veteran as provided for in section eight, article ten, chapter seventeen-a of this code, shall be permitted to hunt, trap or fish in this state without obtaining a license therefor. The director shall promulgate rules and regulations setting forth the procedure for the certification of the disabled veteran, manner of applying for and receiving the certification and requirements as to identification while said disabled veteran is hunting, trapping or fishing.
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.

A Class N license shall be a special deer hunting license for antlerless deer of either sex and shall entitle the licensee to hunt for and kill one antlerless deer of either sex during the Class N license season: Provided, That if a hunter kills a buck deer during the regular deer hunting season, he shall also be permitted to hunt for and kill one antlerless deer during Class N license season if he has applied for and has had issued to him a Class N license. Only one Class N license may be acquired during any calendar year in which such Class N license season is held, and such Class N license can be used only by the applicant. The fee for a Class N license shall be five dollars.

The Class N license shall be issued only for the purpose of removing antlerless deer on a post-season basis when the director deems it essential for proper management of wildlife resources. The director shall establish such rules and regula-
tions governing the issuance of such Class N licenses as he
deems necessary to limit, on a fair and equitable basis, the
number of persons who may hunt for antlerless deer in any
county or any part of a county: Provided, however, That no
more than four Class N licenses shall be issued for each deer
that the director desires to have killed during the Class N
season.

When the director deems it essential that Class N license
season be held in a particular county or part of a county, such
season shall be held on the Friday and Saturday following
regular deer hunting season, and shall be extended beyond
such two-day period only upon order of the director when
necessary to accomplish the desired kill.

Bona fide resident landowners or their resident children, or
bona fide resident tenants of such land shall not be required
to have a Class N license in their possession while hunting
antlerless deer on their own land during the Class N license
season.

Notwithstanding any provision of this code to the contrary,
no Class N license shall be issued for a county or a part of a
county unless, during the regular deer hunting season in
the previous year, two bucks have been killed per square mile
of deer range in that county or part of the county in which the
hunt is to be held, and the director deems the holding of such
Class N season advisable.

 CHAPTER 87
(H. B. 743—By Mr. Bollouz)

[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 license and shall entitle the licensee to fish for trout in all counties of the state, except as prohibited by rules or regulations of the director. It shall be issued only to citizens of the United States who are residents of this state.

2 The fee shall be three dollars. The revenue derived from the sale of this license shall be deposited in the state treasury and credited to the department of natural resources and shall be used and paid out, upon order of the director, for state trout hatchery production.

3 This license shall be issued in the form of a stamp prescribed by the director, shall be in addition to a Class AB or B license and shall be valid only when affixed thereto.

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 rec-
clamation.

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 ar-
ticle 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;
(e) "Operate" means to enter upon a coal refuse disposal pile, or part thereof, for the purpose of disposing, depositing or dumping coal refuse thereon, or to employ a coal refuse disposal pile for retarding the flow of or the impoundment of water;

(f) "Operator" means any person operating any coal refuse disposal pile, or part thereof; and

(g) "Reclamation of abandoned coal refuse disposal piles" means any activity which operates to eliminate the undesirable environmental effects or dangers to public welfare and safety attributable to abandoned coal refuse piles; including but not limited to activities designed to extinguish any fire present in such piles, the prevention of such fires, the abating of water and air pollution attributable to such piles, the prevention of water accumulation behind such piles or in such piles, the prevention of erosion resulting from such piles, the covering of such piles, the removal of such piles to an underground location or for use in backfilling or landfilling, with soil or with suitable soil conditioners, the revegetation of such piles or any similar activity.

§20-6C-3. Legislative findings; purpose and intent of article; declaration of public purpose.

The Legislature finds and hereby declares that the disposition of materials displaced in the mining of coal creates coal refuse disposal piles which have in the past and may in the future:

(a) Endanger the lives and properties of persons residing in the hollows and valleys of the affected watersheds;

(b) Threaten streams, roads, schools and other public properties and facilities;

(c) Result in the creation of an emergency situation in which there can be no delay in taking remedial action if resulting perils to persons and properties are to be alleviated; and

(d) Destroy or decrease the value of land upon which
a coal refuse disposal pile is located and the surrounding
e environs for residential, agricultural, industrial, business
or recreational uses; counteract efforts of the state and
local governments within the state to conserve water,
soil and other valuable natural resources; and destroy or
impair the health, safety, welfare and property rights of
citizens of this state where proper reclamation of such
c coal refuse disposal piles is not practiced.

It is the purpose and intent of the Legislature in enact-
ing this article to provide for the location, inspection and
evaluation of all coal refuse disposal piles and any asso-
ciated water impoundments in this state; for the deter-
mination of their degree of stability, safety, adequacy and
hazard to life and property; for remedial action necessary
and expedient to prevent, correct or abate danger to life
caused by any coal refuse disposal pile and any associated
water impoundment; and for the reclamation of aban-
doned coal refuse disposal piles; and all of the foregoing
are hereby declared by the Legislature to be for a public
purpose.

§20-6C-7a. Reclamation of abandoned coal refuse disposal
piles; duties of the director; powers of the direc-
tor; rules and regulations.

(a) In addition to all other authority, powers, duties
and responsibilities granted or assigned to the department
of natural resources or its director or various divisions
under the provisions of this or any other article of this
chapter, the department of natural resources, acting by
and through its director, division of reclamation, or its
chief of the division of reclamation, shall have the duty
and responsibility to undertake the reclamation of aban-
doned coal refuse disposal piles located within this state.

The director is hereby authorized to expend any funds
which the Legislature may appropriate for the reclama-
tion of abandoned coal refuse disposal piles, but the direc-
tor shall first use such funds for matching purposes to ob-
tain any federal funds which may be available for such
purpose.
(b) The department of natural resources, acting by
and through its director, or its division of reclamation and
chief of the division of reclamation, upon approval of the
director, is hereby authorized to exercise the following
powers in implementing its duty and responsibility to re-
claim abandoned coal refuse disposal piles located within
this state:

1. To make any investigation or inspection necessary to
implement or enforce the provisions of this article and to
enter upon the public or private property of any coal re-
fuse disposal pile owner as may be necessary to make such
investigations or inspections. Such inspections or entries
shall not be made until five days have elapsed after giving
written notice to the pile owner or other persons in charge
of such pile;

2. To promulgate in accordance with the provisions of
chapter twenty-nine-a of this code a plan for the reclama-
tion of abandoned coal refuse piles located within this
state within fifteen months of the effective date of this
act. Such plan shall establish priorities for action to be
taken to reclaim said abandoned coal refuse piles. In
promulgating such plan the director shall consider with
regard to each area to be reclaimed the number of per-
sons affected by hazards resulting from abandoned coal
refuse piles in such area, the adverse environmental ef-
teffects of such piles, the health and safety of persons re-
siding or working in close proximity to such piles, the
potential of such piles for recreational and industrial
development, the potential of such piles for the sale or re-
cycling of its constituent materials, the potential of elimi-
nating surface subsidence damage by removing such piles
to a nearby abandoned mine or other underground loca-
tion or for backfilling nearby surface mines, and the cost
effectiveness of each potential project;

3. To promulgate and adopt, modify, repeal and en-
force reasonable rules and regulations in order to imple-
ment the provisions of this section, which it shall do in
accordance with the provisions of chapter twenty-nine-a
of this code as if the provisions of said chapter were set
forth in extenso herein;
4. To acquire by donation, agreement, lease or purchase such real and personal property, rights, land easements and rights-of-way as are necessary to implement the provisions of this article;

5. To enter upon abandoned coal refuse piles with the permission of the owner thereof, if known, and to undertake pursuant to any agreement arrived at by negotiations with said owner the reclamation of abandoned coal refuse piles. Upon the completion of said reclamation, the department may accept any payments to the state made pursuant to agreements with the land owner. Funds received by the state for rendering such services shall be paid into the general revenues;

6. To cooperate and coordinate with agencies of the federal government, this state and counties and municipalities of this state to reclaim abandoned coal waste disposal piles;

7. To contract with, sell to, buy from and otherwise deal with private and public bodies providing such goods, services, machinery and equipment necessary to implement the provisions of this article, and in doing so comply with the provisions of article three, chapter five-a of this code;

8. To sell reclaimed land acquired or owned by the state subject to the provision or condition that the property will be reclaimed by the purchaser, or, if already reclaimed by the state, subject to the condition that the property will not be used for the purpose of coal waste disposal at any time thereafter;

9. To consult with the commissioner of highways, the director of the department of mines, the director of the air pollution control commission, the director of the state department of health, other state departments and agencies, county and local governments, universities and colleges in the state and private businesses and industries to develop ways to use abandoned coal refuse disposal piles for highway construction, landfills, business, industrial, recreational and residential site development and for other such useful purposes, and to take all actions,
which are legally available to him, to make abandoned
coal refuse disposal piles useful for such purposes; and

10. To exercise such other powers as it may have under
any other article or provision of this chapter in the im-
plementation of the provisions of this article. In no case
shall the powers set forth in this subsection be deemed
to authorize the department of natural resources, its di-
rector or any of its divisions, to condemn real estate solely
for the purpose of reclamation.

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 hun-
dred 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.

Any person violating any of the provisions of this chapter or
rules and regulations promulgated under the provisions of this
chapter, the punishment for which is not prescribed, shall be
guilty of a misdemeanor, and, upon conviction thereof, shall
for each offense be fined not less than twenty nor more than
three hundred dollars, or confined in jail not less than ten nor
more than one hundred days, or be both fined and imprisoned
within the limitations aforesaid, and, in the case of a violation
by a corporation, every officer or agent thereof directing or
engaging in such violation shall be guilty of a misdemeanor,
and, upon conviction thereof, shall be subject to the same pen-
alties and punishment as herein provided: Provided, That any
person violating subdivision three, section five, article two of
this chapter shall be guilty of a misdemeanor, and, upon con-
viction thereof, shall be fined not less than one hundred dol-
lars nor more than five hundred dollars and shall be imprison-
ed for not less than ten days nor more than one hundred days:
Provided, however, That any person violating sections forty-
three and forty-five, article two of this chapter shall be guilty
of a misdemeanor, and, upon conviction thereof, shall be fined
not less than fifty dollars nor more than three hundred dollars,
or confined in jail not less than ten nor more than one hun-
dred days, or both fined and imprisoned within the limitations
aforesaid: Provided further, That any person violating any
parking or speeding regulations as promulgated by the director
on any state parks, state forests, public hunting and fishing
areas and all other lands and waters owned, leased or under
the control of the department of natural resources, shall be
guilty of a misdemeanor, and, upon conviction thereof, shall
be fined not less than two nor more than one hundred dollars,
or imprisoned in the county jail not more than ten days, or
both fined and imprisoned.

CHAPTER 90
(H. 8. 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.

As used in this section and subsequent sections of this article, unless the context clearly requires a different meaning:

(1) "Vessel" means every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water;

(2) "Motorboat" means any vessel propelled by machinery, whether or not such machinery is the principal source of propulsion, but shall not include a vessel which has a valid marine document issued by the bureau of customs of the United States government or any federal agency successor thereto, nor to a vessel powered by a motor of less than three horsepower; and

(3) "Owner" means a person, other than a lienholder, having the property in or title to a motorboat. The term includes a person entitled to the use or possession of a motorboat subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security.
§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.

Every motorboat, as herein defined, operating upon public waters within the territorial limits of this state, shall be numbered as herein provided:

(a) The owner of each motorboat requiring numbering by this state shall file an application for a number with the director on forms approved by him. The application shall be signed by the owner of the motorboat and shall be accompanied by a fee of five dollars if powered by a motor of three or more horsepower. All such fees shall be deposited in the state treasury and shall be credited to the department of natural resources and shall be used and paid out, upon order of the director, solely for the state boating program. Upon receipt of the application in approved form, the director shall enter the same upon the records of his office and issue to the applicant a number awarded to the motorboat and the name and address of the owner. The owner shall paint on or attach to each side of the bow of the motorboat the identification number in such manner as may be prescribed by rules and regulations of the director in order that it may be clearly visible. The number shall be maintained in legible condition. The certificate of number shall be pocket size and shall be available at all times for inspection on the motorboat for which issued, whenever such motorboat is in operation.

(b) The owner of any motorboat already covered by a number in full force and effect which has been awarded to it pursuant to then operative federal law or a federally approved numbering system of another state shall record the number prior to operating the motorboat on the waters of this state in excess of the sixty-day reciprocity period provided for in section fourteen of this article. Such recordation shall be in the manner and pursuant to procedure required for the award of a number under subdivision (a) of this section, except that no additional or substitute number shall be issued.
(c) Should the ownership of a motorboat change, a new application form with fee shall be filed with the director and a new certificate of number shall be awarded in the same manner as provided for in an original award of number.

(d) In the event that an agency of the United States government shall have in force an overall system of identification numbering for motorboats within the United States, the numbering system employed pursuant to this article by the commission shall be in conformity therewith.

(e) The director may designate as issuing agent the clerk of any county court and such other persons in each county as he deems advantageous to provide for the issuance of certificates of number in accordance with the provisions of this article. For services rendered in issuing such certificates, and collecting and paying over such numbering fees, each issuing agent, other than a state or county official, shall charge and retain an additional fee of twenty-five cents from the person obtaining the certificate of number. Every such issuing agent, unless already under bond with the director as an agent for the collection of its moneys, shall file a bond with the director, payable to the state of West Virginia, in an amount to be fixed by the director at not more than one thousand dollars, before the supply of certificates of number is delivered to him, conditioned upon the faithful performance of his obligation to issue certificates only in conformity with the provisions of this article and the regulations of the director. Each issuing agent, on the first day of each month, shall remit to the director all moneys collected for the director during the preceding month, and shall accompany his remittance with a report showing the name of the county, the names and addresses of the persons paying the same, and the date of receipt thereof.

(f) All records of the director made or kept pursuant to this section shall be public records.

(g) Such license shall be valid only until the last day of the fiscal year, in which the same is issued. If at the end of such year ownership has remained unchanged, such owner shall, upon application and payment of a fee of five dollars, be
(h) The owner shall furnish the director notice of the transfer of all or any part of his interest, other than the creation of a security interest, in a motorboat numbered in this state pursuant to subdivisions (a) and (b) of this section, or of the destruction or abandonment of such motorboat, within fifteen days thereof. Such transfer, destruction or abandonment shall terminate the certificate of number for such motorboat, except that in the case of a transfer of a part interest which does not affect the owner's right to operate such motorboat, such transfer shall not terminate the certificate of number.

(i) Any holder of a certificate of number shall notify the director within fifteen days if his address no longer conforms to the address appearing on the certificate and shall, as a part of such notification, furnish the director with his new address. The director may provide in his rules and regulations for the surrender of the certificate bearing the former address and its replacement with a certificate bearing the new address or for the alteration of an outstanding certificate to show the new address of the holder.

(j) No number other than the number awarded to a motorboat or granted reciprocity pursuant to this article shall be painted, attached or otherwise displayed on either side of the bow of such motorboat.

(k) It shall be the duty of the director on or before August thirty-first of each year, commencing with the year one thousand nine hundred sixty-seven, to forward to the assessor of each county a list of the names and addresses of all persons, firms and corporations owning vessels and operating the same or other boats registered with the director under the provisions of this article. In furnishing this information to each county assessor, the director shall include in his report such information as is made available to him in the reports and registrations he receives as to make, model, value and cost price of such vessels and other equipment required to be registered for use by said owner or operator thereof under the provisions of this article: Provided, That the director need not furnish such
information to the assessor if the cost price of such vessel does not exceed two hundred dollars or the cost of the motor does not exceed one hundred seventy-five dollars. In order to deal equitably with overlapping license periods, the director may issue a six months’ license from the period January, one thousand nine hundred sixty-eight through June, one thousand nine hundred sixty-eight. This six months’ license is to be issued to avoid the necessity of motorboat owners who have purchased their licenses from January thirtieth, one thousand nine hundred sixty-eight, losing a six months’ period of license entitlement.

(1) No person shall operate an unlicensed motorboat upon any waters of this state without first acquiring such certificate of number or license as required by law.

§20-7-14. Motorboats exempt from numbering.

A motorboat shall not be required to be numbered under this article if it is: (1) Already covered by a number in full force and effect which has been awarded to it pursuant to federal law or a federally approved numbering system of another state: Provided, That such boat shall not have been within this state for a period in excess of sixty consecutive days; (2) A motorboat from a country other than the United States temporarily using the waters of this state; (3) Motorboats used exclusively for racing while participating in races, and the preparation therefor, which have been authorized pursuant to the provisions of section twenty of this article.

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 persons residing within or without this state and within the United States, its territories or possessions as commissioners to acknowledge signatures performed in or out of state by persons residing in or out of the state of West Virginia, covering deeds, leases and other writings pertaining to West Virginia property for recordation in the state of West Virginia.

8 Such commissioners shall hold office for ten years, unless sooner removed by the governor. Any commissioner in office upon the effective date of this act shall continue therein until his term expires or until sooner removed in the manner prescribed by law.

13 Before performing any duties as such, the commissioner shall enter into a bond in the penalty sum of one thousand dollars with corporate surety to be approved by the secretary of state and filed in his office.

17 A fee of one hundred dollars for such commission issued 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, may take, within or any place out of the state of West Vir-
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.

The warden shall be the chief executive officer of the penitentiary and shall have charge of its internal police and management, and provide for feeding, clothing, working and taking care of the convicts, subject to the control of the state commissioner of public institutions. The warden shall promptly enforce all orders, rules and regulations made by the commissioner of public institutions, enforce strict discipline among the convicts, protect and
preserve the property of the state, and may for that pur-
pose punish the convicts, or cause them to be punished, in
the manner authorized by the commissioner of public in-
stitutions. He shall have the custody and control of all the
real and personal property at the penitentiary, subject to
the orders of the commissioner of public institutions. The
warden shall give bond in such sum as the commissioner
of public institutions may require, with one or more
sureties satisfactory to the commissioner of public insti-
tutions, conditioned for the faithful performance of the
duties of his office, and for accounting for and paying over,
as required by law, all moneys which may come into his
hands by virtue of such office, which bond, when approved
by the commissioner of public institutions, shall be filed
with and recorded by the commissioner. The warden shall
reside in the warden’s apartments at the penitentiary, or
at any other place in Marshall county, convenient to the
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.

The warden of the penitentiary shall, in the manner pro-
provided in section eleven, article one, chapter twenty-five of this code, appoint all assistants and employees required for the management of the penitentiary, including a sufficient number of guards to preserve order and enforce discipline among the convicts, to prevent escapes, and to remove all persons convicted and sentenced to the penitentiary from the place where confined to the penitentiary, all of whom shall be under the control of the warden. The warden may at his discretion issue a certificate authorizing any guard to carry firearms and concealed weapons while on duty. Any guard appointed as herein provided and authorized by the warden shall have the right, without a state license therefor, to carry firearms and concealed weapons while on duty. Each guard appointed as aforesaid shall carry with him a certificate, authorizing him to carry a firearm or concealed weapon when he is performing his official duties as a guard, bearing the official signature of the warden of the penitentiary. Such right shall be extended to a guard during the time he travels from place to place within the state for the purpose of removing prisoners from county jails to the penitentiary, and during the time he is pursuing and apprehending escaped convicts, and during any other time he is performing his official duties as a guard, but a guard shall not have the right to carry a firearm or concealed weapon for any other purpose or during any other time, including when he travels to and from his residence and the penitentiary, unless he shall have obtained a state license therefor in the manner prescribed in section two, article seven, chapter sixty-one 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.

The commissioner of the department of public institutions is hereby authorized and empowered to transfer to the city of Moundsville, a tract of land, together with the improvements thereon and the appurtenances thereunto belonging, owned by the department, consisting of thirty acres, more or less, and to transfer to the County of Marshall, a tract of land, together with the improvements thereon and the appurtenances thereunto belonging, owned by the department, consisting of eighty acres, more or less, both being portions of the prison farm, situated and located in Marshall County.

CHAPTER 95

(P. 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.

Any person, association, partnership, firm or corporation who shall receive any money under any agreement, contract or plan entered into after the effective date of this article, for the final disposition of a deceased person, or for the embalming, cremation or other services relating to the actual interment of a dead human body, or for funeral or burial services, or for the furnishing of funeral or burial merchandise, including vaults and other outside burial receptacles, wherein the said embalming, cremation or other services or the delivery of funeral or burial merchandise or the furnishing of professional services by a funeral director or embalmer or both is not immediately required but shall be required at an undetermined future time, is hereby declared to be trustee thereof, and shall deposit any and all such money paid thereunder in a bank, trust company, or savings and loan association, insured by an agency of the United States federal government, and which is authorized to do business in this state, and subject to the terms of the said agreement, contract or plan for the benefit of the purchaser of the same, or of a third party beneficiary of the purchaser's designation, which are not inconsistent with the provisions of this article.

All such money shall be so deposited within ten days of payment, and shall be held by such bank, trust company or savings and loan association in a separate interest-bearing account in the name of the trustee, as trustee, and shall be held in trust subject to the provisions of this article. The trustee at the time of making deposit shall furnish to the depositary a copy of each such agreement, contract or plan, the name of each payor, and the amount of payment on each such account for which deposit is being so made. Notwithstanding any other provision of this article to the contrary, whenever an individual enters into any such agreement, contract or plan directly with a bank, trust company, or savings and loan association, insured by an agency of the United States government, and which is authorized to do business in this state, such bank, trust company or savings and loan association
shall not be considered to be a trustee within the meaning of 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 REFERRED TO IN CHAPTER.

§30-1-11. Compensation of members; expenses.

Each member of every such board shall receive thirty-five dollars for each day actually spent in attending the sessions of the board, or of its committees, and in necessary travel, and shall be reimbursed for all actual and necessary expenses incurred in carrying out the provisions of this chapter applicable to such board. The secretary shall receive such salary as may be prescribed by the board, but in proceedings relative to the fixing of his salary the secretary shall have no vote. All authorized compensation and all expenses certified by the board as properly and necessarily incurred in the discharge of its duties shall be paid out of the state treasury, from funds appropriated for that purpose, on warrants of the state auditor issued on requisitions signed by the president and secretary of the board.
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.

The following persons and no others shall hereafter be permitted to practice medicine and surgery in this state:

(a) All such persons as shall be legally entitled to practice medicine and surgery in this state including those persons holding temporary permits to practice in prescribed areas as of the effective date of this section; (b) all such persons as shall be graduates of medical schools, as approved by the medical licensing board of West Virginia, and who provide their original diplomas or evidence thereof for authentication by the medical licensing board,
and who shall pass an examination before the medical licensing board and shall receive a certificate therefrom as hereinafter provided: Provided, That the said board, or a majority of them, may accept in lieu of an examination of applicants, the certificate of the national board of medical examiners, or diplomate certificate from an American specialty board, such certification shall be limited to that specific specialty in the practice of medicine and surgery in this state, or the certificate of license to practice medicine and surgery legally granted by the state board of registration or examination or licensing board of another state or territory, whose standard of qualification for the practice of medicine and surgery is equivalent to that of this state, and grant to such applicant a certificate of license to practice medicine and surgery in this state: Provided, however, That whenever in the judgment of the medical licensing board a condition exists in which medical service may be required, the said board is authorized to grant permits for the practice of medicine to qualified physicians in prescribed areas, and such permits shall be subject to revocation when the agreement, under which they were issued, has been violated. A fee of one hundred dollars shall accompany each application for licensure by examination, reexamination, or reciprocity, twenty-five dollars of which shall be retained by the board in the event an application is withdrawn or rejected. A fee of twenty-five dollars shall accompany each application for temporary permits and a fee of ten dollars shall accompany each application for an extension thereof.

§30-3-4a. Biennial registration of physicians and surgeons.

Every person who, on or before the thirty-first day of August, one thousand nine hundred forty-nine, is licensed as a physician or surgeon to practice medicine and surgery in this state, shall, on or before the said thirty-first day of August, one thousand nine hundred forty-nine, make application to the medical licensing board for registration, and shall be registered by the said board, as the holder of such license, which registration shall be for the period ending on the thirtieth day of June, one thousand nine hundred fifty-one. On or before the said thirtieth day of
June, one thousand nine hundred fifty-one, and biennially thereafter, on or before the thirtieth day of June of each biennial period, every person licensed as a physician or surgeon in this state shall apply to the said board for registration, or a renewal of registration, as such license holder: Provided, That no registration shall be required of any holder of a certificate of licensure for the biennial period, or any portion thereof, during which such certificate is issued.

Each applicant for registration or renewal thereof shall remit to the board, with his application, a fee of ten dollars. In addition, any request for renewal of a license which has lapsed for a period of more than one biennial registration period shall be accompanied by a sworn affidavit from the physician indicating his location and activities for the period of time he was not licensed in this state.

The failure of any person to comply with the provisions of this section shall operate automatically, and without further proceedings, to cancel the certificate of such person, and the license issued thereunder. Continued practice by any such person after such cancellation of his certificate and license shall constitute practicing without a license, and any person so practicing shall be subject to all of the penalties provided by law for practicing without a license.

Any certificate and license cancelled pursuant to the provisions of this section, and not for any other reason, shall be reinstated by the said board upon submission to it of an application for registration by the person whose certificate has been cancelled, together with current and delinquent fees, and ten dollars reinstatement fee.

§30-3-6. Refusal to issue, suspension or revocation of license.

The medical licensing board may refuse to grant a certificate of license to a person who has been found guilty of a felony as decreed by a court of law, or to a person known to indulge in gross immorality, or to a person who 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. Poffenberger)

[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 build-
ings 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 reen-
acted 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."

It is hereby declared to be the public policy of this state that all public buildings, sidewalks, curbs and facilities covered by this article, as specified in section two of this article, be accessible to and functional for the physically handicapped, without loss of function, space or facilities insofar as the general public is concerned.

As used in this article a public building or facility is one to which the public has a general right of access and includes the ways of travel to and from the same, but does not include:

1. Apartment houses with less than twenty units, row houses or rooming houses;
2. Convents or monasteries;
3. Jails or other places of detention;
4. Garages, hangars or boat houses;
5. Buildings classified as hazardous occupancies;
6. Warehouses;
7. Building specifically built for field service purposes such as, but not limited to, conservation fire towers, fish hatcheries or tree nursery buildings; or
8. Residence halls at colleges or universities which have at least two other resident halls for men and two other resident halls for women so constructed as to allow physically handicapped persons reasonable means of access and use of such buildings.

§18-10F-2. Application of article.

(a) The provisions of this article and the reasonable rules and regulations promulgated hereunder shall apply to all temporary, emergency or permanent buildings, sidewalks, curbs and facilities to be used by the public which are constructed after the effective date of this article.
(b) Notwithstanding the provisions of subsection (a) of this section, the provisions of this article and the rea-
合理规则和条例的制定和发布

§18-10F-3. 规则和条例。

1. 为了实施本章的条款，职业康复部门的主任，经州公共建筑委员会的批准，应当制定合理规则和条例。主任和委员会在制定和批准合理规则和条例时，应当考虑到以下内容:

(a) 建筑、人行道、路缘石和设施由使用轮椅的人、使用拐杖或其他助行器具的人、视力或听力丧失的人、由于年龄而受限的人以及其他移动受限的人使用的情况；
(b) 以上列举的残疾人士使用的频率；
(c) 为遵守本章的条款和合理规则和条例所必需的额外建设成本。

2. 该主管机构可以全部或部分地免除本章的条款和合理规则和条例的规定，如果他认为遵守这些条款和条例在经济上不切实际、不切实际或无益。

3. 所有合理的规则和条例应根据本章第三章、第二十九节的条款制定，包括但不限于以下内容:

(a) 建筑、人行道、路缘石和设施的用途，以及为满足任何此类人员的需要而收集的数据；
(b) 频繁使用的人员；
(c) 遵守本章条款和合理规则和条例所需的额外建设成本。

4. 该主管机构无权在全部或部分地免除本章的条款和合理规则和条例的规定时，提供维持财务状况的手段或有利条件，或者提供维持健康或安全的手段，或者提供维持教育或训练设施的手段。

5. 该主管机构无权在全部或部分地免除本章的条款和合理规则和条例的规定时，提供维持经济上的或实际的手段或有利条件，或者提供维持教育或训练设施的手段。

6. 该主管机构无权在全部或部分地免除本章的条款和合理规则和条例的规定时，提供维持经济上的或实际的手段或有利条件，或者提供维持教育或训练设施的手段。

7. 该主管机构无权在全部或部分地免除本章的条款和合理规则和条例的规定时，提供维持经济上的或实际的手段或有利条件，或者提供维持教育或训练设施的手段。
(1) Reservation of parking spaces for the disabled where possible;

(2) Construction of exterior walkways, curbs and ramps;

(3) Design and construction of doorways;

(4) Design and construction of interior floors, steps, ramps and doorways;

(5) Design of and accessibility to elevators;

(6) Design and construction of toilet facilities for use by the disabled;

(7) Design and location of public telephones, water fountains and other conveniences to facilitate their use by the disabled; and

(8) Accessibility of at least one primary entrance to individuals in wheelchairs.

No rule or regulation promulgated hereunder shall require the construction of elevators in buildings or facilities not constructed in whole or in part by the use of state, county or municipal funds or the funds of any other political subdivision of this state when such buildings or facilities are less than three stories in height.

§18-10F-4. State board of public buildings created; membership; expenses.

There is hereby created the state board of public buildings which shall consist of five members appointed by the governor, one member to be a representative of the state building commission, one member to be a representative of a municipality, one member to be a representative of the state board of education, and one member to be an architect. Each member shall serve at the will and pleasure of the governor. The members of the board shall receive no compensation for their services on such board, but they shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of 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 provisions of this article and all reasonable rules and regulations promulgated hereunder, and it shall be the duty of the state, any county, municipality or other political subdivision thereof, or any department, agency, commission, board, bureau or individual responsible for the construction of any public building, sidewalk, curb or facility to comply with the provisions of this article and all such reasonable rules and regulations. Whenever the director ascertains that any such public building, sidewalk, curb or facility is about to be constructed or is under construction (which construction began after the effective date of this article) in violation of the provisions of this article or any such reasonable rules and regulations, he may petition the circuit court of the county wherein the construction is to be or is taking place for an order to compel compliance with the provisions of this article and such reasonable rules and regulations, and the court may compel compliance unless such court finds that compliance would create a financial hardship, be impractical or serve 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.

The board of trustees of the West Virginia public employees retirement system is hereby created. The administration and management of the retirement system, the responsibility for making effective the provisions of this article, and the authority to make all rules and regulations therefor, are hereby vested in the said board of trustees, except as is otherwise specifically provided in this article. The board shall consist of five trustees, as follows:

(a) The auditor of the state, by virtue of his office;
(b) The treasurer of the state, by virtue of his office;
(c) The commissioner of finance and administration, by virtue of his office;
(d) A resident of the state, who is not a member, retirant or beneficiary of the retirement system, to be appointed by the governor, by and with the advice and consent of the Senate;
(e) One member of the retirement system, who is an employee of a participating public employer other than the state of West Virginia, to be appointed by the governor, by and with 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 subdivisions (d) and (e) of section five of this article shall expire June thirty, one thousand nine hundred sixty-five, June thirty, one thousand nine hundred sixty-four and June thirty, one thousand nine hundred sixty-three, respectively, as the governor shall designate at the time of the appointments. Thereafter, the terms of office for the said trustees shall be five years. Each trustee shall serve as trustee until his successor is appointed and has qualified. In order to make the preliminary arrangements for the operation of the retirement system as of its effective date, the governor shall make the appointments provided for in section five hereof as 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) and (e) of section five of this article leaves the employ of a participating public employer, or fails to attend three consecutive meetings of the board of trustees, unless in each case excused for cause by the remaining trustees attending such meeting or meetings, he shall be considered to have resigned from the board and the board shall, by resolution, declare his office of trustee vacated. If a vacancy occurs in the office of such trustee, the governor shall, within thirty days from and after the date of the vacancy, fill the vacancy, by appointment, for the unexpired term.
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.

(a) In the event a member leaves the employ of a participating public employer prior to the date he becomes entitled to retire with an annuity payable by the retirement system he shall be paid, upon his written application filed with the board of trustees, his accumulated contributions standing to his credit in the members deposit fund, if his separation from the employ of a participating public employer occurs subsequent to a period of two years from and after the date he last became a member of the system. If his said separation from the employ of a participating public employer occurs within a period of two years from and after the date he last became a member of the system, he shall be paid his accumulated contributions standing to his credit in the members deposit fund less the total interest credited to his individual account therein; and the said total interest credit shall be transferred to the income fund.

(b) In the event a member dies and does not leave a beneficiary entitled to an annuity payable by the retirement system, his accumulated contributions standing to his credit
in the members deposit fund at the time of his death shall
be paid to such person or persons as he shall have nominated
by written designation duly executed and filed with the board
of trustees. If there be no such designated person or persons
surviving the said member, his said accumulated contributions
shall be paid to his estate.

(c) Refunds of a member’s contributions or accumulated
contributions, as the case may be, may be made in equal
installments according to such rules and regulations as the
board of trustees may from time to time adopt.

(d) In the event a member dies and a refund of his
contributions is due to be made to an infant child or chil-
dren by reason of being the person or persons nominated
by written designation duly executed and filed with the re-
tirement system, and the amount of said refund is less
than one thousand dollars, then, and in said event, the board
of trustees may make said refund, upon written application, to
the closest relative or natural guardian for the use of said
infant child or children. The board of trustees may, at its
discretion, require that said relative or natural guardian post
bond with the retirement system to insure that said money
will be used for the benefit of said infant child or children.
In any event, before said refund is made to said relative or
natural guardian of the said infant or infants, said relative or
natural guardian shall give the retirement system an indemnify-
ing release of said sums so paid over.

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, chap-
ter five of the code of West Virginia, one thousand nine hun-
dred thirty-one, as amended, relating to the amount of compen-
sation 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 public employer, payment of his annuity shall be suspended during the period of his reemployment and he shall become a contributing member to the retirement system. If his reemployment is for a period of one year or longer, his annuity shall be recalculated and he shall be granted an increased annuity due to such additional employment, said annuity to be computed according to section twenty-two of this article. A retirant may accept temporary employment for a participating employer so long as he shall not receive compensation in excess of twenty-four hundred dollars per year and continue to draw his annuity.
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.

Section seven, article thirteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, is hereby repealed.

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 install a system of accounting and reporting in conformity with the provisions of this article, which shall be uniform for all local governmental offices and agencies (including district offices, justices of the peace and constables) and for all public accounts of the same class and which shall exhibit true accounts and detailed statements for all public funds collected, received and expended for any purpose by all local governmental officers, employees or other persons. Such accounts shall show the receipt, use and disposition of all public property under the control of such local governmental officers, employees or other persons, and any income derived therefrom and of all sources of such public income, the amounts due and received from each source, all receipts, vouchers and other documents kept or required to be kept and necessary to identify and prove the validity of every transaction, all statements and reports made or required to be made for the internal administration of the office to which they pertain and all reports published or required to be published for the information of the people regarding any and all details of the financial administration of such public affairs. The chief inspector shall prescribe receipt forms for all such local governmental offices and agencies and shall formulate, prescribe and install a uniform system with respect to the utilization, processing and disposition of receipts given as evidence of moneys or property collected or received by such local governmental offices and agencies.

2. The chief inspector shall also formulate, prescribe and install a system of accounting for the civil accounts of the justices of the peace, which shall exhibit true accounts and detailed statements of the services rendered, the name and address of the persons for whom rendered, the charges made and collected therefor and such other information as may be necessary to identify the transaction.
The power and authority herein granted shall be in addition to all other power and authority vested by law in the state tax commissioner as chief inspector or otherwise.

CHAPTER 105

(Com. Sub. for H. B. 811—By Mr. Speaker, Mr. McManus, and Mr. Saibert)

[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.

(a) Pay and allowances for officers and men of the national guard for drill, encampment or other duty for training prescribed or ordered by the federal government, shall be such as are provided by the laws of the United States.

(b) Officers and men of the national guard in active service of the state shall receive the same pay and allowances, in accordance with their rank and service, as are prescribed for the armed forces of the United States: Provided, That no member of the national guard shall receive base pay of less than twenty-five dollars per day while he is in active service of the state.

(c) Notwithstanding any of the provisions of this article, members of the national guard, may, with their consent, per-
form without pay, or without pay and allowances any duties
prescribed by section thirteen of this article pursuant to com-
petent orders therefor: Provided, That necessary expense may
be furnished such personnel within the discretion of the adju-
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.

The superintendent shall create, appoint and equip a department of public safety, which shall, in addition to the personnel provided for in section two of this article, consist of four companies or platoons. They shall be designated as companies “A,” “B,” “C” and “D.” Each company or platoon shall be composed of one captain, one lieutenant, one first sergeant, seven sergeants, not more than seventeen corporals and such number of troopers and troopers first class as the superintendent may decide best, but such number of troopers and troopers first class in any company or platoon shall not at any time be less than twenty-five.

The superintendent shall provide adequate facilities for the
training of all members of the department and shall prescribe
a basic training course for newly enlisted members. He shall
also provide advanced or in-service training from time to time
for all members of the department. The superintendent shall
hold training classes for other peace officers in the state
without cost to such officers, except actual expenses for food,
lodging and school supplies.

Members of the department shall receive salaries, as follows:

The inspector shall receive an annual salary of fourteen thou-
sand three hundred four dollars; the major shall receive an an-
nual salary of twelve thousand nine hundred thirty-one dollars;
captains shall each receive an annual salary of eleven thousand
six hundred sixty-four dollars; lieutenants shall each receive
an annual salary of eleven thousand five hundred seventy dollars; the
master sergeants and first sergeants shall each receive an
annual salary of ten thousand three hundred eighty-four dol-
ars; sergeants shall each receive an annual salary of ten
thousand eighty dollars; corporals shall each receive an an-
nual salary of nine thousand three hundred eighty dollars; and each newly enlisted
trooper shall receive a salary of six hundred fifty-seven dol-
lars during the period of his basic training, and upon the
satisfactory completion of such training and assignment to
active duty each trooper shall receive, during the remainder of
his first year's service a salary of seven hundred twenty-eight
dollars monthly. During the second year of his service in the
department each trooper shall receive an annual salary of eight
thousand nine hundred five dollars; during the third year
of his service each trooper shall receive an annual salary
of nine thousand seventy-seven dollars; and during the
fourth and fifth years of his service and for each year
thereafter each trooper shall receive an annual salary of
nine thousand two hundred thirty-five dollars. Each mem-
ber of the department entitled thereto by the provisions here-
of shall receive an increase in salary over that hereinbefore
set forth in this section, for grade and rank, based on length of
service, including that heretofore and hereafter served, with
the department, as follows: At the end of five years of service
with the department, such member of the department shall
receive a salary increase of three hundred dollars per year to be effective during his next three years of service and like increases at three-year intervals thereafter, until a total of six such increases shall be received and such increases shall be cumulative.

In applying the foregoing salary schedule where salary increases are provided for length of service, members of the department in service at the time this article becomes effective shall be given credit for prior service and shall be paid such salaries as the same length of service will entitle them to receive under the provisions hereof.

Each member of the department of public safety, except the superintendent and civilian employees, shall, before entering upon the discharge of his duties, execute a bond with security in the sum of three thousand five hundred dollars payable to the state of West Virginia, conditioned for the faithful performance of his duties as such, and such bond shall be approved as to form by the attorney general, and as to sufficiency by the governor, and the same shall be filed with the secretary of state and preserved in his office.

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
state road commission, department of motor vehicles and
department of public safety of West Virginia for any license,
permit or certificate that may be lawfully issued by these
departments of state government;

(d) Members of the department of public safety shall be
and are hereby created forest patrolmen and game and fish
wardens throughout the state to do and perform any and all
duties and exercise any and all powers of such officers, and
may apprehend and bring before any court or justice of the
peace having jurisdiction of such matters, anyone violating
any of the provisions of chapters twenty, sixty and sixty-one of
this code, and any and all amendments thereto; and the de-
partment of public safety shall at any time be subject to the
call of the West Virginia alcohol beverage control com-
missioner to aid in apprehending any person violating any
of the provisions of said chapter sixty. They shall serve and
execute warrants for the arrest of any person and warrants
for the search of any premises issued by any properly con-
stituted authority, and shall exercise all of the powers con-
ferred by law upon a sheriff, constable or any other peace of-
cer of this state, except that they shall not serve any civil
process or exercise any of the powers of such officers in mat-
ters of a civil nature;

(e) Any member of the department of public safety know-
ing or having reason to believe that anyone has violated the
law may make complaint in writing before any court or offi-
cer having jurisdiction and procure a warrant for such offen-
der, execute the same and bring such person before the proper
tribunal having jurisdiction. He shall make return on all
such warrants to such tribunals and his official title shall be
“member of the department of public safety.” Members of
the department of public safety may execute any summons or
process issued by any tribunal having jurisdiction requiring
the attendance of any person as a witness before such tribunal
and make return thereon as provided by law, and any return
by a member of the department of public safety showing the
manner of executing such warrant of process shall have the
same force and effect as if made by a sheriff;

(f) Each member of the department of public safety, when
called by the sheriff of any county, or when the governor by proclamation so directs, shall have full power and authority within such county, or within the territory defined by the governor, to direct and command absolutely the assistance of any sheriff, deputy sheriff, constable, chief of police, policeman, town marshal, game and fish warden, and any and every peace officer of the state, or of any county or municipality therein, or of any able-bodied citizen of the United States, to assist and aid in accomplishing the purposes expressed in this article. When so called, any officer or person shall, during the time his assistance is required, be and be considered to be, for all purposes, a member of the department of public safety force and subject to all the provisions of this article.

For official services rendered in any criminal case, a member of the department of public safety shall be entitled to receive the same fees as a constable is entitled to receive for the same services pursuant to section twelve, article seventeen, chapter fifty of this code, when such fees are actually paid by or for the defendant in such criminal case, pursuant to the order made and entered therein, to the justice of the peace, the clerk of the court or other officer for the services of such member: Provided, That under no circumstances shall any member of the department of public safety be entitled to any mileage fees for services rendered in criminal cases and under no circumstances shall any county court or municipal corporation be required to pay any fees or costs which the county court would be required to pay were the services rendered by a constable.

All such fees shall be collected by the justice of the peace, who shall quarterly, on the first day of January, April, July and October, certify and submit to the state tax commissioner a list of all such collection, along with the amount so collected. Such certification shall be submitted on forms prescribed by and furnished by the state tax commissioner. Upon receipt of such collections the state tax commissioner shall pay the same to the state treasurer which shall be deposited by him to the credit of the general revenue of the state. The Legislature shall then appropriate annually to the department of public safety death, disability and retirement fund an
amount equal to the total funds deposited into the state
treasury by the state tax commissioner as set forth in this article.

§15-2-27. Death, disability and retirement fund; retirement board.

There shall be continued the death, disability and retire-
ment fund heretofore created for the benefit of members of
the department of public safety, and any dependent of a
retired or deceased member thereof.

There shall be deducted from the monthly payroll of each
member of the department of public safety and paid into
such fund six percent of the amount of his salary, and an
additional twelve percent of the monthly salary of each
member of said department shall be paid by the state of West
Virginia monthly into such fund out of the biennial appro-
priation for said department. All moneys payable into such
fund shall be deposited in the state treasury, and the
treasurer and auditor shall keep a separate account thereof
on their respective books.

The moneys in this fund, and the right of a member to a
retirement allowance, to the return of contributions, or to
any benefit under the provisions of this article, are hereby
exempt from any state or municipal tax; shall not be subject
to execution, garnishment, attachment or any other process
whatsoever; and shall be unassignable except as is provided
in this article.

The death, disability and retirement fund shall be ad-
ministered by a retirement board which shall consist of the
attorney general, state treasurer, the superintendent and two
members in active service of the department of public safety:
Provided, That members of said retirement board shall not
be entitled to receive any compensation in addition to the
salary of their respective offices for any service rendered
as a member of said retirement board: Provided, however,
That the superintendent may pay out of funds appropriated
for operation of said department the reasonable expenses of
members of said board necessarily incurred in connection with
dispatch of any business properly before such board. The
two members of said department shall be elected to membership
on the retirement board by vote of the members of the depart-
ment of public safety; such election to be held on the first
Tuesday in June next following the passage of this act and on the first Tuesday in June each two years thereafter. The attorney general, state treasurer and the superintendent of the department of public safety shall promulgate any and all necessary rules and regulations for holding in a fair and impartial manner the election on the first Tuesday in June next following the passage of this act and thereafter the retirement board consisting of the attorney general, state treasurer, superintendent and the two duly elected members of said department shall have authority to promulgate and, from time to time, revise rules and regulations for holding all subsequent elections in a fair and impartial manner. All elections shall be held under the direction of the superintendent of said department in accordance with said rules and regulations. The members of the department chosen to serve on said retirement board shall hold office for a period of two years commencing on the first day of July next following the date of such election. When any member elected to the retirement board shall die, resign from the board, resign or be discharged from service in the department, make application for retirement, be retired, or become disabled, the office of such member of the retirement board shall be declared vacant by the superintendent of said department, and said superintendent, to fill such vacancy, shall appoint the member in active service of said department who as an unsuccessful candidate at the preceding election of members to said retirement board received the greatest number of votes. No member of the retirement board shall participate in any hearing at which his own petition for retirement or the petition of any member of said department who is related to him by blood or marriage shall be presented for consideration.

At its first meeting following each election of members to the retirement board said board shall elect one of its members to serve as chairman and a second member to serve as secretary thereof. The retirement board shall have the power to make rules and regulations, not inconsistent with the provisions hereof, governing procedure and order and manner of business by and before such board. The retirement board shall have the power to make awards and to revise and terminate awards previously made for such times and under
such terms and conditions as are hereinafter provided. The votes of a majority of the five members of the board shall be necessary to decision of any matter by the board. Decisions made by the board shall be supreme and final and there shall be no appeal therefrom.

It shall be the duty of the retirement board on or before the first day of July of each year to cause all future awards from such fund to be valued and, to the extent that moneys shall be available, reserves based on sound actuarial principles for payment thereof to be carried on the funds account as a liability against the reserve fund. The board shall have the authority to employ an actuary for such purpose. The board shall cause a system of accounting to be installed and maintained to reflect currently and truly all transactions or developments pertaining to age of members and eligible dependents surviving deceased members, periods of service and aggregate earnings of all members eligible to participate in said fund and any other matter relating to maintenance of said fund or administration thereof, and each year to cause to be made and submitted to each member of said department a statement of the condition of said fund. Costs and expenses incurred in making actuarial studies, audits and installations and maintenance of such accounting system shall be paid by the superintendent from funds appropriated for operation of the department of public safety.

All moneys paid into and accumulated in said death, disability and retirement fund, except such amounts as shall be designated or set aside by the retirement board for payments of death, disability and retirement benefits and awards, shall be invested by the state board of public works in bonds of the government of the United States, the state of West Virginia, or any political subdivision thereof selected or approved by the retirement board.

CHAPTER 50. JUSTICES AND CONSTABLES.

ARTICLE 17. FEES, FINES AND COSTS.


In all cases and proceedings before a justice in relation to both felonies and misdemeanors, not triable on the merits
of the case, the fees provided by section eleven shall be audited and paid by the county court as other claims against the county. Fees in misdemeanor cases, triable on the merits thereof, may be paid as provided by section fifteen, article five, chapter seven of the code.

The justice may issue executions for all fines and costs imposed by him in criminal proceedings which are not paid by the parties, and shall deliver such executions to a constable of his district of the county and such constable shall collect the same by levy or otherwise if the same can be collected, and shall return such executions to the justice issuing the same, showing how he has executed the same, and the justice shall note such returns on his docket. All costs collected by the justice by executions or otherwise shall be paid by him to the sheriff in like manner as the justice is required by section fifteen of this article to pay to the sheriff all fines collected by him: Provided, That the justice need not pay to the sheriff but may pay direct to any constable, and to any witness such lawful fees as he may have collected on their behalf and which they are lawfully entitled to receive.

No payment of fees or costs shall be made to any justice as provided herein until the claim shall have been submitted to the prosecuting attorney and the approval or disapproval 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 passengers for hire by motor vehicles or other conveyances over regular routes shall be deemed a common carrier of passengers for hire and shall be subject to the jurisdiction and authority of the public service commission of West Virginia as provided in chapter twenty-four and chapter twenty-four-a of this code, to the same extent as any other common carrier of passengers for hire, except that the public service commission shall not have the power to originate, establish, promulgate, change, investigate and enforce routes and schedules for any urban mass transportation system established pursuant to this article: Provided, That it shall be the mandatory duty of the public service commission to fix and establish, from time to time, such fees, rates or other charges for each authority as will provide revenues in each year at least sufficient to pay the principal of and interest on all bonds issued by that authority, and reasonable reserves therefor, as the same shall become due in each year, together with the cost of administration, maintenance, repair and operation of such system or systems in each year, together with all other payments required in each year by the resolution which authorized the issuance of such bonds or the
trust indenture securing the same, including reasonable reserves, 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.

The commission shall have power to originate, establish, promulgate, change, investigate and enforce tariffs, rates, joint rates, classifications, and schedules for all motor carriers, except for routes and schedules of urban mass transportation systems established and maintained pursuant to article twenty-seven, chapter eight of this code, and the practices, services and facilities of all motor carriers. And whenever the commission shall, after hearing, find any existing rates, tariffs, joint rates, classifications, schedules, practices, services, or facilities unjust, unreasonable, insufficient, or unjustly discriminatory or otherwise in violation of any of the provisions of this chapter, the commission shall, by order, fix and require reasonable rates, joint rates, tariffs, classifications, schedules, practices, services, or facilities to be followed or established in the future in lieu of those found to be unjust, unreasonable, insufficient, or unjustly discriminatory or otherwise in violation of any provisions of law.

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.


1. No public utility subject to this chapter shall change, suspend or annul any rate, joint rate, charge, rental or classification except after thirty days' notice to the commission and the public, which notice shall plainly state the changes proposed to be made in the schedule then in force and the time when the changed rates or charges shall go into effect; but the commission may enter an order suspending the proposed rate as hereinafter provided. The proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time, and kept open to public inspection: Provided, That the commission may, in its discretion, and for good cause shown, allow changes upon less time than the notice herein specified, or may modify the requirements of this section in respect to publishing, posting and filing of tariffs, either by particular instructions or by general order.

Whenever there shall be filed with the commission any schedule stating a change in the rates or charges, or joint rates or charges, or stating a new individual or joint rate or charge or joint classification or any new individual or joint regulation or practice affecting any rate or charge, the commission shall have authority, either upon complaint or upon its own initiative without complaint, to enter upon a hearing concerning the propriety of such rate, charge, classification, regulation or practice; and, if the commission so orders, it may proceed without answer
or other form of pleading by the interested parties, but upon reasonable notice, and, pending such hearing and the decision thereon, the commission, upon filing with such schedule and delivering to the public utility affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification, regulation or practice, but not for a longer period than one hundred and twenty days beyond the time when such rate, charge, classification, regulation or practice would otherwise go into effect; and after full hearing, whether completed before or after the rate, charge, classification, regulation or practice goes into effect, the commission may make such order in reference to such rate, charge, classification, regulation or practice as would be proper in a proceeding initiated after the rate, charge, classification, regulation or practice had become effective: Provided, however, That if any such hearing and decision thereon cannot be concluded within the period of suspension, as above stated, such rate, charge, classification, regulation or practice shall go into effect at the end of such period. In such case the commission may require such public utility to enter into a bond in an amount deemed by the commission to be reasonable and conditioned for the refund to the persons or parties entitled thereto of the amount of the excess, plus interest at the rate of not less than six nor more than ten percent per annum as specified by the commission, if such rates so put into effect are subsequently determined to be higher than those finally fixed for such utility. In specifying the applicable interest rate between the aforesaid minimum and maximum, the commission shall be guided by the interest rate which such public utility would in all probability have to agree to pay if such public utility at that time borrowed in the marketplace a sum of money equivalent to the amount of money the commission estimates the increase in rates will produce between the effective date of such increase and the anticipated date the rates will be finally fixed for such public utility, it being intended that a public utility should be discouraged from imposing higher rates than it should reasonably
anticipate will be finally fixed as a means in effect of borrowing money at a rate of interest less than such public utility would have to agree to pay if it borrowed money in the marketplace. No such accrued interest paid on any such refund shall be deemed part of the cost of doing business in a subsequent application for changing rates or any decision thereon. At any hearing involving a rate sought to be increased or involving the change of any fare, charge, classification, regulation or practice, the burden of proof to show that the increased rate or proposed increased rate, or the proposed change of fare, charge, classification, regulation or practice is just and reasonable shall be upon the public utility making application for such change. When in any case pending before the commission all evidence shall have been taken, and the hearing completed, the commission shall, within three months, render a decision in such case.

Where more than twenty members of the public are affected by a proposed change in rates, it shall be a sufficient notice to the public within the meaning of this section if such notice is published as a Class II legal advertisement in compliance with the provision of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the community where the majority of the resident members of the public affected by such change reside or, in case of nonresidents, have their principal place of business within this state.

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.”

(a) All public utilities subject to the provisions of this chapter shall pay a special license fee in addition to those now required by law. The amount of such fees shall be fixed by the public service commission and such fee shall not exceed five cents on each one hundred dollars of value and shall be levied by it upon each of such public utilities according to the value of its property as ascertained by the last assessment, and shall be apportioned among such public utilities upon the basis of such valuation, which fees shall be paid on or before the twentieth day of January in each year. Such sum, together with that provided in subsection (b) hereof shall be paid into the state treasury and kept as a special fund, designated “public service commission fund,” to be appropriated as provided by law for the purpose of paying the salaries of the commission, as fixed by this chapter, its expenses and salaries, compensations, costs and expenses of its employees.

(b) All public utilities subject to the provisions of this chapter shall pay a special license fee in addition to any and all fees now required by law. The amount of such fees shall be fixed by the public service commission and such fee shall not exceed twenty cents on each one hundred dollars of total gross revenue and shall be levied by it upon each of such public utilities, in the proportion which the total gross revenue derived from intrastate business done by each of such public utilities in the calendar year next preceding bears to the total gross revenue derived from intrastate business done in such year by all public utilities subject to regulation by the public service commission, in addition to such fees as may be fixed by the public service commission under the provisions of
subsection (a) hereof and which fees shall be paid on or before the first day of July in each year. Such sum shall be paid into the state treasury and be kept, appropriated and used as provided in subsection (a) hereof.

(c) Any balance remaining in said fund at the end of any fiscal year shall not revert to the treasury but shall remain in said fund and may be appropriated and used as provided in subsection (a) hereof in the ensuing fiscal years.

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-1. Definitions.

1 As used in this article:

2 (a) "Carrier," "railroad" or "railroad company" means a common carrier by railroad.

3 (b) "Train" or "trains" mean engines, cars and any type of railroad equipment or rolling stock, or any part thereof, capable of blocking any crossing of a railroad track or tracks and any public street, road or highway.


1 It shall be unlawful for any railroad company, except in an emergency, to order, allow or permit the operation of or to operate or to so operate its system so that a train blocks the passage of vehicular traffic over the railroad crossing of any public street, road or highway of this state for a period longer than ten minutes. This section does not apply to an obstruction of any such street, road or highway caused by a continuously moving train or caused by circumstances wholly beyond the control of the railroad, but does apply to all other obstructions as aforesaid, including, but not limited to, those caused by a stopped train or a train engaged in switching, loading or unloading operations: Provided, That, if any such train is within the jurisdictional limits of any municipality which now has or hereafter shall have in force and effect an ordinance limiting the time a railroad crossing may be blocked by a train, such ordinance shall govern, and the provisions of this article shall not be applicable.


1 The railroad company shall be solely responsible for the acts of its agents and employees in violating any provision of this article or any provision of any ordinance of any municipality or any provision of any order of a county or other public authority regulating the period of time any such street, road or highway may be so blocked by a train.
§31-2A-4. Presumption.

There shall be a rebuttable presumption that a train is operated by the carrier whose marks, numbers, signs and symbols of identification appear on the engine or caboose of such train.

§31-2A-5. Service of process.

Process issuing for a violation of this article may be served upon the engineer or conductor of the train causing a violation of the provisions of this article or any other officer, agent or attorney-in-fact of the railroad company authorized by law to receive service of summons or other process issuing against said railroad company.

§31-2A-6. Fines and penalties.

If any railroad company, carrier or railroad shall violate the provisions of this article it shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty dollars.

§31-2A-7. Severability.

If any provision of this article or the application thereof to any person or circumstance be held invalid, such invalidity shall not affect other provisions or applications of the article, and to this end the provisions of this article are hereby declared to be severable.

CHAPTER 112
(S. B. 352—By Mr. Hubbart)

[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 sell to the commissioner of the West Virginia department of highways, upon competitive bids or otherwise, any materials, supplies or equipment shall comply with all of the provisions of section fourteen-a, article three, chapter five-a of this code and shall file with the director of the purchasing division of the state of West Virginia the affidavit required therein.

2. Any person, firm or corporation failing or refusing to comply with said statute as herein required shall be ineligible to sell or offer to sell commodities to the commissioner as hereinabove set forth.

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:
In addition to all other powers conferred by this article, building and loan associations whose accounts are insured by the federal savings and loan insurance corporation are authorized and empowered to make any loan or investment permitted to be made by any federal savings and loan association doing business in this state on the second day of January, one thousand nine hundred seventy-four: Provided, That all such loans and investments shall be made upon the same terms and conditions and subject to the same restrictions and limitations as were at said date prescribed for loans and investments made by such a federal savings and loan association doing business in this state under the provisions of the Homeowners Loan Act of one thousand nine hundred thirty-three, as amended, and the "Rules and Regulations for the Federal Savings and Loan System," as amended, promulgated by the federal home loan bank board: Provided, however, That (a) whenever and wherever authorization by charter or bylaws of such a federal savings and loan association was at said date required by said law or said rules and regulations as a prerequisite to the making of any such loan or investment, such authorization in the case of a building and loan association may be granted by its charter or constitution and bylaws, as the case may be, or by amendments thereto heretofore or hereafter duty adopted; (b) whenever or wherever authorization of the members of such a federal savings and loan association was at said date required by said law or by said rules and regulations as a prerequisite to the making of any such loan or investment, such authorization may in the case of a building and loan association be granted by its shareholders; and (c) whenever and wherever approval by the board of directors of such a federal savings and loan association was at said date required by said law or by said rules and regulations as a prerequisite to the making of any such loan or investment, such approval may in the case of a building and loan
Building and loan associations are authorized and empowered to amend their charters, constitutions and bylaws to provide for the making of all loans and investments permitted by this section and their shareholders and boards of directors are authorized to take any and all actions required to authorize the making of such loans and investments.

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.

The board of regents is hereby authorized to construct, maintain and operate automobile parking facilities upon
any premises owned or leased at any college or university under its jurisdiction for use by student, faculty, staff and visitors. Such facilities shall be open to use on such terms and subject to such reasonable regulations as may be prescribed by the board of regents. A summary of the regulations shall be posted conspicuously in each parking area and shall be filed with the secretary of state in the manner prescribed by chapter twenty-nine-a of this code, and when so filed shall have the force and effect of law.

The board of regents shall have authority to charge fees for use of the parking facilities under its control. All moneys collected for such use shall be paid into a special fund which is hereby created in the state treasury. The moneys in such fund shall be used first to pay the cost of maintaining and operating such facilities, but any excess not needed for this purpose may be used for the acquisition of property by lease or purchase and the construction thereof of additional parking facilities. Any money in the fund not needed immediately for the acquisition, construction, maintenance or operation of such facilities may be temporarily invested in the state sinking fund to the credit of the institution.

Notwithstanding any other motor vehicle or traffic law or regulation to the contrary, the board of regents is also authorized to regulate and control at any college or university under its jurisdiction, the speed and flow of traffic, including the parking of vehicles, on campus roads and driveways. Rules and regulations for such purpose shall be filed with the secretary of state in the manner prescribed by section one, article two, chapter twenty-nine-a of this code, and when so filed shall have the force and effect of law. The board of regents shall cause to be conspicuously posted along such roadways notice signs pertaining to the speed of vehicles, spaces available for parking, directional flow of traffic and penalties which may be imposed for violations of such rules and regulations.

Any person parking any vehicle or operating a vehicle contrary to the rules and regulations upon conviction shall be subject to a fine of not less than one dollar nor more 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.

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.

The state board of education is authorized and empowered to enter into contracts and expend funds for programs, services and facilities provided by public and private educational institutions, associations, boards, agencies, consortia, corporations, partnerships, individuals and local, state and federal governmental bodies within and outside of West Virginia in order that maximum educational opportunities of high quality may be provided to the citizens of the state in the most economical manner: Provided, That in no event shall a contract for such services and facilities be entered into unless the board has determined that said services and/or facilities are necessary and that said services and/or facilities would be at a savings to the state.

Notwithstanding the provisions of this section, nothing herein contained shall supersede the responsibility and respective duties of the commissioner of finance and administration, the director of the purchasing division of such department and the attorney general, for the execution and approval of the contracts entered into under this article and such contracts shall be in complete conformity with the provisions of articles three and five, chapter five-a of this code.

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.


1 The boards, subject to the provisions of this chapter and the rules and regulations of the state board, shall have authority:

(1) To control and manage all of the schools and school interests for all school activities and upon all school property, whether owned or leased by the county, including the authority to require that records be kept of all receipts and disbursements of all funds collected or received by any principal, teacher, student or other person in connection therewith, any programs, activities or other endeavors of any nature operated or carried on by or in the name of the school, or any organization or body directly connected with the school, to audit such records and to conserve such funds, which shall be deemed quasi-public moneys, including securing surety bonds by expenditure of board moneys;

(2) To establish schools, from preschool through high school, inclusive of vocational schools; and to establish schools and programs, or both, for post high school instruction, subject to approval of the state board of education;

(3) To close any school which is unnecessary and to assign the pupils thereof to other schools: Provided, That such closing shall be officially acted upon and teachers and service personnel involved notified on or before the first Monday in May, in the same manner as provided in section four of this article, except in an emergency, subject to the approval of the state superintendent, or under subdivision (5) of this section;

(4) To consolidate schools;
(5) To close any elementary school whose average daily attendance falls below twenty pupils for two months in succession, and send the pupils to other schools in the district or to schools in adjoining districts. If the teachers in the school so closed are not transferred or reassigned to other schools, they shall receive one month's salary;

(6) (a) To provide at public expense adequate means of transportation, including transportation across county lines, for all children of school age who live more than two miles distance from school by the nearest available road and to provide at public expense and according to such regulations as the board may establish, adequate means of transportation for school children participating in board-approved curricular and extracurricular activities; and to provide in addition thereto, at public expense, by rules and regulations and within the available revenues, transportation for those within two miles distance; and to provide in addition thereto, at no cost to the board and according to rules and regulations established by the board, transportation for participants in projects operated, financed, sponsored or approved by the commission on aging: Provided, That all costs and expenses incident in any way to transportation for projects connected with the commission on aging shall be borne by such commission, or the local or county chapter thereof: Provided further, That in all cases the buses or other transportation facilities owned by the board of education shall be driven or operated only by drivers regularly employed by the board of education: Provided, however, That buses shall be used for extracurricular activities as herein provided only when the insurance provided for by this section shall have been effected;

(b) To enter into agreements with one another to provide, on a cooperative basis, adequate means of transportation across county lines for children of school age subject to the conditions and restrictions of subdivisions (6) and (7) of this section;

(7) To provide at public expense for insurance against the negligence of the drivers of school buses, trucks or
other vehicles operated by the board; and if the trans-
portation of pupils be let out to contract, then the con-
tract therefor shall provide that the contractor shall carry
insurance against negligence in such an amount as the
board shall specify;

(8) To employ and to provide in-service training for
teacher aides, the training to be in accordance with rules
and regulations of the state board;

(9) To establish and conduct a self-supporting dormi-
tory for the accommodation of the pupils attending a
high school or participating in a post high school program
and of persons employed to teach therein;

(10) To employ legal counsel;

(11) To provide, at public expense, adequate public
liability insurance, including professional liability in-
surance for board employees.

No policy or contract of public liability insurance pro-
viding coverage for public liability shall be purchased
as provided herein, unless it shall contain a provision or
endorsement whereby the company issuing such policy
waives, or agrees not to assert as a defense to any
claim covered by the terms of such policy, the de-
fense of governmental immunity. In any action against
the board, its officers, agents or employees, in which
there is in effect liability insurance coverage in an
amount equal to or greater than the amount sued
for, the attorney for such board, the attorney for such
insurance carrier, or any other attorney who may ap-
pear on behalf of the board, its agents, officers or
employees shall not set up the defense of govern-
mental immunity in any such action.

"Quasi-public funds" as used herein are defined as any
money received by any principal, teacher, student or other
person for the benefit of the school system as a result of
curricular or noncurricular activities.

The board of each county shall expend under such
regulations as it establishes for each child an amount not
to exceed the proportion of all school funds of the district
that each child would be entitled to receive if all the funds
were distributed equally among all the children of
school age in the district upon a per capita basis.

CHAPTER 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.

The membership of the retirement system shall consist of the following:

(a) All persons, except new entrants, employed as teachers at the time they become eligible for membership who, within a year after becoming eligible for membership, notify the retirement board in writing of their decision to become members. Any such persons who fail to notify the board shall automatically be constituted members one year after they become eligible, unless the retirement board receives written notice from them declining membership in the system.
(b) New entrants, whose membership in the system shall be compulsory upon employment as teachers.

(c) The membership of the retirement system shall not include any person who is an active member of or who has been retired by the West Virginia public employees retirement system, the judge's retirement system, or the retirement system of the department of public safety.

The membership of any person in the retirement system shall cease:

(1) Upon the withdrawal of his accumulated contributions after the cessation of teaching service, or (2) upon retirement, or (3) at death, or (4) if service amounts to less than five years in any period of ten consecutive years. For the sole purpose of preventing loss of membership under subdivision (4), a deposit by the member to his individual account in the teachers accumulation fund of an amount equaling his last annual contribution shall be the amount necessary to maintain membership status for a period of one year.

Any former member of the retirement system who has withdrawn his accumulated contributions but subsequently re-enters the retirement system shall be permitted to repay to the retirement fund the amount withdrawn, plus payment for absence as provided herein, and shall be accorded all the rights to prior service and experience as he held at the time of withdrawal of such accumulated contributions.

Any person in subdivision (a) of this section who elects to become a member after having declined to accept membership, shall be permitted to enter the retirement system, but shall be accorded only the rights of a new entrant, unless he deposits in the reserve fund twenty-five dollars for each year of his prior service. After making such a deposit, he shall be deemed a present teacher, and may elect to contribute retroactively to retirement account for those years, if any, during which he served as a teacher but elected not to contribute. No member shall be eligible for prior service credit unless he is eligible for prior service pension, as prescribed by section twenty-two of this article; however, a new entrant who becomes a present teacher as provided in this paragraph shall be deemed eligible for prior service pension upon retirement.
§18-7A-17. Statement and computation of teachers' service.

Under such rules and regulations as the retirement board may adopt, each teacher shall file a detailed statement of his length of service as a teacher for which he claims credit. The retirement board shall determine what part of a year is the equivalent of a year of service. In computing such service, however, it shall credit no period of more than a month's duration during which a member was absent without pay, nor shall it credit for more than one year service performed in any calendar year.

For the purpose of this article, the retirement board shall grant prior service credit to new entrants and other members of the retirement system for service in any of the armed forces of the United States in any period of national emergency within which a federal selective service act was in effect. For purposes of this section, "armed forces" shall include Women's Army Corps, Women's Appointed Volunteers for Emergency Service, Army Nurse Corps, Spars, Women's Reserve and other similar units officially parts of the military service of the United States. Such military service shall be deemed equivalent to public school teaching, and the salary equivalent for each year of such service shall be the actual salary of the member as a teacher for his first year of teaching after discharge from military service. Prior service credit for military service shall not exceed ten years for any one member, nor shall it exceed twenty-five percent of total service at the time of retirement.

For service as a teacher in the employment of the federal government, or a state or territory of the United States, or a governmental subdivision of such state or territory the retirement board shall grant credit to the same extent and on the same conditions, if any, as a retirement system established for teachers in such employment would grant credit for service as a teacher in the public schools of West Virginia.

No member shall be deemed absent from service as a teacher while serving as a member of the Legislature of the state of West Virginia during any duly constituted session of that body.

The teachers retirement board shall grant service credit to any former or present member of the West Virginia public
employees retirement system who have been contributing mem-
bers for more than three years, for service previously credited
by the public employees retirement system, and (1) shall re-
quire the transfer of the member's contributions to the teach-
ers retirement system or (2) shall require a repayment of the
amount withdrawn any time prior to the member's retirement:
Provided, That there shall be added by the member to the
amounts transferred or repaid under this paragraph an
amount which shall be sufficient to equal the contributions
he would have made had the member been under the
teachers retirement system during the period of his member-
ship in the public employees retirement system. Payments
for absence as provided in section thirteen of this article, shall
be paid in addition to the above amount, if applicable.

If a member is not eligible for prior service credit or pen-
sion as provided in this article, then his prior service shall not
be deemed a part of his total service.

A member who withdrew from membership shall be per-
mitted to regain his former membership rights as specified in
section thirteen of this article only in case he has served two
years since his last withdrawal.

Subject to the above provisions, the board shall verify as
soon as practicable, the statements of service submitted. The
retirement board shall issue prior service certificates to all
persons eligible therefor under the provisions of this article.
Such certificates shall state the length of such prior service
credit, but in no case shall the prior service credit exceed
forty years.

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.


1 Benefits upon withdrawal from service prior to retirement under the provisions of this article shall be as follows:

(a) A contributor who withdraws from service as a teacher for any cause other than death or retirement shall, on demand, be paid his accumulated contributions plus refund interest up to but not including the date of his last contribution, if he is then no longer under contract, verbal or otherwise, to serve as a teacher; or

(b) If such contributor has completed twenty years of total service he may elect to receive at retirement age an annuity which shall be computed as provided in this article. The contributor must notify the retirement board in writing concerning such election.

Benefits upon the death of a contributor prior to retirement under the provisions of this article shall be paid as follows:

(1) If the contributor was at least fifty years old, and if his total service as a teacher was at least twenty-five years at the time of his death, then the surviving spouse of the deceased, provided said spouse is designated as the refund beneficiary, shall be deemed eligible for an annuity which shall be computed as though the deceased were actually a retired teacher at the time of death, and had selected a survivorship option which pays such spouse the same monthly amount which would have been received by the deceased; or

(2) If the facts do not permit payment under the preceding paragraph (1), then the following sum shall be paid to the refund beneficiary of the contributor: His accumulated con-
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 rehabilitation established by this article.

4 (3) "Director" means the director of the division of vocational rehabilitation.

5 (4) "Employment handicap" means a physical or mental condition which constitutes, contributes to, or if not corrected will probably result in, an obstruction to occupational performance.

6 (5) "Disabled individual" means any person who has a substantial employment handicap.

7
(6) "Vocational rehabilitation" and "vocational rehabilitation services" means any services, provided directly or through public or private instrumentalities, found by the director to be necessary to compensate a disabled individual for his employment handicap and to enable him to engage in a remunerative occupation including, but not limited to, medical and vocational diagnosis, vocational guidance, counseling and placement, rehabilitation training, physical restoration, transportation, occupational licenses, occupational tools and equipment, including motor vehicles, maintenance, and training books and materials.

(7) "Rehabilitation training" means all necessary training provided to a disabled individual to compensate for his employment handicap including, but not limited to, manual, pre-conditioning, prevocational, vocational, and supplementary training and training provided for the purpose of achieving broader or more remunerative skills and capacities.

(8) "Physical restoration" means any medical, surgical or therapeutic treatment necessary to correct or substantially reduce a disabled individual's employment handicap within a reasonable length of time including, but not limited to, medical, psychiatric, dental and surgical treatment, nursing services, hospital care not to exceed ninety days, convalescent home care, drugs, medical and surgical supplies, and prosthetic appliances, but excluding curative treatment for acute or transitional conditions.

(9) "Prosthetic appliance" means any artificial device necessary to support or take the place of a part of the body or to increase the acuity of a sense organ.

(10) "Occupational licenses" means any license, permit or other written authority required by any governmental unit to be obtained in order to engage in an occupation.

(11) "Maintenance" means money payments not exceeding the estimated cost of subsistence during vocational rehabilitation.

(12) "Regulations" means regulations made by the director with the approval of the state board.
SCHOOLS [Ch. 120

§18-10A-8. Eligibility for vocational rehabilitation.

1 Vocational rehabilitation services shall be provided to any disabled individual who is present in the state at the time of filing his application therefor, if the director after full investigation shall determine that his rehabilitation can be satisfactorily achieved. Such services shall also be provided to any person who is eligible therefor under the terms of an agreement with another state or with the federal government.

Except as otherwise provided by law or as specified in an agreement with the federal government with respect to classes of individuals certified to the state board thereunder, the following rehabilitation services shall be provided at public cost only to disabled individuals found to require financial assistance with respect thereto:

14 (1) Physical restoration.

15 (2) Transportation, for any other purpose than that of determining the eligibility of the individual for vocational rehabilitation services and the nature and extent of the services necessary.

19 (3) Occupational licenses.

20 (4) Occupational tools, equipment, initial stocks and supplies, books and training material; the title to any or all of which may be conveyed to the individual.

23 (5) Maintenance.

The rights of a disabled individual under the provisions of this article shall not be transferable or assignable at law or in equity.

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
§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.

There is hereby created in the state treasury a special nonrevolving Marshall University capital improvements fund. On and after the first day of July, one thousand nine hundred sixty-three, or on and after the date of the final payment of all principal of and interest on the revenue bonds heretofore issued pursuant to this article, or the making of adequate provision for the payment of all principal of and interest on said revenue bonds, whichever is later, there shall be paid into such special fund all fees collected under the provisions of section one, article twenty-four, chapter eighteen of this code, from students at Marshall University, except such fees as are required by that section to be paid into other special funds.

The board of regents shall have authority to pledge all or such part of the revenue paid into the special Marshall University capital improvements fund as may be needed to meet the requirements of the sinking fund established in connection with any revenue bond issue authorized by this article, including a reserve fund for the payment of the principal of and interest on such revenue bond issue when other moneys in the sinking fund are insufficient therefor; and may provide in the resolution authorizing any issue of such bonds, and in any trust agreement made in connection therewith, for such priorities on the revenues paid into the special fund as may be necessary for the protection of the prior rights of the holders of bonds issued at different times under the provisions of this article. The board of regents shall also have authority to use all or any part of the revenue paid into the special Marshall University capital improvements fund for the payment of all or any part of the cost of providing said
classroom and office building, addition to the library, renovation of administration building and additional land for a new student center building for Marshall University and, to acquire land and to improve and add parking, educational and athletic facilities: Provided, That in the event all or any part of such revenue is so used and applied, the amount of revenue bonds which the board of regents may issue pursuant to this article shall be correspondingly reduced so that the total amount expended pursuant to this article for the payment of the cost of providing said classroom and office building, addition to the library, renovation of administration building and additional land for a new student center building for Marshall University and, to acquire land and to improve and add parking, educational and athletic facilities, shall not exceed the total amount of bonds authorized herein exclusive of any appropriations, grants, gifts, or contributions therefor.

If any balance shall remain in the special Marshall University capital improvements fund after the board has issued the maximum amount of bonds authorized by this article, and after the requirements of all sinking funds and reserve funds established in connection with the issue of such bonds have been satisfied in each year as provided in the resolution or trust agreement authorizing the issuance of such bonds, such balance shall be used solely for the redemption of any of the outstanding bonds issued hereunder which by their terms are then redeemable, or for the purchase of bonds at the market price, but at not exceeding the price, if any, at which such bonds shall be redeemable on the next ensuing date upon which such bonds are redeemable prior to maturity, and all bonds redeemed or purchased shall forthwith be cancelled and shall not again be issued. Whenever all outstanding bonds issued under this article shall have been paid, the special Marshall University capital improvements fund shall cease to exist and any balance then remaining in such fund shall be transferred to the general revenue fund of the state. Thereafter all fees formerly paid into such special fund shall be paid into the general revenue fund of the state.
§18-12A-3. Issuance of revenue bonds.

The issuance of bonds under the provisions of this article shall be authorized by a resolution of the board of regents, which resolution shall recite an estimate by the board of the cost of the proposed building or buildings, improvements and land; and shall provide for the issuance of bonds in an amount sufficient, when sold as hereinafter provided, to provide moneys sufficient to pay such cost, less the amount of revenue paid into the special Marshall University capital improvements fund which is used to pay any part of the cost of providing such classroom and office building, addition to the library, renovation of administration building and additional land for a new student center building for Marshall University and, to acquire land and to improve and add parking, educational and athletic facilities, as authorized by section two of this article and exclusive of the amount of any other funds available for the construction or acquisition of the building or buildings, improvements and land from any appropriation, grant, gift or contribution therefore. Such resolution shall prescribe the rights and duties of the bondholders and the board, and for such purpose may prescribe the form of the trust agreement hereinafter referred to. The bonds shall be of such series, bear such date or dates, mature at such time or times not exceeding thirty years from their respective dates, bear interest at such rates or rates, not exceeding seven per centum per annum, payable semiannually; be in such denominations; be in such form, either coupon or fully registered without coupons, carrying such registration exchangeability and interchangeability privileges; be payable in such medium of payment and at such place or places; be subject to such terms of redemption at such prices not exceeding one hundred five percent of the principal amount thereof, and be entitled to such priorities on the revenues paid into the special Marshall University capital improvements fund as may be provided in the resolution authorizing the issuance of the bonds or in any trust agreement made in connection therewith. The bonds shall be signed by the governor, and by the president of the board of regents, under the great seal of the state, at-
tested by the secretary of state, and the coupons attached thereto shall bear the facsimile signature of the president of the board. In case any of the officers whose signatures appear on the bonds or coupons cease to be such officers before the delivery of such bonds, such signatures shall nevertheless be valid and sufficient for all purposes the same as if such officers had remained in office until such delivery.

Such bonds shall be sold in such manner as the board may determine to be for the best interests of the state, taking into consideration the financial responsibility of the purchaser, the terms and conditions of the purchase, and especially the availability of the proceeds of the bonds when required for payment of the cost of such building or buildings, improvements and land, such sale to be made at a price not lower than a price, which when computed upon standard tables of bond values, will show a net return of not more than eight percent per annum to the purchaser upon the amount paid therefor. The proceeds of such bonds shall be used solely for the payment of the cost of such building or buildings, improvements and land, and shall be deposited in the state treasury in a special fund and checked out as provided by law for the disbursement of other state funds. If the proceeds of such bonds, by error in calculation or otherwise, shall, together with any other funds used therefor as hereinbefore in this article authorized, be less than the cost of such building or buildings, improvements and land, additional bonds may in like manner be issued to provide the amount of the deficiency, but in no case to exceed the total amount of bonds authorized herein less the amount of any other funds used therefor as hereinbefore in this article authorized; and unless otherwise provided for in the resolution or trust agreement hereinafter mentioned, shall be deemed to be of the same issue, and shall be entitled to payment from the same fund, without preference or priority, as the bonds before issued for such building or buildings. If the proceeds of bonds issued for such building or buildings, improvements and land shall, together with the amount of any other funds used therefor as hereinbefore in this article authorized, exceed the cost there-
of, the surplus shall be paid into the sinking fund or re-
serve fund to be established for payment of the principal
and interest of such bonds as hereinafter provided. Prior
to the preparation of definitive bonds, the board may,
under like restrictions, issue temporary bonds with or
without coupons, exchangeable for definitive bonds upon
their issuance.

The bonds issued under the provisions of this article
shall be and have all the qualities of negotiable instru-
ments under the law merchant and the Uniform Com-
mercial Code of this state.

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.

Before entering upon their duties, all teachers shall execute a contract with the state board of education, which contract shall state the salary to be paid and shall be in the form prescribed by the state superintendent of schools. Every such contract shall be signed by the teacher and by the president and secretary of the state board of education.

A teacher's contract, under this section, shall be for a term of not less than one nor more than three years; and if, after three years of such employment, the teacher who holds a professional certificate, based on at least a bachelor's degree, has met the qualifications for the same, and the board of education enter into a new contract of employment, it shall be a continuing contract.

Notwithstanding any other provisions of law, the state board of education may suspend or dismiss any teacher subject to the provisions of this article, with continuing contract status, for immorality, incompetency, cruelty, insubordination, intemperance or willful neglect of duty, but the charges shall be stated in writing and the teacher affected shall be given an opportunity to be heard by the state board upon not less than ten days' written notice, which charges and notice shall be served on the teacher within five days of the presentation of the charges to the state board. The hearing may be held at a regular meeting of the state board or at a special meeting called for that purpose.

§18-17-9. Employment of auxiliary and service personnel, dismissal and suspension procedures.

The state board is authorized to employ such auxiliary and service personnel as is deemed necessary for meeting the needs of the schools for the deaf and blind. Before entering upon their duties such personnel shall execute with the board a written contract which may be in a letter form and shall state the classification and terms of work, the employment period and pay, and shall certify that said employment has been made a matter of minute record. The letter shall provide space for an acceptance
provision and shall be signed and returned to the board by
the employee, or otherwise he shall forfeit his right to
employment.

After three years of acceptable employment each
auxiliary and service personnel, at the end of his con-
tractual period of employment shall be notified in writing
on or before the first day of May in the year in which
such employment shall terminate if he is not to be re-
employed for the ensuing year. Such notice shall be by
certified mail, return receipt requested, and the employee
shall have the right of a hearing before the state board, if
requested, before final action is taken by the board upon
the termination of such employment.

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, sail-
ors and marines; appropriation to provide educational opportu-
nities; 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.

For the purpose of providing educational opportunities for
the children of those who served in the army, navy or marine
corps of the United States during the world war from April
sixth, one thousand nine hundred seventeen, to July second,
one thousand nine hundred twenty-one, or served in the armed
forces of the United States of America at any time between
December first, one thousand nine hundred forty-one, and the
declaration of peace by the Congress of the United States,
or served in the armed forces of the United States of America
at any time between June twenty-seventh, one thousand nine
hundred fifty, and January thirty-first, one thousand nine
hundred fifty-five, or served in the armed forces of the United
States of America at any time between February one, one
thousand nine hundred fifty-five, and the official cessation of
hostilities in Southeast Asia as declared by the United States
government, all dates inclusive, and who were killed in action
or have died or may hereafter die from disease or disability
resulting from such war service, there shall be appropriated
from the state fund general revenue the sum of at least five
thousand dollars for each fiscal year commencing July first
and ending on June thirty of each year of the next biennium
to be used for the benefit of such children while attending
state education or training institutions.

§18-19-2. Eligibility of applicant for benefits; application forms;
preference.

To be eligible for the benefits of this article, said children
must be at least sixteen and not more than twenty-two years
of age and have had their domiciles in this state for at least
twelve months preceding their application for said benefits.
Such application shall be made to, and upon forms provided
by, the West Virginia department of veterans affairs, which
department shall determine the eligibility of those who make
such application and the yearly amount to be allotted each ap-
plicant, which amount in the discretion of the department may
vary from year to year, but shall not exceed the sum of five
hundred dollars in any one year. In selecting those to receive
the benefits of this article, preference shall be given those who
are otherwise financially unable to secure said educational op-
opportunities and to those whose parent was domiciled in this
state during the period of such parent's war service.
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.

In accordance with the following provisions, county boards of education throughout the state shall establish and maintain for all exceptional children between five and twenty-three years of age special educational programs, including but not limited to special schools, classes, regular classroom programs, home-teaching or visiting-teacher services for such type or classification as the state board of education shall approve. Provisions shall be made for educating such exceptional children (including the handicapped and the gifted) who differ from the average or normal in physical, mental or emotional characteristics, or in communicative or intellectual deviation characteristics, or in both communicative and intellectual deviation characteristics, to the extent that they cannot be educated safely or profitably in the regular classes of the public schools or to the extent that they need special educational provisions within the regular classroom in order to educate them in accordance...
with their capacities, limitations and needs. In addition, county boards of education may establish and maintain other educational services for exceptional children as the state superintendent of schools may approve.

By the school year beginning on the first day of July, one thousand nine hundred seventy-four, county boards of education shall establish and maintain these special educational programs, including but not limited to special schools, classes, regular class programs, home-teaching and visiting-teacher services. The state board of education shall adopt rules and regulations to advance and accomplish this program.

Nothing in this section shall be construed to prevent county boards of education from providing special educational programs, including but not limited to special schools, classes, regular class programs, home-teaching or visiting-teacher services for such exceptional children who are three years of age or older.

§18-20-2. Providing suitable educational facilities, equipment and services.

The board of education of each county is empowered and is responsible for providing suitable educational facilities, special equipment, and such special services as may be necessary. Special services include provisions and procedures for finding and enumerating exceptional children of each type, diagnosis by appropriate specialists who will certify the child's need and eligibility for special education and make recommendations for such treatment and prosthesis as may alleviate his disability, special teaching by qualified and especially trained teachers, transportation, lunches, and remedial therapeutic services. Qualifications of teachers and therapists shall be in accordance with standards prescribed or approved by the state board of education.

Counties may provide for educating their resident exceptional children by contracting with other counties or other educational agencies which maintain such special education facilities. Fiscal matters will follow policies approved by the state board of education.
§18-20-3. County reports.

Counties maintaining special schools, classes, regular class programs, home-teaching or visiting services and receiving or requesting reimbursement from state appropriated funds shall file with the state superintendent of schools on forms supplied by his office, applications, annual reports and such other reports as he may require.

§18-20-4. Examination and report by medical or other specialists.

Each child prior to enrolling in a special education program shall be examined by an appropriate medical specialist, psychologist, or educational specialist (reading specialist, speech and language clinician, or other specialists as required by the state board of education for specific areas of exceptionality) who shall report to the county superintendent of schools. The specialists' report shall carry recommendation for eligibility and placement in regular school or in the special education facility, indicate the nature and extent of disability, and advise with reference to treatment and prosthesis for alleviating the child's disability.

No educationally exceptional child shall be excused or excluded from attending school except with expressed written approval of the county superintendent of schools.

§18-20-5. Powers and duties of state superintendent.

The state superintendent of schools shall have power to organize, promote and administer this program under his present organization and be responsible for:

(1) Stimulating and assisting county boards of education in establishing, organizing and maintaining special schools, classes, regular class programs, home-teaching and visiting-teacher services.

(2) Cooperating with all other public and private agencies engaged in relieving, caring for, curing, educating and rehabilitating exceptional children, and in helping coordinate the services of such agencies.

(3) Preparing the necessary rules, regulations, formula for distribution of available appropriated funds, reporting forms
and procedures necessary to define minimum standards in pro-
viding suitable facilities for education of exceptional children,
ensuring the employment, certification and approval of quali-
fied teachers and therapists subject to approval by the state
board of education.

(4) Receiving from county boards of education their appli-
cations, annual reports, and claims for reimbursement from
such moneys as are appropriated by the Legislature, auditing
such claims and preparing vouchers to reimburse said counties
the amounts reimbursable to them.

(5) Performing such other duties and assuming such other
responsibilities in connection with this program as may be
needed.

(6) Nothing herein contained shall be construed to prevent
any county board of education from establishing and main-
taining special schools, classes, regular class programs, home-
teaching or visiting-teaching services out of funds available
from local revenue.

§18-20-6. Advisory council for the education of exceptional chil-
dren.

There shall be an advisory council for the education of
exceptional children which shall advise and consult with
the state board of education on matters pertinent thereto.
The advisory council shall be composed of nine members
appointed by the state superintendent of free schools, four
of which shall be parents of exceptional children utilizing
the services of the special educational programs established
hereunder. Officers and employees of the state shall not be
eligible for appointment to the advisory council. Members shall
be appointed for terms of three years. The members of the
advisory council shall be citizens and residents of this state,
who by reason of their training, education or experience are
qualified to carry out the functions of the advisory council
under this article.

The first term of office for the members shall begin the
thirtieth day of June, one thousand nine hundred seventy-
four.
At its first meeting, to be held the second Wednesday in July, one thousand nine hundred seventy-four, the advisory council shall elect a chairman from among its members, who shall preside over its meetings until the second Wednesday in July of the next year. Thereafter, the advisory council shall elect a chairman on the second Wednesday in July of each year.

All members shall be eligible for reappointment. A member shall, unless sooner removed, continue to serve until his term expires and his successor has been appointed and has qualified. A vacancy caused by the death, resignation or removal of a member prior to the expiration of his term shall be filled only for the remainder of such term.

For the purpose of carrying out its functions under this article, five members of the advisory council shall constitute a quorum. The advisory council shall meet at least four times each year at a building in the state capitol complex and at a time designated by the chairman. Additional meetings may be held when called by the chairman or when requested by five members of the advisory council.

Members of the council shall not receive any compensation for their services on the council, but shall be reimbursed any actual expenses incurred by them in carrying out their duties from funds appropriated to the department of education.

The council shall:

(a) Consult with the state board of education concerning any rules and regulations formulated by such board in implementing this article;

(b) Consider and advise the state board and superintendent concerning any problems presented to the council;

(c) Hold public meetings at such times and places as the advisory council deems appropriate;

(d) Periodically review the state plan for special programs and make any recommendations it may have concerning changes it may deem proper.
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.

The Legislature declares that there exists within the state of West Virginia the Greenbrier College of Osteopathic Medicine which is an accredited, private institution of graduate study for the purpose of training doctors of osteopathic medicine. This article, therefore, is adopted as a measure of providing additional graduate education opportunities to citizens of the state of West Virginia.

§18-22C-2. State aid for students of osteopathy.

The board of regents is hereby authorized to enter into a contract with the Greenbrier College of Osteopathic Medicine to offer training in osteopathic medicine, by the terms of which the board of regents may obligate itself to pay such institution within the limits of any appropriation made for the purpose, a stated amount per year for each West Virginia student the institution will agree to accept for training in osteopathic medicine.
The board of regents shall each year send to the Greenbrier College of Osteopathic Medicine a certified list of all persons, applying to the board for training in osteopathic medicine, who are bona fide citizens and residents of this state prior to the filing of their applications, and who have completed either within or without the state the course of study required by such institution as a prerequisite to the study of osteopathic medicine.

Any person who receives state aid under this section shall, upon graduation from an educational institution for study of osteopathic medicine, be required to practice osteopathic medicine for a period of two years in this state, or in lieu thereof shall, within sixty days from the date of graduation, reimburse the board of regents for any tuition advance by it in his behalf.

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.

The board of regents is authorized and empowered to enter into contracts and expend funds for programs, services and
facilities provided by public and private educational institutions, associations, boards, agencies, consortia, corporations, partnerships, individuals and local, state and federal governmental bodies within and outside of West Virginia in order that maximum higher educational opportunities of high quality may be provided to the citizens of the state in the most economical manner: Provided, That in no event shall a contract for such services and facilities be entered into unless the board has determined that such services and facilities are necessary and that such services and facilities would be at a savings to the state.

Notwithstanding the provisions of this section, nothing herein contained shall supersede the responsibility and respective duties of the commissioner of finance and administration, the director of the purchasing division of such department and the attorney general, for the execution and approval of the contracts entered into under this article and such contracts shall be in complete conformity with the provisions of articles three and five, chapter five-a of this code.

CHAPTER 126

(H. B. 941—By Mr. Speaker, Mr. McManus, and Mr. Selbert)

[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 minimum cost to students and the state, the board of regents, on behalf of the state of West Virginia, is authorized and empowered to participate in the Southern Regional Education Board interstate agreement, namely the Academic Common Market, and in such other regional and interstate agreements determined to be mutually beneficial to the citizens of the participating states and which provide an opportunity for qualified nonresident students to enroll in selected programs and curricula on a resident tuition and fee charge basis. The board of regents is specifically authorized to waive the collection of nonresident tuition and fee charges for students from other states enrolled in programs and curricula approved by the board as a part of a regional or interstate agreement.

CHAPTER 127
(5. 8. 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.
§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.

Bonds of the state of West Virginia, under authority of the better school buildings amendment of 1972, of the par value not to exceed fifty million dollars during the fiscal year ending the thirtieth day of June, one thousand nine hundred seventy-five, are hereby authorized to be issued and sold, at some date subsequent to the first day of August, one thousand nine hundred seventy-four, 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 construction, renovation or remodeling, and the acquisition and preparation of sites for elementary or secondary public school buildings or facilities. Such bonds may be issued by the governor in such amounts, in coupon or registered form, in such denominations, at such time, after the first day of August, one thousand nine hundred seventy-four, bearing such date or dates, as the governor may determine, based upon an examination of the needs of the various county boards of education which justify the issuance by the governor of said bonds, and shall become due and payable serially, annually or semi-annually, in such amounts and mature in such years as the governor may determine. Such bonds shall mature within and not exceeding twenty-five years from their date. The governor must offer said bonds for competitive bids from recognized financial investment institutions before 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 arrange for the transfer of registered bonds and for each such transfer a fee of one dollar shall be charged by and paid to the state of West Virginia, to the credit of the state school buildings bond debt service account. Bonds taken in exchange shall be cancelled by the auditor and treasurer and be carefully preserved by the treasurer. The treasurer shall make provisions for registering "payable to bearer" bonds and for each bond registered a fee of one dollar shall likewise be charged by and paid to the state of West Virginia, to the credit of the state school buildings bond debt service account. All such bonds shall be payable at the office of the treasurer of the state of West Virginia, or, at the option of the holder, at a bank in the city of New York to be designated by the governor, or, at the option of the holder at such other bank or banks, within the state, as may be designated or approved by the governor. The bonds shall bear interest, payable semiannually, to bearer, at the office of the treasurer of the state of West Virginia, at the capitol of the state, or at the banks designated and approved by the governor, upon presentation and surrender of interest coupons, then due, in the case of coupon bonds. For the payment of interest on registered bonds, the treasurer of the state of West Virginia shall requisition a warrant from the auditor of the state to be drawn on the state treasurer, and shall mail such warrant to the registered owner at the address as shown by the record of registration. Both the principal and interest of the bonds shall be payable in lawful money of the United States of America and the bonds shall be exempt from taxation by the state of West Virginia, or by any county, district or municipality thereof, which facts shall appear on the face of the bonds as part of the contract with the holder thereof.

§3. Form of bond.

1 The bonds shall be executed on behalf of the state of West Virginia, by the manual or facsimile signature of the treasurer thereof, under the great seal of the state or
a facsimile thereof, and countersigned by the manual or facsimile signature of the auditor of the state: Provided, That one of said signatures on said bonds shall be a manual signature and said bonds shall be in the following form or to the following effect, as nearly as may be, namely:

**COUPON SCHOOL BUILDINGS BOND**

(Or registered school buildings bond, as the case may be)

OF THE

**STATE OF WEST VIRGINIA**

$... No...

The state of West Virginia, under and by virtue of authority of an amendment to the constitution, which was proposed by Senate Joint Resolution No. 4, adopted the ninth day of March, one thousand nine hundred seventy-two, and was ratified by a vote of the people at the general election on the seventh day of November, one thousand nine hundred seventy-two, which is hereby made a part hereof as fully as if set forth at length herein, acknowledges itself to be indebted to and hereby promises to pay to the bearer hereof (in case of a coupon bond) or to the owner of record, in case of registered bonds) on the day of 19..., in lawful money of the United States of America at the office of the treasurer of the state of West Virginia at the capitol of said state, or, at bank in the city of New York, or, at bank, at the option of the holder, the sum of dollars, with interest thereon at percent a year from the date, payable semiannually in like lawful money of the United States of America at the treasurer's office or banks afore-said, on the first day of and the first day of of each year (and in the case of coupon bonds) according to the tenor of the annexed coupons bearing the facsimile signature of the treasurer of the state of West Virginia, upon surrender of such coupons. This bond (in case of a coupon bond) may be exchanged for a registered bond of like tenor upon application to the treasurer of the state of West Virginia.
To secure the payment of the principal and interest of this bond, the state of West Virginia covenants and agrees with the holder as follows: (1) That this bond shall constitute a direct and general obligation of the state of West Virginia; (2) that the full faith and credit of the state is pledged to secure the payment of the principal and interest of this bond; (3) that an annual state tax shall be collected in an amount sufficient to pay as it may accrue the interest on this bond and the principal as the same mature; and (4) that to the full extent permitted by the constitution of West Virginia any of the covenants, agreements and provisions of this act may be enforced in any court of competent jurisdiction by any holder of such bonds or of any interest coupon appertaining thereto.

This bond is hereby made exempt from any taxation by the state of West Virginia, or by any county, district or municipal corporation thereof.

In testimony whereof, witness the manual or facsimile signature of the treasurer of the state of West Virginia, and the manual or facsimile countersignature of the auditor of the state, hereto affixed according to law, dated the ______ day of ________, one thousand nine hundred ________, and the seal of the state of West Virginia or a facsimile thereof.

Treasurer of the State of West Virginia

(SEAL)

Countersigned:

Auditor of the State of West Virginia

§4. Form of coupon.

The form of coupon shall be substantially as follows, to wit:

STATE OF WEST VIRGINIA

Bond No.______________

Coupon No.______________

On the first day of _____________, 19___, the state of West Virginia will pay to the bearer, in lawful money
of the United States of America, at the office of the
treasurer of the state, or, at__________________________bank
in the city of New York, or, at ______________________,
at the option of the holder, the sum of_______________
dollars, the same being semiannual interest on School
Buildings Bond No.__________________________
Treasurer of the State of West Virginia

The signature of the treasurer to such coupon shall be
by his facsimile signature and the coupons shall be num-
ered in the order of their maturity, from number one
consecutively. The bonds and coupons may be signed, as
provided in this act, by the present treasurer and auditor,
or by any of their respective successors in office, and the
bonds signed by the persons now in the office may be
sold by the governor or his successor in office without being
signed by the successor in office of the present treasurer or
auditor.

§5. Listing by auditor.

All coupons and registered bonds issued under this act
shall be separately listed by the auditor of the state in
books provided for the purpose, in each case giving the
date, number, character and amount of obligations issued,
and in the case of registered bonds, the name and post-
office address of the person, firm or corporation registered
as the owner thereof.

§6. Establishment of state school buildings bond debt service
account; deposits therein.

The treasurer shall establish in his office a special ac-
count designated state school buildings bond debt service
account. Into such account and from the appropriation
made by the Legislature for such purpose there shall be
transferred sufficient moneys to pay the interest as the
same may accrue and the principal as the same mature
on such bonds. Moneys received from transfer and regis-
tration fees shall likewise be deposited into said special
account.

§7. Covenants of state.

The state of West Virginia covenants and agrees with
the holders of the bonds issued pursuant hereto as follows: (1) That such bonds shall constitute a direct and general obligation of the state of West Virginia; (2) that the full faith and credit of the state is hereby pledged to secure the payment of the principal and interest of such bonds; (3) that an annual state tax shall be collected in an amount sufficient to pay as it may accrue the interest on this bond and the principal as the same mature; and (4) that to the full extent permitted by the constitution of West Virginia any of the covenants, agreements and provisions of this act may be enforced in any court of competent jurisdiction by any holder of such bonds or of any interest coupon appertaining thereto.

§8. Sale by governor; minimum price.

The governor shall sell the bonds herein authorized at such time or times after the first day of August, one thousand nine hundred seventy-four, as he may determine necessary to provide funds for the construction, renovation, remodeling and equipping of elementary or secondary public school buildings or facilities as herein provided, and subject to the limitations contained in this act. All sales shall be at not less than par and accrued interest. All interest coupons becoming payable prior to the sale date shall be cancelled by the treasurer and rendered ineffective, before the delivery of the bonds so sold.

§9. Proceeds paid into separate account; expenditures.

The proceeds of all sales of bonds herein authorized shall be paid into a separate and distinct account and shall be used and appropriated solely for the construction, renovation, remodeling and equipping of elementary or secondary public school buildings or facilities as provided for by the state constitution and the laws enacted thereunder. Except for such sums necessary for current operating balances, such account shall be invested and reinvested in short-term obligations of the United States treasury: Provided, That no such investment or reinvestment
§10. Plates, etc., property of state.

The plates, casts, dies or other forms from which the bonds authorized by this act are produced or made shall be the property of the state of West Virginia.

§11. Auditor to be custodian of unsold bonds.

The state auditor shall be the custodian of all unsold bonds issued pursuant to the provisions of this act.

§12. Interim certificates.

The governor may authorize the issuance of interim certificates to be issued to the purchasers of such bonds to be held by them in lieu of permanent bonds. When interim certificates are so issued, they shall become full and legal obligations of the state of West Virginia under all of the provisions of this act just as fully and completely as the permanent bonds.

§13. State treasurer to be financial advisor.

The state treasurer shall serve as financial advisor to the governor for the issuance and sale of such bonds.

§14. Attorney general or his duly appointed legal representative to serve as bond counsel.

The attorney general, or his duly appointed legal representative, shall serve as bond counsel and shall be responsible for the issuance of a final approving opinion regarding the legality of the sale of such bonds.

§15. Approval and payment of all necessary expenses.

All necessary expenses, including legal expenses approved by the attorney general, incurred in the execution of this act shall be chargeable to and paid out of the state school buildings bond debt service account on warrants of the auditor of the state drawn on the state treasurer.
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


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.

ARTICLE 1. FRAUDULENT AND OTHER PROHIBITED PRACTICES.

§32-1-102. Advisory activities.


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
(1) that the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;

(2) that no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract; and

(3) that the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change.

Subdivision (1) of this section does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date. "Assignment," as used in subdivision (2) of this section includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but, if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

(c) It is unlawful for any investment adviser to take or have custody of any securities or funds of any client if

(1) the commissioner by rule prohibits custody; or

(2) in the absence of rule, the investment adviser fails to notify the commissioner that he has or may have custody.

ARTICLE 2. REGISTRATION OF BROKER-DEALERS, AGENTS AND INVESTMENT ADVISERS.

§32-2-201. Registration requirement.
§32-2-201. Registration requirement.

(a) It is unlawful for any person to transact business in this state as a broker-dealer or agent unless he is registered under this chapter.

(b) It is unlawful for any broker-dealer or issuer to employ an agent unless the agent is registered. The registration of an agent is not effective during any period when he is not associated with a particular broker-dealer registered under this chapter or a particular issuer. When an agent begins or terminates a connection with a broker-dealer or issuer, or begins or terminates those activities which make him an agent, the agent as well as the broker-dealer or issuer shall promptly notify the commissioner.

(c) It is unlawful for any person to transact business in this state as an investment adviser unless (1) he is so registered under this chapter, (2) he is registered as a broker-dealer without the imposition of a condition under section 204(b)(5), or (3) his only clients in this state are investment companies as defined in the Investment Company Act of 1940 or insurance companies.

(d) Every registration expires one year from its effective date unless renewed. The commissioner by rule or order may prepare an initial schedule for registration renewals so that subsequent renewals of registrations effective on the effective date of this chapter may be staggered by calendar months. For this purpose the commissioner by rule may reduce the registration fee proportionately.


(a) A broker-dealer, agent or investment adviser may obtain an initial or renewal registration by filing with the commissioner an application together with a consent to service of process pursuant to section 414(g). The application shall contain whatever information the commissioner by rule requires concerning such matters as (1) the applicant's firm and place of organization; (2) the
applicant's proposed method of doing business; (3) the qualifications and business history of the applicant; in the case of a broker-dealer or investment adviser, the qualifications and business history of any partner, officer or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser; and, in the case of an investment adviser, the qualifications and business history of any employee; (4) any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony; and (5) the applicant's financial condition and history. The commissioner may by rule or order require an applicant for initial registration to publish an announcement of the application as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area or areas for such publication shall be specified by the commissioner. If no denial order is in effect and no proceeding is pending under section 204, registration becomes effective at noon of the thirtieth day after an application is filed. The commissioner may by rule or order specify an earlier effective date, and he may by order defer the effective date until noon of the thirtieth day after the filing of any amendment. Registration of a broker-dealer automatically constitutes registration of any agent who is a partner, officer or director, or a person occupying a similar status or performing similar functions, as designated by the broker-dealer in writing to the commissioner and approved in writing by the commissioner.

(b) Every applicant for initial or renewal registration shall pay a filing fee of one hundred dollars in the case of a broker-dealer, fifteen dollars in the case of an agent, and fifteen dollars in the case of an investment adviser. When application is denied or withdrawn, the commissioner shall retain all of the fee.

(c) A registered broker-dealer or investment adviser may file an application for registration of a successor, whether or not the successor is then in existence, for the
unexpired portion of the year. A filing fee of five dollars shall be paid.  

(d) The commissioner may by rule require a minimum capital for registered broker-dealers and investment advisers.  

(e) The commissioner may by rule require registered broker-dealers, agents and investment advisers to post surety bonds in amounts up to ten thousand dollars, and may determine their conditions. Any appropriate deposit of cash or securities shall be accepted in lieu of any bond so required. No bond may be required of any registrant whose net capital, which may be defined by rule, exceeds twenty-five thousand dollars. Every bond shall provide for suit thereon by any person who has a cause of action under section 410 and, if the commissioner by rule or order requires, by any person who has a cause of action not arising under this chapter. Every bond shall provide that no suit may be maintained to enforce any liability on the bond unless brought within two years after the sale or other act upon which it is based.

§32-2-203. Post-registration provisions.  

(a) Every registered broker-dealer and investment adviser shall make and keep such accounts, correspondence, memoranda, papers, books and other records as the commissioner by rule prescribes. All records so required shall be preserved for three years unless the commissioner by rule prescribes otherwise for particular types of records.  

(b) Every registered broker-dealer and investment adviser shall file such financial reports as the commissioner by rule prescribes.  

(c) If the information contained in any document filed with the commissioner is or becomes inaccurate or incomplete in any material respect, the registrant shall promptly file a correcting amendment unless notification of the correction has been given under section 201(b).  

(d) All the records referred to in subsection (a) are subject at any time or from time to time to such reason-
able periodic, special or other examinations by representa-
tives of the commissioner, within or without this state, as
the commissioner deems necessary or appropriate in the
public interest or for the protection of investors. For the
purpose of avoiding unnecessary duplication of examina-
tions, the commissioner, insofar as he deems it practicable
in administering this subsection, may cooperate with the
securities administrators of other states, the securities and
exchange commission, and any national securities ex-
change or national securities association registered under

§32-2-204. Denial, revocation, suspension, cancellation and
withdrawal of registration.

(a) The commissioner may by order deny, suspend or
revoke any registration if he finds (1) that the order is in
the public interest and (2) that the applicant or registrant
or, in the case of a broker-dealer or investment adviser,
any partner, officer or director, any person occupying a
similar status or performing similar functions, or any per-
son directly or indirectly controlling the broker-dealer or
investment adviser

(A) has filed an application for registration which as
of its effective date, or as of any date after filing in the case
of an order denying effectiveness, was incomplete in any
material respect or contained any statement which was,
in light of the circumstances under which it was made,
false or misleading with respect to any material fact;

(B) has willfully violated or willfully failed to com-
ply with any provision of this chapter or a predecessor
act or any rule or order under this chapter or a predeces-

or act;

(C) has been convicted, within the past ten years, of
any misdemeanor involving a security or any aspect of the
securities business, or any felony;

(D) is permanently or temporarily enjoined by any
court of competent jurisdiction from engaging in or con-

Continuing any conduct or practice involving any aspect of
the securities business;
(E) is the subject of an order of the commissioner denying, suspending or revoking registration as a broker-dealer, agent or investment adviser;

(F) is the subject of an order entered within the past five years by the securities administrator of any other state or by the securities and exchange commission denying or revoking registration as a broker-dealer, agent or investment adviser, or the substantial equivalent of those terms as defined in this chapter, or is the subject of an order of the securities and exchange commission suspending or expelling him from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934, or is the subject of a United States post office fraud order; but (i) the commissioner may not institute a revocation or suspension proceeding under subdivision (F) more than one year from the date of the order relied on, and (ii) he may not enter an order under subdivision (F) on the basis of an order under another state act unless that order was based on facts which would currently constitute a ground for an order under this section;

(G) has engaged in dishonest or unethical practices in the securities business;

(H) is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature; but the commissioner may not enter an order against a broker-dealer or investment adviser under this subdivision without a finding of insolvency as to the broker-dealer or investment adviser;

(I) is not qualified on the basis of such factors as training, experience and knowledge of the securities business, except as otherwise provided in subsection (b).

The commissioner may by order deny, suspend or revoke any registration if he finds (1) that the order is in the public interest and (2) that the applicant or registrant

(J) has failed reasonably to supervise his agents if he is a broker-dealer or his employees if he is an investment adviser; or
(K) has failed to pay the proper filing fee; but the commissioner may enter only a denial order under this subdivision, and he shall vacate any such order when the deficiency has been corrected.

The commissioner may not institute a suspension or revocation proceeding on the basis of a fact or transaction known to him when registration became effective unless the proceeding is instituted within the next thirty days.

(b) The following provisions govern the application of section 204(a) (2) (I):

(1) The commissioner may not enter an order against a broker-dealer on the basis of the lack of qualification of any person other than (A) the broker-dealer himself if he is an individual or (B) an agent of the broker-dealer.

(2) The commissioner may not enter an order against an investment adviser on the basis of the lack of qualification of any person other than (A) the investment adviser himself if he is an individual or (B) any other person who represents the investment adviser in doing any of the acts which may make him an investment adviser.

(3) The commissioner may not enter an order solely on the basis of lack of experience if the applicant or registrant is qualified by training or knowledge or both.

(4) The commissioner shall consider that an agent who will work under the supervision of a registered broker-dealer need not have the same qualifications as a broker-dealer.

(5) The commissioner shall consider that an investment adviser is not necessarily qualified solely on the basis of experience as a broker-dealer or agent. When he finds that an applicant for initial or renewal registration as a broker-dealer is not qualified as an investment adviser, he may by order condition the applicant’s registration as a broker-dealer upon his not transacting business in this state as an investment adviser.

(6) The commissioner may by rule provide for an examination, which may be written or oral or both, to be
taken by any class of or all applicants, as well as persons
who represent or will represent an investment adviser in
doing any of the acts which make him an investment ad-
viser.

(c) The commissioner may by order summarily post-
pone or suspend registration pending final determination
of any proceeding under this section. Upon the entry of
the order, the commissioner shall promptly notify the ap-
plicant or registrant, as well as the employer or prospec-
tive employer if the applicant or registrant is an agent,
that it has been entered and of the reasons therefor and
that within fifteen days after the receipt of a written re-
quest the matter will be set down for hearing. If no
hearing is requested and none is ordered by the com-
missioner, the order will remain in effect until it is modi-
ified or vacated by the commissioner. If a hearing is re-
quested or ordered, the commissioner, after notice of and
opportunity for hearing, may modify or vacate the order
or extend it until final determination.

(d) If the commissioner finds that any registrant or
applicant for registration is no longer in existence or has
ceased to do business as a broker-dealer, agent or invest-
ment adviser, or is subject to an adjudication of mental
incompetence or to the control of a committee, conservator
or guardian, or cannot be located after reasonable search,
the commissioner may by order cancel the registration or
application.

(e) Withdrawal from registration as a broker-dealer,
agent or investment adviser becomes effective thirty days
after receipt of an application to withdraw or within such
shorter period of time as the commissioner may determine,
unless a revocation or suspension proceeding is pending
when the application is filed or a proceeding to revoke or
suspend or to impose conditions upon the withdrawal is
instituted within thirty days after the application is filed.
If a proceeding is pending or instituted, withdrawal be-
comes effective at such time and upon such conditions as
the commissioner by order determines. If no proceeding
is pending or instituted and withdrawal automatically be-
comes effective, the commissioner may nevertheless in-
142 substitute 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 
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
average net earnings, determined in accordance with generally accepted accounting practices, (i) which are applicable to all securities without a fixed maturity or a fixed interest or dividend provision outstanding at the date the registration statement is filed and equal at least five percent of the amount of such outstanding securities (as measured by the maximum offering price or the market price on a day, selected by the registrant, within thirty days before the date of filing the registration statement, whichever is higher, or book value on a day, selected by the registrant, within ninety days of the date of filing the registration statement to the extent that there is neither a readily determinable market price nor a cash offering price), or (ii) which, if the issuer and any predecessors have not had any security of the type specified in clause (i) outstanding for three full fiscal years, equal at least five percent of the amount (as measured in clause (i)) of all securities which will be outstanding if all the securities being offered or proposed to be offered (whether or not they are proposed to be registered or offered in this state) are issued;

(2) any security (other than a certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease) registered for nonissuer distribution if (A) any security of the same class has ever been registered under this chapter or a predecessor act, or (B) the security being registered was originally issued pursuant to an exemption under this chapter or a predecessor act.

(b) A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in section 305 (c) and the consent to service of process required by section 414(g):

(1) A statement demonstrating eligibility for registration by notification;

(2) with respect to the issuer and any significant subsidiary: Its name, address and form of organization; the state (or foreign jurisdiction) and the date of its
organization; and the general character and location of its business;

(3) with respect to any person on whose behalf any part of the offering is to be made in a nonissuer distribution: His name and address; the amount of securities of the issuer held by him as of the date of the filing of the registration statement; and a statement of his reasons for making the offering;

(4) a description of the security being registered;

(5) the information and documents specified in subdivisions (8), (10) and (12) of section 304(b); and

(6) in the case of any registration under section 302(a) (2) which does not also satisfy the conditions of section 302(a) (1), a balance sheet of the issuer as of a date within four months prior to the filing of the registration statement, and a summary of earnings for each of the two fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessors' existence if less than two years.

(c) If no stop order is in effect and no proceeding is pending under section 306, a registration statement under this section automatically becomes effective at three o'clock in the afternoon of the full business day after the filing of the registration statement or the last amendment, or at such earlier time as the commissioner determines.

§32-3-303. Registration by coordination.

(a) Any security for which a registration statement has been filed under the Securities Act of 1933 in connection with the same offering may be registered by coordination.

(b) A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in section 305(c) and the consent to service of process required by section 414(g):
(1) Three copies of the latest form of prospectus filed under the Securities Act of 1933;

(2) If the commissioner by rule or otherwise requires, a copy of the articles of incorporation and bylaws (or their substantial equivalents) currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;

(3) If the commissioner requests, any other information, or copies of any other documents, filed under the Securities Act of 1933; and

(4) An undertaking to forward all future amendments to the federal prospectus, other than an amendment which merely delays the effective date of the registration statement, promptly and in any event not later than the first business day after the day they are forwarded to or filed with the securities and exchange commission, whichever first occurs.

(c) A registration statement under this section automatically becomes effective at the moment the federal registration statement becomes effective if all the following conditions are satisfied: (1) No stop order is in effect and no proceeding is pending under section 306; (2) the registration statement has been on file with the commissioner for at least ten days; and (3) a statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and the commissions has been on file for two full business days or such shorter period as the commissioner permits by rule or otherwise and the offering is made within those limitations. The registrant shall promptly notify the commissioner by telephone or telegram of the date and time when the federal registration statement became effective and the content of the price amendment, if any, and shall promptly file a post-effective amendment containing the information and documents in the price amendment. "Price amendment" means the final federal amendment which includes a statement of the offering price, under-
writing and selling discounts or commissions, amount of proceeds, conversion rates, call prices and other matters dependent upon the offering price. Upon failure to receive the required notification and post-effective amendment with respect to the price amendment, the commissioner may enter a stop order, without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with this subsection, if he promptly notifies the registrant by telephone or telegram (and promptly confirms by letter or telegram when he notifies by telephone) of the issuance of the order. If the registrant proves compliance with the requirements of this subsection as to notice and post-effective amendment, the stop order is void as of the time of its entry. The commissioner may by rule or otherwise waive either or both of the conditions specified in subdivisions (2) and (3) of subsection (b). If the federal registration statement becomes effective before all the conditions in this subsection are satisfied and they are not waived, the registration statement automatically becomes effective as soon as all the conditions are satisfied. If the registrant advises the commissioner of the date when the federal registration statement is expected to become effective, the commissioner shall promptly advise the registrant by telephone or telegram, at the registrant's expense whether all the conditions are satisfied and whether he then contemplates the institution of a proceeding under section 306; but this advice by the commissioner does not 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 contain the following information and be accompanied by the following documents in addition to the information specified in section 305(c) and the consent to service of process required by section 414(g):

7 (1) With respect to the issuer and any significant subsidiary: Its name, address and form of organization; the state or foreign jurisdiction and date of its organiza-
tion; the general character and location of its business; a
description of its physical properties and equipment; and
a statement of the general competitive conditions in the
industry or business in which it is or will be engaged;

(2) with respect to every director and officer of the
issuer, or person occupying a similar status or performing
similar functions: His name, address and principal occu-
pation for the past five years; the amount of securities
of the issuer held by him as of a specified date within
thirty days of the filing of the registration statement; the
amount of the securities covered by the registration
statement to which he has indicated his intention to
subscribe; and a description of any material interest in any
material transaction with the issuer or any significant
subsidiary effected within the past three years or pro-
posed to be effected;

(3) with respect to persons covered by subdivision (2):
The remuneration paid during the past twelve months and
estimated to be paid during the next twelve months, di-
rectly or indirectly, by the issuer (together with all
predecessors, parents, subsidiaries and affiliates) to all
those persons in the aggregate;

(4) with respect to any person owning of record, or
beneficially if known, ten percent or more of the out-
standing shares of any class of equity security of the
issuer: The information specified in subdivision (2) other
than his occupation;

(5) with respect to every promoter if the issuer was
organized within the past three years: The information
specified in subdivision (2), any amount paid to him with-
in that period or intended to be paid to him, and the
consideration for any such payment;

(6) with respect to any person on whose behalf any
part of the offering is to be made in a nonissuer distribu-
tion: His name and address; the amount of securities of
the issuer held by him as of the date of the filing of the
registration statement; a description of any material in-
terest in any material transaction with the issuer or any
significant subsidiary effected within the past three years
(7) the capitalization and long-term debt (on both a current and a pro forma basis) of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration (whether in the form of cash, physical assets, services, patents, goodwill or anything else) for which the issuer or any subsidiary has issued any of its securities within the past two years or is obligated to issue any of its securities;

(8) the kind and amount of securities to be offered; the proposed offering price or the method by which it is to be computed; any variation therefrom at which any proportion of the offering is to be made to any person or class of persons other than the underwriters, with a specification of any such person or class; the basis upon which the offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finders' fees (including separately cash, securities, contracts or anything else of value to accrue to the underwriters or finders in connection with the offering) or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering and accounting charges; the name and address of every underwriter and every recipient of a finder's fee; a copy of any underwriting or selling-group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;

(9) the estimated cash proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the amount to be used for each purpose; the order or priority in which the 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 acquis-
96 tion 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 acquisi-
99 tion); 
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-
sel as to the legality of the security being registered (with
an English translation if it is in a foreign language),
which shall state whether the security when sold will be
legally issued, fully paid and nonassessable, and, if a debt
security, a binding obligation of the issuer;

(15) the written consent of any accountant, engineer,
appraiser or other person whose profession gives authority
to a statement made by him, if any such person is named
as having prepared or certified a report or valuation
(other than a public and official document or statement)
which is used in connection with the registration state-
ment;

(16) a balance sheet of the issuer as of a date within
four months prior to the filing of the registration state-
ment; a profit and loss statement and analysis of surplus
for each of the three fiscal years preceding the date of the
balance sheet and for any period between the close of the
last fiscal year and the date of the balance sheet, or for
the period of the issuer’s and any predecessors’ existence
if less than three years; and, if any part of the proceeds
of the offering is to be applied to the purchase of any
business, the same financial statements which would be
required if that business were the registrant; and

(17) such additional information as the commissioner
requires by rule or order.

(c) A registration statement under this section becomes
effective when the commissioner so orders.

(d) The commissioner may by rule or order require as
a condition of registration under this section that a pros-
ppectus containing any designated part of the information
specified in subsection (b) be sent or given to each person
to whom an offer is made before or concurrently with (1)
the first written offer made to him (otherwise than by
means of a public advertisement) by or for the account of
the issuer or any other person on whose behalf the offer-
ing is being made, or by any underwriter or broker-dealer
who is offering part of an unsold allotment or subscrip-
tion taken by him as a participant in the distribution, (2)
the confirmation of any sale made by or for the account of
§32-3-305. Provisions applicable to registration generally.

(a) A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered broker-dealer.

(b) Every person filing a registration statement shall pay a filing fee of one twentieth of one percent of the maximum aggregate offering price at which the registered securities are to be offered in this state, but the fee shall in no case be less than fifty dollars or more than fifteen hundred dollars. When a registration statement is withdrawn before the effective date or a preeffective stop order is entered under section 306, the commissioner shall retain all of the fee.

(c) Every registration statement shall specify (1) the amount of securities to be offered in this state; (2) the states in which a registration statement or similar document in connection with the offering has been or is to be filed; and (3) any adverse order, judgment or decree entered in connection with the offering by the regulatory authorities in each state or by any court or the securities and exchange commission.

(d) Any document filed under this chapter or a predecessor act within five years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate.

(e) The commissioner may by rule or otherwise permit the omission of any item of information or document from any registration statement.

(f) In the case of a nonissuer distribution, information may not be required under section 304 or 305(j) unless it is known to the person filing the registration statement or to the persons on whose behalf the distribution is to be made, or can be furnished by them without unreasonable effort or expense.
(g) The commissioner may by rule or order require as a condition of registration by qualification or coordina-
tion (1) that any security issued within the past three years or to be issued to a promoter for a consideration substantially different from the public offering price, or to any person for a consideration other than cash, be deposited in escrow; and (2) that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere. The commissioner may by rule or order determine the condi-
tions of any escrow or impounding required hereunder, but he may not reject a depository solely because of location in another state.

(h) The commissioner may by rule or order require as a condition of registration that any security registered by qualification or coordination be sold only on a specified form of subscription or sale contract, and that a signed or conformed copy of each contract be filed with the commissioner or preserved for any period up to three years specified in the rule or order.

(i) Every registration statement is effective for one year from its effective date, or any longer period during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by any underwriter or broker-dealer who is still offering part of an unsold allotment or subscrip-
tion taken by him as a participant in the distribution, except during the time a stop order is in effect under section 306. All outstanding securities of the same class as a registered security are considered to be registered for the purpose of any nonissuer transaction (1) so long as the registration statement is effective and (2) between the thirtieth day after the entry of any stop order sus-
pending or revoking the effectiveness of the registration statement under section 306 (if the registration state-
ment did not relate in whole or in part to a nonissuer distribution) and one year from the effective date of the registration statement. A registration statement may not
be withdrawn for one year from its effective date if any securities of the same class are outstanding. A registration statement may be withdrawn otherwise only in the discretion of the commissioner.

(j) So long as a registration statement is effective, the commissioner may by rule or order require the person who filed the registration statement to file reports, not more often than quarterly, to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering.

(k) A registration statement relating to a security issued by a face amount certificate company or a redeemable security issued by an open-end management company or unit investment trust, as those terms are defined in the Investment Company Act of 1940, may be amended after its effective date so as to increase the securities specified as proposed to be offered. Such an amendment becomes effective when the commissioner so orders. Every person filing such an amendment shall pay a filing fee, calculated in the manner specified in subsection (b), with respect to the additional securities proposed to be offered.

§32-3-306. Denial, suspension and revocation of registration.

(a) The commissioner may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement if he finds (1) that the order is in the public interest and (2) that

(A) the registration statement as of its effective date or as of any earlier date in the case of an order denying effectiveness, or any amendment under section 305(k) as of its effective date, or any report under section 305(j) is incomplete in any material respect or contains any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(B) any provision of this chapter or any rule, order or condition lawfully imposed under this chapter has been willfully violated, in connection with the offering,
by (i) the person filing the registration statement, (ii) the issuer, any partner, officer or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer, or (iii) any underwriter;

(C) the security registered or sought to be registered is the subject of an administrative stop order or similar order or a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state act applicable to the offering; but (i) the commissioner may not institute a proceeding against an effective registration statement under subdivision (C) more than one year from the date of the order or injunction relied on, and (ii) he may not enter an order under subdivision (C) on the basis of an order or injunction entered under any other state act unless that order or injunction was based on facts which would currently constitute a ground for a stop order under this section;

(D) the issuer's enterprise or method of business includes or would include activities which are illegal where performed;

(E) the offering has worked or tended to work a fraud upon purchasers or would so operate;

(F) the offering has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions or other compensation, or promoters' profits or participation, or unreasonable amounts or kinds of options;

(G) when a security is sought to be registered by notification, it is not eligible for such registration;

(H) when a security is sought to be registered by coordination, there has been a failure to comply with the undertaking required by section 303(b) (4); or

(I) the applicant or registrant has failed to pay the
proper filing fee; but the commissioner may enter only
a denial order under this subdivision and he shall vacate
any such order when the deficiency has been corrected.

The commissioner may not institute a stop order pro-
ceeding against an effective registration statement on
the basis of a fact or transaction known to him when the
registration statement became effective unless the pro-
ceeding is instituted within the next thirty days.

(b) The commissioner may by order summarily post-
pone or suspend the effectiveness of the registration state-
ment pending final determination of any proceeding under
this section. Upon the entry of the order, the commis-
sioner shall promptly notify each person specified in
subsection (c) that it has been entered and of the reasons
therefor and that within fifteen days after the receipt
of a written request the matter will be set down for
hearing. If no hearing is requested and none is ordered
by the commissioner, the order will remain in effect
until it is modified or vacated by the commissioner. If
a hearing is requested or ordered, the commissioner,
after notice of and opportunity for hearing to each per-
son specified in subsection (c), may modify or vacate
the order or extend it until final determination.

(c) No stop order may be entered under any part
of this section except the first sentence of subsection (b)
without (1) appropriate prior notice to the applicant or
registrant, the issuer and the person on whose behalf
the securities are to be or have been offered, (2) oppor-
tunity for hearing, and (3) written findings of fact and
conclusions of law.

(d) The commissioner may vacate or modify a stop
order if he finds that the conditions which prompted
entry have changed or that it is otherwise in the public
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.
§32-4-401. Definitions.

1 When used in this chapter, unless the context otherwise requires:

3 (a) "Commissioner" means the auditor of the state of West Virginia.

5 (b) "Agent" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities. "Agent" does not include an individual who represents an issuer in (1) effecting transactions in a security exempted by subdivision (1), (2), (3), (10) or (11) of section 402 (a), (2) effecting transactions exempted by section 402 (b), or (3) effecting transactions with existing employees, partners or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state. A partner, officer or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if he otherwise comes within this definition.

20 (c) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his own account. "Broker-dealer" does not include (1) an agent, (2) an issuer, (3) a bank, savings institution or trust company, or (4) a person who has no place of business in this state if (A) he effects transactions in this state exclusively with or through (i) the is-
suers of the securities involved in the transactions, (ii)
other broker-dealers, or (iii) banks, savings institutions,
trust companies, insurance companies, investment com-
panies as defined in the Investment Company Act of 1940,
pension or profit-sharing trusts, or other financial institu-
tions or institutional buyers, whether acting for themselves
or as trustees, or (B) during any period of twelve consecu-
tive months he does not direct more than fifteen offers to
sell or buy into this state in any manner to persons other
than those specified in clause (A), whether or not the of-
feror or any of the offerees is then present in this state.
(d) "Fraud," "deceit" and "defraud" are not limited to
common-law deceit.
(e) "Guaranteed" means guaranteed as to payment of
principal, interest or dividends.
(f) "Investment adviser" means any person who, for
compensation, engages in the business of advising others,
either directly or through publications or writings, as to
the value of securities or as to the advisability of investing
in, purchasing or selling securities, or who, for compensa-
tion and as a part of a regular business, issues or promul-
gates analyses or reports concerning securities. "Invest-
ment adviser" does not include (1) a bank, savings insti-
tution or trust company; (2) a lawyer, accountant, engi-
neer or teacher whose performance of those services is
solely incidental to the practice of his profession; (3) a
broker-dealer whose performance of these services is sole-
ly incidental to the conduct of his business as a broker-
dealer and who receives no special compensation for them;
(4) a publisher of any bona fide newspaper, news maga-
zine or business or financial publication of general, regular
and paid circulation; (5) a person whose advice, analyses
or reports relate only to securities exempted by section
402(a) (1); (6) a person who has no place of business in
this state if (A) his only clients in this state are other
investment advisers, broker-dealers, banks, savings in-
stitutions, trust companies, insurance companies, invest-
ment companies as defined in the Investment Company
Act of 1940, pension or profit-sharing trusts, or other finan-
cial institutions or institutional buyers, whether acting for
themselves or as trustees, or (B) during any period of
twelve consecutive months he does not direct business
communications into this state in any manner to more
than five clients other than those specified in clause (A),
whether or not he or any of the persons to whom the com-
munications are directed is then present in this state; or
(7) such other persons not within the intent of this para-
graph as the commissioner may by rule or order desig-
nate.

(g) "Issuer" means any person who issues or proposes
to issue any security, except that (1) with respect to cer-
tificates of deposit, voting-trust certificates or collateral-
trust certificates, or with respect to certificates of interest
or shares in an unincorporated investment trust not hav-
ing a board of directors or persons performing similar
functions or of the fixed, restricted management, or unit
type, the term "issuer" means the person or persons per-
forming the acts and assuming the duties of depositor or
manager pursuant to the provisions of the trust or other
agreement or instrument under which the security is
issued; and (2) with respect to certificates of interest or
participation in oil, gas or mining titles or leases or in
payments out of production under such titles or leases,
there is not considered to be any "issuer."

(h) "Nonissuer" means not directly or indirectly for
the benefit of the issuer.

(i) "Person" means an individual, a corporation, a
partnership, an association, a joint-stock company, a trust
where the interests of the beneficiaries are evidenced by
a security, an unincorporated organization, a government
or a political subdivision of a government.

(j) (1) "Sale" or "sell" includes every contract of sale
of, contract to sell, or disposition of, a security or interest
in a security for value.

(2) "Offer" or "offer to sell" includes every attempt
or offer to dispose of, or solicitation of an offer to buy,
a security or interest in a security for value.

(3) Any security given or delivered with, or as a
bonus on account of, any purchase of securities or any
other thing is considered to constitute part of the subject
of the purchase and to have been offered and sold for
value.

(4) A purported gift of assessable stock is considered
to involve an offer and sale.

(5) Every sale or offer of a warrant or right to pur-
chase or subscribe to another security of the same or
another issuer, as well as every sale or offer of a security
which gives the holder a present or future right or
privilege to convert into another security of the same or
another issuer, is considered to include an offer of the
other security.

(6) The terms defined in this subdivision do not in-
clude (A) any bona fide pledge or loan; (B) any stock
dividend, whether the corporation distributing the divi-
dend is the issuer of the stock or not, if nothing of value
is given by stockholders for the dividend other than the
surrender of a right to a cash or property dividend when
each stockholder may elect to take the dividend in cash
or property or in stock; (C) any act incident to a class
vote by stockholders, pursuant to the certificate of in-
corporation or the applicable corporation statute, on a
merger, consolidation, reclassification of securities or sale
of corporate assets in consideration of the issuance of
securities of another corporation; or (D) any act incident
to a judicially approved reorganization in which a se-
curity is issued in exchange for one or more outstanding
securities, claims or property interests, or partly in such
exchange and partly for cash.

(k) "Securities Act of 1933," "Securities Exchange
Act of 1934," "Public Utility Holding Company Act of
1935," and "Investment Company Act of 1940" mean the
federal statutes of those names as amended before the
effective date of this chapter.

(l) "Security" means any note; stock; treasury stock;
bond; debenture; evidence of indebtedness; certificate of
interest or participation in any profit-sharing agreement;
collateral-trust certificate; preorganization certificate or
subsection; transferable share; investment contract; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or some other specified period.

(m) "State" means any state, territory or possession of the United States, the District of Columbia and Puerto Rico.

§32-4-402. Exemptions.

(a) The following securities are exempted from sections 301 and 403:

(1) Any security (including a revenue obligation) issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing; or any certificate of deposit for any of the foregoing;

(2) any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor;

(3) any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank, savings institution or trust company organized and supervised under the laws of any state;
(4) any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association, or any building and loan or similar association organized under the laws of any state and authorized to do business in this state;

(5) any security issued by and representing an interest in or a debt of, or guaranteed by, any insurance company organized under the laws of any state and authorized to do business in this state;

(6) any security issued or guaranteed by any federal credit union or any credit union, industrial loan association or similar association organized and supervised under the laws of this state;

(7) any security issued or guaranteed by any railroad, other common carrier, public utility or holding company which is (A) subject to the jurisdiction of the interstate commerce commission; (B) a registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of such a company within the meaning of that act; (C) regulated in respect of its rates and charges by a governmental authority of the United States or any state; or (D) regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province;

(8) any security listed or approved for listing upon notice of issuance on the New York Stock Exchange, the American Stock Exchange, or the Midwest Stock Exchange, or listed on any regional stock exchange; any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing;

(9) any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic or reformatory purposes, or as a chamber of commerce or trade or professional association, and no
part of the net earnings of which inures to the benefit of any person, private stockholder or individual;

(10) any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within twelve months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited, or any guarantee of such paper or of any such renewal;

(11) any investment contract issued in connection with an employees’ stock purchase, savings, pension, profit-sharing or similar benefit plan if the commissioner is notified in writing thirty days before the inception of the plan or, with respect to plans which are in effect on the effective date of this chapter, within sixty days thereafter (or within thirty days before they are reopened if they are closed on the effective date of this chapter);

(12) any security issued by an agricultural cooperative association operating in this state and organized under article four, chapter nineteen of this code, or by a foreign cooperative association organized under the laws of another state and duly qualified to transact business in this state.

(b) The following transactions are exempted from sections 301 and 403:

(1) Any isolated nonissuer transaction, whether effected through a broker-dealer or not;

(2) any nonissuer distribution of an outstanding security if (A) a recognized securities manual contains the names of the issuer’s officers and directors, a balance sheet of the issuer as of a date within eighteen months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations, or (B) the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the three preceding fiscal years, or during the existence of the issuer and any pre-
dececers if less than three years, in the payment of principal, interest or dividends on the security;

(3) any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy; but the commissioner may by rule require that the customer acknowledge upon a specified form that the sale was unsolicited, and that a signed copy of each such form be preserved by the broker-dealer for a specified period;

(4) any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;

(5) any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit;

(6) any transaction by an executor, administrator, sheriff, marshal, constable, receiver, trustee in bankruptcy, guardian or conservator, and any transaction constituting a judicial sale;

(7) any transaction executed by a bona fide pledgee without any purpose of evading this chapter;

(8) any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

(9) any transaction pursuant to an offer directed by the offeror to not more than ten persons (other than those designated in subdivision (8)) in this state during any period of twelve consecutive months, whether or not the offeror or any of the offerees is then present in this state, if (A) the seller reasonably believes that all the buyers in this state (other than those designated in subdivision (8))
are purchasing for investment, and (B) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer in this state (other than those designated in subdivision (8)); but the commissioner may by rule or order, as to any security or transaction or any type of security or transaction, withdraw or further condition this exemption, or increase or decrease the number of offerees permitted, or waive the conditions in clauses (A) and (B) with or without the substitution of a limitation on remuneration;

(10) any offer or sale of a preorganization certificate or subscription if (A) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber, (B) the number of subscribers does not exceed ten, and (C) no payment is made by any subscriber;

(11) any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants or transferable warrants exercisable within not more than ninety days of their issuance, if (A) no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this state, or (B) the issuer first files a notice specifying the terms of the offer and the commissioner does not by order disallow the exemption within the next five full business days;

(12) any offer (but not a sale) of a security for which registration statements have been filed under both this chapter and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either either chapter.

(c) The commissioner may by order deny or revoke any exemption specified in subdivision (9) or (11) of subsection (a) or in subsection (b) with respect to a specific security or transaction. No such order may be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of
fact and conclusions of law, except that the commissioner may by order summarily deny or revoke any of the specified exemptions pending final determination of any proceeding under this subsection. Upon the entry of a summary order, the commissioner shall promptly notify all interested parties that it has been entered and of the reasons therefor and that within fifteen days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. No order under this subsection may operate retroactively. No person may be considered to have violated section 301 or 403 by reasons of any offer or sale effected after the entry of an order under this subsection if he sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the order.

(d) In any proceeding under this chapter, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

§32-4-403. Filing of sales and advertising literature.

Any prospectus, pamphlet, circular, form letter, advertisement or any other sales literature or advertising communication addressed or intended for distribution to prospective investors, including clients or prospective clients of an investment adviser, shall be filed with the commissioner before it is used, disseminated or distributed unless the security or transaction is exempted by section 402.

§32-4-404. Misleading filings.

It is unlawful for any person to make or cause to be made, in any document filed with the commissioner or in any proceeding under this chapter, any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.
§32-4-405. Unlawful representations concerning registration or exemption.

1 (a) Neither (1) the fact that an application for registration under article two of this chapter or a registration statement under article three of this chapter has been filed nor (2) the fact that a person or security is effectively registered constitutes a finding by the commissioner that any document filed under this chapter is true, complete and not misleading. Neither any such fact nor the fact that an exemption or exception is available for a security or a transaction means that the commissioner has passed in any way upon the merits or qualifications of, or recommended or given approval to, any person, security or transaction.

(b) It is unlawful to make, or cause to be made, to any prospective purchaser, customer or client any representation inconsistent with subsection (a).

§32-4-406. Administration of chapter.

1 (a) This chapter shall be administered by the auditor of this state, and he is hereby designated, and shall be, the commissioner of securities of this state. He shall have power and authority to appoint or employ such assistants as are necessary for the administration of this chapter.

(b) All fees herein provided for shall be collected by the commissioner and shall be deposited in the state treasury and credited to the general revenue fund, and the commissioner shall keep a record of the receipts and expenditures incurred in carrying out the provisions of this chapter.

(c) It is unlawful for the commissioner or any of his officers or employees to use for personal benefit any information which is filed with or obtained by the commissioner and which is not made public. No provision of this chapter authorizes the commissioner or any of his officers or employees to disclose any such information except among themselves or when necessary or appropriate 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
the commissioner, or in obedience to the subpoena of the
commissioner or any officer designated by him, or in any
proceeding instituted by the commissioner, on the ground
that the testimony or evidence (documentary or other-
wise) required of him may tend to incriminate him or
subject him to a penalty of forfeiture; but no individual
may be prosecuted or subjected to any penalty or for-
feiture for or on account of any transaction, matter or
thing concerning which he is compelled, after claiming
his privilege against self-incrimination to testify or pro-
duce evidence (documentary or otherwise), except that
the individual testifying is not exempt from prosecution
and punishment for perjury or contempt committed in
testifying.

§32-4-408. Injunctions.

1 Whenever it appears to the commissioner that any per-
son has engaged or is about to engage in any act or prac-
tice constituting a violation of any provision of this chap-
ter or any rule or order hereunder, he may in his discre-
ension bring an action in the circuit court of Kanawha
county or a court of competent jurisdiction in the county
where one or more of the defendants reside or have a
place of business to enjoin the acts or practices and to en-
force compliance with this chapter or any rule or order
hereunder. Upon a proper showing, a permanent or
temporary injunction, restraining order or writ of manda-
mus shall be granted and a receiver or conservator may
be appointed for the defendant or the defendant’s assets.
The court may not require the commissioner to post a
bond.

§32-4-409. Criminal penalties.

1 (a) Any person who willfully violates any provision
of this chapter, except section 404, or who willfully vio-
lates any rule or order under this chapter, or who will-
fully violates section 404 knowing the statement made to
be false or misleading in any material respect, shall be
guilty of a felony, and, upon conviction thereof, shall be
fined not more than five thousand dollars, or imprisoned in
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.
Every person who directly or indirectly controls a seller liable under subsection (a), every partner, officer or director of such a seller, every person occupying a similar status or performing similar functions, every employee of such a seller who materially aids in the sale, and every broker-dealer or agent who materially aids in the sale are also liable jointly and severally with and to the same extent as the seller, unless the nonseller who is so liable sustains the burden of proof that he did not know, and in exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There is contribution as in cases of contract among the several persons so liable.

Any tender specified in this section may be made at any time before entry of judgment.

Every cause of action under this statute survives the death of any person who might have been a plaintiff or defendant.

No person may sue under this section more than three years after the sale.

No person who has made or engaged in the performance of any contract in violation of any provision of this chapter or any rule or order hereunder, or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation, may base any suit on the contract.

Any condition, stipulation or provision binding any person acquiring any security to waive compliance with any provision of this chapter or any rule or order hereunder is void.

The rights and remedies provided by this chapter are in addition to any other rights or remedies that may exist at law or in equity, but this chapter does not create any cause of action not specified in this section or section 202 (e).

§32-4-411. Judicial review of orders.

(a) Any person aggrieved by a final order of the
commissioner may obtain a review of the order in the circuit court of Kanawha county by filing in court, within sixty days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. A copy of the petition shall be forthwith served upon the commissioner and thereupon the commissioner shall certify and file in court a copy of the filing and evidence upon which the order was entered. When these have been filed, the court has exclusive jurisdiction to affirm, modify, enforce or set aside the order, in whole or in part. The findings of the commissioner as to the facts, if supported by competent, material and substantial evidence, are conclusive. If either party applies to the court for leave to adduce additional material evidence, and shows to the satisfaction of the court that there were reasonable grounds for failure to adduce the evidence in the hearing before the commissioner, the court may order the additional evidence to be taken before the commissioner and to be adduced upon the hearing in such manner and upon such conditions as the court considers proper. The commissioner may modify his findings and order by reason of the additional evidence and shall file in court the additional evidence together with any modified or new findings or order. The judgment of the court shall be final, subject to review by the supreme court of appeals.

(b) The commencement of proceedings under subsection (a) does not, unless specifically ordered by the court, operate as a stay of the commissioner's order.

§32-4-412. Rules, forms, orders and hearings.

(a) The commissioner may from time to time make, amend and rescind such rules, forms and orders as are necessary to carry out the provisions of this chapter, including rules and forms governing registration statements, applications and reports, and defining any terms, whether or not used in this chapter, insofar as the definitions are not inconsistent with the provisions of this chapter. For the purpose of rules and forms, the commissioner may classify securities, persons and matters within his jurisdiction, and prescribe different requirements for different classes.
(b) No rule, form, or order may be made, amended or rescinded unless the commissioner finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of this chapter. In prescribing rules and forms the commissioner may cooperate with the securities administrators of the other states and the securities and exchange commission with a view to effectuating the policy of this statute to achieve maximum uniformity in the form and content of registration statements, applications and reports wherever practicable.

(c) The commissioner may by rule or order prescribe (1) the form and content of financial statements required under this chapter, (2) the circumstances under which consolidated financial statements shall be filed, and (3) whether any required financial statements shall be certified by independent or certified public accountants. All financial statements shall be prepared in accordance with generally accepted accounting practices.

(d) All rules and forms of the commissioner shall be published.

(e) No provision of this chapter imposing any liability applies to any act done or omitted in good faith in conformity with any rule, form or order of the commissioner, notwithstanding that the rule, form or order may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(f) Every hearing in an administrative proceeding shall be public.

§32-4-413. Administrative files and opinions.

(a) A document is filed when it is received by the commissioner.

(b) The commissioner shall keep a register of all applications for registration and registration statements which are or have ever been effective under this chapter and all denial, suspension or revocation orders which have been entered under this chapter. The register shall be open for public inspection.
(c) The information contained in or filed with any registration statement, application or report may be made available to the public under such rules as the commissioner prescribes.

(d) Upon request and at such reasonable charges as he prescribes, the commissioner shall furnish to any person photostatic or other copies (certified under his seal of office if requested) of any entry in the register or any document which is a matter of public record. In any proceeding or prosecution under this chapter, any copy so certified is prima facie evidence of the contents of the entry or document certified.

(e) The commissioner in his discretion may honor requests from interested persons for interpretative opinions; copies of which opinions shall be filed in a special file maintained for that purpose and shall be public records available for public inspection and at such reasonable charges as he prescribes.

§32-4-414. Scope of the chapter and service of process.

(a) Sections 101, 201(a), 301, 405 and 410 apply to persons who sell or offer to sell when (1) an offer to sell is made in this state, or (2) an offer to buy is made and accepted in this state.

(b) Sections 101, 201(a) and 405 apply to persons who buy or offer to buy when (1) an offer to buy is made in this state, or (2) an offer to sell is made and accepted in this state.

(c) For the purpose of this section, an offer to sell or to buy is made in this state, whether or not either party is then present in this state, when the offer (1) originates from this state or (2) is directed by the offeror to this state and received at the place to which it is directed (or at any post office in this state in the case of a mailed offer).

(d) For the purpose of this section, an offer to buy or to sell is accepted in this state when acceptance (1) is communicated to the offeror in this state and (2) has not previously been communicated to the offeror, orally or in
writing, outside this state; and acceptance is communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state and it is received at the place to which it is directed (or at any post office in this state in the case of a mailed acceptance).

(e) An offer to sell or to buy is not made in this state when (1) the publisher circulates or there is circulated on his behalf in this state any bona fide newspaper or other publication of general, regular and paid circulation which is not published in this state, or which is published in this state but has had more than two thirds of its circulation outside this state during the past twelve months, or (2) a radio or television program originating outside this state is received in this state.

(f) Sections 102 and 210(c), as well as section 405 so far as investment advisors are concerned, apply when any act instrumental in effecting prohibited conduct is done in this state, whether or not either party is then present in this state.

(g) Every applicant for registration under this chapter and every issuer which proposes to offer a security in this state through any person acting on an agency basis in the common-law sense shall file with the commissioner, in such form as he by rule prescribes, an irrevocable consent appointing the commissioner or his successor in office to be his attorney to receive service of any lawful process in any noncriminal suit, action or proceeding against him or his successor executor or administrator which arises under this chapter or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration need not file another. Service may be made by leaving a copy of the process in the office of the commissioner, but it is not effective unless (1) the plaintiff, who may be the commissioner in a suit, action or proceeding instituted by him, forthwith sends notice of the service and a copy
of the process by registered mail to the defendant or respondent at his last address on file with the commiss-
ioner, and (2) the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return
day of the process, if any, or within such further time as the court allows.

(h) When any person, including any nonresident of this state, engages in conduct prohibited or made action-
able by this chapter or any rule or order hereunder, and he has not filed a consent to service of process under sub-
section (g) and personal jurisdiction over him cannot otherwise be obtained in this state, that conduct shall be considered equivalent to his appointment of the commis-
sioner or his successor in office to be his attorney to receive service of any lawful process in any noncriminal suit, action or proceeding against him or his successor executor or administrator which grows out of that con-
duct and which is brought under this chapter or any rule or order hereunder, with the same force and validity as if served on him personally. Service may be made by leaving a copy of the process in the office of the commis-
sioner, and it is not effective unless (1) the plaintiff, who may be the commissioner in a suit, action or pro-
ceeding instituted by him, forthwith sends notice of the service and a copy of the process by registered mail to the defendant or respondent at his last known address or takes other steps which are reasonably calculated to give actual notice, and (2) the plaintiff's affidavit of com-
ppliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

(i) When process is served under this section, the court, or the commissioner in a proceeding before him, shall order such continuance as may be necessary to afford the defendant or respondent reasonable oppor-
tunity to defend.

§32-4-415. Statutory policy.

1 This chapter shall be so construed as to effectuate the general purpose to make uniform the law of those states
which enact the uniform securities act and to coordinate
the interpretation and administration of this chapter with
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 applica-
4 tions 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, transportation
9 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
or part or share of which, is proposed to be sold, and such information with respect to the value thereof, and the title to such property or properties as the commissioner of securities shall require, and without causing such property to be registered by the commissioner of securities in the manner provided for the registration of securities by qualification under section three hundred four, article three, chapter thirty-two of this code; and no person shall sell or offer any such property for sale until he has been registered as a salesman by the commissioner of securities under the provisions for registering agents contained in article two, chapter thirty-two of this code. All of the provisions contained in chapter thirty-two of this code governing the registration of securities by qualification and the registration of agents and the penalties provided therein shall apply to the registration of properties and salesmen under this article: Provided, That nothing contained in this article shall prevent any bona fide owner of any such land, mine, mining lease, mineral claim or other property, or interest therein, from selling the same on his own account and not as a part, or in furtherance, of any promotion or development to the public.

§32A-1-2. False advertising prohibited; penalty.

Any person or corporation who, with intent to sell or in anywise dispose of merchandise, securities, service or anything offered by such person or corporation, directly or indirectly, to the public for sale or distribution, or with intent to increase the consumption thereof, or to induce the public in any manner to enter into any obligation relating thereto, or to acquire title thereto, or any interest therein, makes, publishes, disseminates, circulates or places before the public, or causes, directly or indirectly, to be made, published, disseminated, circulated or placed before the public in this state, in a newspaper or other publication, or in the form of a book, notice, handbill, poster, blueprint, map, bill, tag, label, circular, pamphlet, or letter, or by way of radio or television, or in any other way, an advertisement of any sort regarding merchandise, securities, service, land, lot or anything so offered to the public, which advertisement contains any promise, as-
sertion, representation or statement of fact which is untrue, deceptive or misleading, with knowledge that the same was untrue, deceptive or misleading, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than two thousand dollars, or imprisoned in the county jail not more than six months, or both fined and imprisoned.

§32A-1-3. Indictment need not negative exceptions.
1 In any indictment for violation of any provision of this article, it shall not be necessary to negative any exception 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-2-1. Definitions.
1 As used in this article:
2 (1) “Person” means any individual, partnership, association, joint stock association, trust or corporation, but does not include the United States of America, any department, agency, commission or officer thereof, the state of West Virginia, any department, agency, commission or officer thereof, or any political subdivision of or any municipality in this state;
3 (2) “Commissioner” means the commissioner of banking of this state;
4 (3) “Check” means any check, draft, money order, personal money order or other instrument for the transmission or payment of money;
(4) "Personal money order" means any instrument for the transmission or payment of money in relation to which the purchaser or remitter appoints or purports to appoint the seller thereof as his agent for the receipt, transmission or handling of money, whether such instrument be signed by the seller or by the purchaser or remitter or some other person;

(5) "Securities" means all bonds, debentures or other evidences of indebtedness (a) issued by the United States of America or any agency thereof, or guaranteed by the United States of America, or for which the credit of the United States of America or any agency thereof is pledged for the payment of the principal and interest thereof; and/or (b) which are direct general obligations of this state, or any other state if unconditionally guaranteed as to the principal and interest by such other state and if such other state has the power to levy taxes for the payment of the principal and interest thereof and is not in default in the payment of any part of the principal or interest owing by it upon any part of its funded indebtedness; and/or (c) which are general obligations of any county, school district or municipality in this state issued pursuant to law and payable from ad valorem taxes levied on all of the taxable property located therein, if such county, school district or municipality is not in default in the payment of any part of the principal or interest on any debt evidenced by its bonds, debentures or other evidences of indebtedness.

§32A-2-2. Legislative findings and declaration of public policy.

The Legislature hereby determines and finds that many innocent persons in various states have suffered severe financial losses as a result of financially irresponsible persons engaging in the business of issuing and selling checks; that many of these states have, following the discovery of such losses, promptly enacted legislation to assure that persons engaged in the business of issuing and selling checks are financially responsible; and that it is imperative that legislation be enacted to assure that persons engaged in the business of issuing and selling checks in this state are financially responsible. It is, there-
fore, declared to be the public policy of this state that the
business of issuing and selling checks affects the general
welfare of this state and its individual citizens; and that
financial losses as aforesaid may best be prevented in this
state and the interests of the citizens of this state best
served by requiring persons now engaged or to be en-
gaged in the business of issuing and selling checks to
meet the requirements set forth in this article.

§32A-2-3. Financial responsibility must be established and
security given; fee required.

On and after the effective date of this article, no per-
son shall engage in the business of issuing and selling
checks as a service or for a fee or other compensation,
unless (a) the net worth of such person is at all times at
least fifty thousand dollars, computed according to gen-
erally accepted accounting principles and shown by fi-
nancial statements filed with and satisfactory to the
commissioner, and (b) such person either (1) keeps on
deposit at all times with the commissioner, or a bank in
this state designated by such person and approved for
such purpose by the commissioner, one hundred thousand
dollars in cash or securities satisfactory to the commis-
sioner, or (2) posts and maintains with the commissioner
at all times a surety bond in the penal sum of one hun-
dred thousand dollars, in form and with conditions satis-
factory to the commissioner and with corporate surety
thereon authorized to do business in this state and ac-
ceptable to the commissioner. When securities are de-
posited as aforesaid, the value of such securities must at
times be one hundred thousand dollars, computed on
the basis of the principal amount or the market value
thereof, whichever is lower.

The deposit or bond, as the case may be, shall be for
the benefit and protection of the purchasers or holders
of checks sold in this state by the person making the
deposit or posting the bond as principal, and the commis-
sioner or any aggrieved person may by appropriate civil
actions enforce claims on any such check or checks against
such deposit or bond. The aggregate liability of the
surety in no event shall exceed the principal sum of the bond. The surety on such bond shall have a right to cancel such bond upon giving thirty days' notice to the commissioner and thereafter shall be relieved of liability for any breach of condition occurring after the effective date of said cancellation. So long as the person making a deposit is not in violation of any of the provisions of this article, such person shall be permitted to receive all interest and dividends on said deposit, and shall have the right, with the approval of the commissioner, to substitute other securities. If the deposit is made at a bank, any custodial fees therefor shall be paid by the person making such deposit. At the time any such deposit is made or any such bond is posted, and annually thereafter, the person making such deposit or posting such bond shall pay to the commissioner a fee of one hundred dollars. All such fees shall be deposited in the state 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.

Any person who complies with the provisions of section three of this article may engage in the business of issuing and selling checks at one or more locations in this state and through or by means of such agent or agents as such person may designate and appoint from time to time, and no such agent shall be required to comply with the provisions of said section three.

§32A-2-5. Exemptions.

The provisions of section three of this article shall not apply to banks, trust companies, building and loan associations, savings and loan associations, industrial loan companies and small loan companies organized under the laws of this state or authorized to do business in this state, or to the receipt of money by an incorporated telegraph company at any office or agency thereof for transmission by telegraph.


Any person aggrieved by any action of the commissioner
under the provisions of this article may appeal such
action by filing a petition, at the election of such person,
in either the circuit court of Kanawha County, West Vir-
ingia, or with the judge thereof in vacation, or in the
circuit court of the county in which such person resides
or does business, or with the judge thereof in vacation,
within ninety days after such action.

The judgment of the circuit court shall be final unless
reversed, vacated or modified on appeal to the supreme
court of appeals. Any such appeal shall be sought in the
manner and within the time provided by law for appeals
from circuit courts in other civil cases.


Whenever it appears to the commissioner that any
person has been or is violating or is about to violate any
provision of this article, the commissioner may apply
in the name of the state, to the circuit court of the
county in which the violation or violations or any part
thereof has occurred, is occurring or is about to occur,
or the judge thereof in vacation, for an injunction against
such person and any other persons who have been, are
or are about to be involved in any practices, acts or
omissions, so in violation, enjoining such person or per-
sons from any such violation or violations. Such applica-
tion may be made and prosecuted to conclusion whether
or not any such violation or violations have resulted or
shall result in prosecution or conviction under the pro-
visions of section eight of this article.

Upon application by the commissioner, the circuit courts
of this state may by mandatory or prohibitory injunction
compel compliance with the provisions of this article.
The court may issue a temporary injunction in any case
pending a decision on the merits of any application filed.

The judgment of the circuit court upon any application
permitted by the provisions of this section shall be final
unless reversed, vacated or modified on appeal to the
supreme court of appeals. Any such appeal shall be sought
in the manner and within the time provided by law for
appeals from circuit courts in other civil cases.

1 Any person who directly or through another violates or attempts to violate any provision of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars. Each transaction in violation of this article and each day that a violation continues shall be a separate offense.


1 If any provision of this article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the remainder of the article or the application of such provision to other persons or circumstances, and to this end the provisions of this article are declared to be severable.

CHAPTER 129
(S. B. 79—By Mr. McGraw)

[Passed March 5, 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 authorized and empowered (1) to acquire from the
United States of America such property, including equip-
ment, materials, books or other supplies under the con-
trol of any department or agency of the United States
of America as may be usable and necessary for edu-
cational, fire protection and prevention, rescue, or public
health purposes, including research; (2) to warehouse
property acquired; and (3) to distribute the property to
tax-supported medical institutions, hospitals, clinics, fire
departments, rescue squads, health centers, school sys-
tems, schools, colleges and universities within the state,
and to other nonprofit medical institutions, hospitals,
clinics, volunteer fire departments, volunteer rescue
squads, health centers, schools, colleges and universities
within the state which have been held exempt from tax-
atation under section 101 (6) of the United States Internal
Revenue Code.

(b) For the purpose of executing its authority under
this article, the state agency for surplus property is au-
thorized and empowered to adopt, amend or rescind rules
and regulations as may be deemed necessary, and take
other action necessary and suitable in the administration
of this article, including the enactment and promulgation
of rules and regulations necessary to bring this article and
its administration into conformity with any federal stat-
utes or rules and regulations promulgated under federal
statutes for the acquisition and disposition of surplus
property.

(c) The state agency for surplus property is autho-
rized and empowered to appoint advisory boards or com-
mittees necessary to the end that this article and the rules
and regulations promulgated hereunder conform with
federal statutes and rules and regulations promulgated
under federal statutes for the acquisition and disposition
of surplus property.

(d) The state agency for surplus property is autho-
rized and empowered to take action, make expenditures
and enter into contracts, agreements and undertakings
for and in the name of the state, require reports, and
make investigations as may be required by law or regu-
lation of the United States of America in connection with
the receipt, warehousing and distribution of property received by the state agency for surplus property from the United States of America.

(e) The state agency for surplus property is authorized and empowered to act as a clearinghouse of information for the public and private nonprofit institutions and agencies referred to in subsection (a) of this section, to locate property available for acquisition from the United States of America, to ascertain the terms and conditions under which the property may be obtained, to receive requests from the above-mentioned institutions and agencies and to transmit to them all available information in reference to the property, and to aid and assist the institutions and agencies in every way possible in the consummation or acquisition of transactions hereunder.

(f) The state agency for surplus property, in the administration of this article, shall cooperate to the fullest extent consistent with the provisions of this article, with the departments or agencies of the United States of America and shall make reports in the form and containing the information the United States of America or any of its departments or agencies may from time to time require, and it shall comply with the laws of the United States of America and the rules and regulations of any of the departments or agencies of the United States of America governing the allocation, transfer, use or accounting for property donable or donated to the state.

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 service corporations whose duty it is by law to list any real estate or personal property for taxation, shall refuse to furnish a proper list thereof or refuse to list within the time required by law, or to make such oath as required by this chapter; or if any person, firm or corporation, including public service corporations, shall refuse to answer or shall answer falsely any question asked by the assessor or by the tax commissioner, or shall fail or refuse to deliver any statement required by law, he or it shall forfeit not less than twenty-five nor more than one hundred dollars, and shall be denied all remedy provided by law for the correction of any assessment made by the assessor or by the board of public works. If any person, firm or corporation, including public service corporations, required by law to make return of property for taxation, whether such return is to be made to the assessor, the board of public works, or any other assessing officer or body, fails to return a true list of all property which should be assessed in this state, including notes, bonds, bills and accounts receivable, stocks and any other intangible personal property, such person, firm or corporation, in addition to all other penalties provided by law, shall forfeit one percent of the value of the property not yet returned and not otherwise taxed in this state. A forfeiture as to all property aforesaid may be enforced for any such default occurring in any year not exceeding five years immediately prior to the time the same is discovered, but no liability to penalty or forfeiture as to notes, bonds,
bills and accounts receivable, stocks and other intangible personal property arising prior to the first day of January, one thousand nine hundred thirty-three, shall be enforceable on behalf of the state or of any of its subdivisions. Each failure to make a true return as herein required shall constitute a separate offense, and a forfeiture shall apply to each of them, but all such forfeitures, to which the same person, firm or corporation is liable, shall be enforced in one proceeding against such person, firm or corporation, or against the estate of any deceased person and shall not exceed five percent of the value of the property not returned. Such forfeitures shall be collected as is hereinafter provided under the provision of article two, chapter eleven-a of this code, the same as any tax liability, against the defaulting taxpayer, or in case of a decedent, against his personal representative. The sheriff shall apportion such fund among the state, county, district, school district and municipalities which would have been entitled to the taxes upon such property if it had been assessed, in proportion to the rates of taxation for each such levying unit for the year in which the judgment was obtained bears to the sum of rates for all. When the list of property returned by the appraisers of the estate of any deceased person shows an amount greater than the last assessment list of such deceased person next preceding the appraisal of his estate, it shall be prima facie evidence that such deceased person returned an imperfect list of his property: Provided, That any person liable for the tax or his personal representative, may always be permitted to prove by competent evidence that the discrepancy between such assessment list and the appraisal of the estate is caused by a difference of valuation returned by the assessor and that made by the appraisers of the same property or by property acquired after assessment, or that any property enumerated in the appraisers' list had been otherwise listed for taxation, or that it was not liable for taxation. Any judgment recovered under this section shall be a lien, from the time of the service of the notice, upon all real estate and personal property of such defaulting taxpayer, owned at the time or subsequently acquired, in preference to any other lien.
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 hundred seventy-four, and every July first thereafter the assessor shall ascertain each person in his county who owns real property, wholly or partially, including, but not limited to a person who owns a life estate or a consummate dower interest therein, and who occupies such real property as his primary residence and who is sixty-five years of age or older. An exemption from ad valorem tax of the first five thousand dollars of assessed valuation of all such property is hereby granted when owned and occupied by any such qualified person.

12 The exemption of the first five thousand dollars shall
be shown on the land book against the total assessed value, and taxes shall be extended against the net amount of assessed value for the calendar tax year one thousand nine hundred seventy-five and every calendar tax year thereafter in which the owner and the property remains qualified under this section. Only one exemption shall be granted for each owner-occupied residence regardless of the number of qualified persons, sixty-five or older, residing therein.

When the five thousand dollar exemption is greater than the total assessed value of the residence, no taxes will be levied; and the sheriff shall issue a statement to the landowner showing that no taxes are due.

Only those homeowners sixty-five years of age or older on the July first assessment date will be eligible for the exemption provided by this section for the following calendar tax year. The exemption shall attach to the real estate occupied by the qualified homeowner on the July first assessment date. An exemption shall not be transferred to another parcel of real estate until the following July first. If the property of a homeowner qualified under this section is transferred by deed, will or otherwise to an owner who will not be at least sixty-five years of age on the next July first assessment date, the five thousand dollar exemption will be removed from the property when next assessed.

In addition to the listing made by the assessor, every homeowner who is qualified shall have the right to appear before the assessor and register his right to the exemption provided by this section. Any person who does not appear before the assessor, by himself or his personal representative, or who does not in any way contact the assessor's office to register his right to an exemption on or before the first day of October following a July first assessment day, shall not be entitled to any exemption for the following calendar tax year.

The tax commissioner shall prescribe and supply all necessary instructions and forms and shall promulgate all necessary regulations to effectuate the purpose of this section.
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 engaged expressly or impliedly holds himself out as engaged in business or supplying his products or a commodity or service to the public as a class or a limited portion of the public or sells any goods, wares, merchandise of any kind or provides a service of any kind: Provided, however, That “business” shall not include sales of products of the farm, garden, or dairy by the producer or grower thereof; occasional sales by societies acting for charitable, religious or benevolent purposes; judicial sales directed by law or court order; or any business the gross income of which is less than four thousand dollars per license year. “Gross Income” shall mean the gross receipts of the business received as compensation for personal services and from trade, commerce, or sales and the value accruing from the sale of tangible property (real or personal), or service, or both, without any deduction on account of the cost of property sold, materials used, labor costs, taxes or any other expense whatsoever.
3 (b) “Business franchise registration certificate” shall mean a franchise or certificate authorizing a person to conduct
business within the state of West Virginia and when referred to in this article as certificate of registration shall mean business franchise registration certificate.

(c) "Person" or "company" shall mean and include any individual, firm, copartnership, joint venture, association, corporation, trust and any other group or combination acting as a unit in the plural as well as the singular and when used in connection with the penalties imposed by section nine of this article, shall mean and include the officers, directors, trustees, or members of any firm, copartnership, joint venture, association, corporation, trust or any other groups acting as a unit.

(d) "Tax commissioner" shall mean the tax commissioner or his agent.

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.

Upon every person engaging or continuing within this state
in the business of manufacturing, compounding or preparing for
sale, profit, or commercial use, either directly or through the
activity of others in whole or part, any article or articles, sub-
stance or substances, commodity or commodities, or electric
power produced by public utilities or others and not taxed
under other provisions of this article, or newspaper pub-
lishing (including all gross income or proceeds of sale from
circulation and advertising), the amount of the tax to be
equal to the value of the article, substance, commodity or
electric power or newspaper, manufactured, compounded
or prepared for sale, as shown by the gross proceeds derived
from the sale thereof by the manufacturer or person com-
pounding or preparing the same, except as otherwise provided,
multiplied by a rate of eighty-eight one hundredths of one
percent. The measure of this tax is the value of the entire
product manufactured, compounded or prepared in this state
for sale, profit or commercial use, regardless of the place of
sale or the fact that deliveries may be made to points outside
the state. However, the dressing and processing of food
by a person, firm or corporation, which food is to be sold on
a wholesale basis by such person, firm or corporation shall
not be considered as manufacturing or compounding, but the
sale of these products on a wholesale basis shall be subject
to the same tax as is imposed on the business of selling at
wholesale as provided in section two-c.

It is further provided, however, that in those instances in
which the same person partially manufactures, compounds
or prepares products within this state and partially manu-
factures, compounds or prepares such products outside of
this state the measure of his tax under this section shall be that
proportion of the sale price of the product that the payroll cost
of manufacturing within this state bears to the entire payroll
cost of manufacturing the product; or, at the option of the
taxpayer, the measure of his tax under this section shall be
the proportion of the sales value of the articles that the cost
of operations in West Virginia bears to the full cost of manu-
facture of the articles.
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.


There shall be an exemption in every case of fifty dollars in amount of tax computed under the provisions of this article. A person exercising a privilege taxable hereunder for a fractional part of a tax year shall be entitled to an exemption of the sum bearing the proportion to fifty dollars that the period of time the privilege is exercised bears to a whole year. Only one exemption shall be allowed to any one person, whether he exercises one or more privileges taxable hereunder.

The provisions of the article shall not apply to: (a) Insurance companies which pay the state of West Virginia a tax upon premiums: Provided, That said exemption shall not extend to that part of the gross income of insurance companies which is received for the use of real property, other than property in which any such company maintains its office or offices, in this state, whether such income be in the form of rentals or royalties; (b) nonprofit cemetery companies organized and operated for the exclusive benefit of their members; (c) fraternal societies, organizations and associations organized and operated for the exclusive benefit of their members and not for profit: Provided, however, That said exemption shall not extend to that part of the gross income...
income arising from the sale of alcoholic liquor, food and related services, of such fraternal societies, organizations and associations which are licensed as private clubs under the provisions of article seven, chapter sixty of this code; (d) corporations, associations and societies organized and operated exclusively for religious or charitable purposes; (e) production credit association, organized under the provisions of the federal “Farm Credit Act of 1933”; (f) any credit union organized under the provisions of chapter thirty-one, or any other chapter of this code: Provided further, That the exemptions of this section shall not apply to corporations or cooperative associations organized under the provisions of article four, chapter nineteen of this code; (g) gross income arising from the sale of radio and television broadcasting time: And provided further, That subsection (g) shall be effective only until the date of March thirty-first, one thousand nine hundred 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 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.

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 corpora-
tions 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.


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;
(3) Sales of textbooks required to be used in any of the schools of this state;

(4) Sales of property or services to the state, its institutions or subdivisions, and to the United States, including agencies of federal, state or local governments for distribution in public welfare or relief work;

(5) Sales of motor vehicles which are titled by the department of motor vehicles which are subject to the tax imposed by section four, article three, chapter seventeen-a of the code;

(6) Sales of property or services to churches and bona fide charitable organizations who make no charge whatever for the services they render or sales of property or services to corporations or organizations qualified under section 501 (c) (3) of the Internal Revenue Code of 1954, as amended, or under section 501 (c) (4) of the Internal Revenue Code of 1954, as amended, who make casual and occasional sales not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions of like character, or sales of property or services to persons engaged in this state in the business of contracting, manufacturing, transportation, transmission, communication, or in the production of natural resources: Provided, however, That the exemption herein granted shall apply only to services, machinery, supplies and materials directly used or consumed in the businesses or organizations named above;

(7) An isolated transaction in which any tangible personal property is sold, transferred, offered for sale, or delivered by the owner thereof or by his representative for the owner's account, such sale, transfer, offer for sale or delivery not being made in the ordinary course of repeated and successive transactions of like character by such owner or on his account by such representative;

(8) Sales of tangible personal property and services rendered for use or consumption in connection with the conduct of the business of selling tangible personal property to consumers or dispensing a service subject to tax under this article and sales of tangible personal property and services rendered for use or consumption in connection with the com-
commercial production of an agricultural product the ultimate
sale of which will be subject to the tax imposed by this
article: Provided, That sales of tangible personal property
and services to be used or consumed in the construction of
or permanent improvement of real property shall not be
exempt;

(9) Sales of tangible personal property for the purpose
of resale in the form of tangible personal property;

(10) Sales of property or services to nationally chartered
fraternal or social organizations for the sole purpose of free
distribution in public welfare or relief work;

(11) Sales and services, fire fighting, or station house
equipment, including construction and automotive, made to
any volunteer fire department organized and incorporated
under the laws of the state of West Virginia;

(12) Sales of newspapers when delivered to consumers by
route carriers;

(13) Sales of drugs dispensed upon prescription;

(14) Sales of radio and television broadcasting time, news-
paper and outdoor advertising space for the advertisement of
goods or services;

(15) Sales and services performed by day care centers;

(16) Casual and occasional sales of property or services
not conducted in a repeated manner or in the ordinary course
of repetitive and successive transactions of like character by
corporations or organizations qualified under section 501 (c)
(3) of the Internal Revenue Code of 1954, as amended, or
under section 501 (c) (4) of the Internal Revenue Code of
1954, as amended;

(17) Bank safety deposit boxes.

CHAPTER 137

(H. B. 708—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.

On or before the fifteenth day of each month common carriers, wholesalers, subjobbers, retail dealers, and agents, or vending machine operators shall, when required by this article, or the tax commissioner, file a report covering the business transacted in the previous month covering such information as the commissioner may deem necessary for the ascertainment or assessment of the tax imposed by this article; and shall be signed under penalty of perjury on such forms as the tax commissioner may prescribe and shall at this time remit any taxes owed or due, if any.

The reports imposed by this section shall be deemed as having been timely filed for the purpose of avoiding penalties only if the postmark date thereon is clearly within the said due
date of the calendar month, or is received within such period.

If the due date falls on a Saturday or Sunday, or a day which is a legal holiday in the state of West Virginia, filing will be considered timely if it is done on the next succeeding secular day which is not a legal holiday.

The reports prescribed herein are required although a tax might not be due, or no business transacted, for the period covered by the report.

Each person required to file a report under this article shall make and keep such records as shall be prescribed by the tax commissioner that are necessary to substantiate the returns required by this article, including, but not limited to, inventories, receipts, disbursements and sales, for a period of time not less than five years.

Unless otherwise permitted, in writing, by authority of the tax commissioner, each delivery ticket or invoice for each purchase or sale of cigarettes must be recorded upon a serially numbered invoice showing the name and address of the seller and the purchasers, point of delivery, the date, quantity, price of product, and the tax must be set out separate or the invoice must indicate whether or not the West Virginia cigarette excise tax is included in the total price and such other reasonable information as the tax commissioner may require. However, these invoicing requirements do not apply to cash sales, and a person making such sales must maintain such records as may be reasonably necessary to substantiate his return.

The tax commissioner or his deputy or agent authorized by him shall have authority to inspect or examine the stock of cigarettes kept in and upon the premises of any person where cigarettes are placed, stored or sold and shall inspect or examine the records, books, papers and any equipment or records of manufacturers, cigarette stamping agents, wholesalers, sub-jobbers, retail dealers, common carriers, or any other person for the purpose of determining the quantity of cigarettes acquired or distributed to verify the truth and accuracy of any statement or report or to ascertain that the tax imposed by this article has been properly paid.

As a further means of obtaining the records, books and papers of a manufacturer, common carrier, wholesaler, sub-
jobber, or retailer or any other person and ascertaining the amount of taxes and reports due under this article, the commissioner and his duly appointed agent shall have the power to examine witnesses under oath; and if the witness shall fail or refuse at the request of the tax commissioner or his duly appointed agent to grant access to the books, records, or papers, the tax commissioner or such agent shall certify the facts and names to the circuit court of the county having jurisdiction of the party and such court shall thereupon issue summons to such party to appear before the tax commissioner or his agent, at a place designated within the jurisdiction of such court, on a day fixed, to be continued as the occasion may require for good cause shown and give such evidence and lay open for inspection such books and papers as may be required for the purpose 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 authority and it is hereby made his duty to prescribe the necessary forms and to promulgate necessary and needful rules and regulations to ascertain, assess and collect the taxes imposed by this article and to enforce the provisions thereof.

Any employee or agent of the tax commissioner, so designated by the tax commissioner, shall have all the lawful powers delegated to members of the department of public safety to enforce the provisions of this article, in any county, or municipality in this state.

Such employee shall execute a bond with security in the sum of thirty-five hundred dollars, payable to the state of West Virginia conditioned for the faithful performance of his duties, as such, and such bond shall be approved as to form by the attorney general, and the same shall be filed with the secretary of state and preserved in his office.

The state department of public safety or any county sheriff or his deputies is, upon request of the commissioner, hereby authorized and required to assist in the enforcement of the provisions of this article.

§11-17-19. Interest; additions to tax; penalties; crimes.

1. (1) If any person:
(a) Fails to pay the taxes imposed by this article when due, said taxes shall bear interest at the rate of six percent per annum prorated for each month or fraction thereof from the due date of the tax, each assessment made by the tax commissioner shall bear interest for failure to timely pay the taxes imposed by this article, or

(b) Fails to make or file a return whenever the full amount of the tax on any portion or deficiency thereof has not been paid in the time required by this article, unless it be shown that such failure was due to reasonable cause and not due to willful neglect, there may be added to the tax a penalty of five percent per month, with an additional five percent for each additional month or fraction thereof during which failure shall continue, not to exceed twenty-five percent in the aggregate. If no tax is due, the penalty will be twenty-five dollars per month or fraction thereof for failure to file a tax return: Provided, That in all cases of delinquency in the payment of taxes due, interest shall be assessed.

(2) If any person:

Files a false or fraudulent return with intent to evade the tax imposed by this article, or in the case of a willful failure to file a return with intent to evade the tax, or file a false claim for credit or refund there shall be added to the tax due an amount equal to one hundred percent of the tax due. The burden of proving fraud, willfulness, or intent to evade tax shall be upon the commissioner.

(3) If any person:

(a) Makes any false entry upon an invoice, package or container of cigarettes required to be made under the provisions of this article, or with intent to evade the tax imposed by this article, presents any such false entry for the inspection of the commissioner, or

(b) Prevents or hinders the commissioner or his deputy from making a full inspection of any place where cigarettes subject to the tax imposed by this state are sold or stored, or prevents or hinders the full inspection of invoices, books, records, or papers required to be kept under the provisions of this article, or
(c) Sells cigarettes in this state without there having been first affixed to each individual package thereof the stamp or meter impression required to be affixed thereto by this article, or

(d) Being a retail dealer or subjobber in this state, has in his possession packages of cigarettes not bearing the stamps or meter impression herein required to be affixed thereto or, whoever fails to produce on demand by the commissioner invoices of all cigarettes purchased or received by him within two years prior to such demand, unless upon satisfactory proof it is shown that such nonproduction is due to providential or other causes beyond his control, or

(e) If any wholesale dealer shall sell cigarettes to any person in this state other than to another wholesaler, subjobber, or retail dealer and no person in this state other than a wholesaler, or subjobber, shall sell cigarettes to a retail dealer. It shall be unlawful and a violation of this article for any retail cigarette dealer to purchase or acquire cigarettes from any person other than a wholesaler or subjobber. The original wholesaler who purchases unstamped cigarettes from the manufacturer is liable for the excise tax and the affixing of the required stamps or meter impression, or

(f) If any person, firm or corporation, who is not a wholesaler of tobacco products, as provided by this article, shall have in his possession within the state more than twenty packages of cigarettes not bearing cigarette tax paid indicia of this state, stamps or meter impressions, such possession shall be presumed to be for the purpose of evading the payment of the taxes imposed or due thereon, or

(g) Whoever violates any of the provisions of subsection (2) through subsection (3) (f) of this section or any lawful rule or regulation promulgated by the commissioner under authority of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than three hundred dollars nor more than five thousand dollars, or imprisoned in the county jail for not more than one year, or both, in the discretion of the court.

(4) Whoever falsely or fraudulently makes, forges, alters or 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.

(5) Whenever the commissioner or any of his deputies or
93 employees authorized by him or any peace officer of this state
94 for the purpose shall discover any cigarettes subject to tax as
95 provided by this article and upon which the tax has not been
96 paid as herein required, such cigarettes shall thereupon be
97 deemed to be contraband, and the commissioner, or such de-
98 puty or employee or any peace officer of this state is hereby
99 authorized and empowered forthwith to seize and take posses-
100 sion of such cigarettes, without a warrant, and such cigarettes
101 shall be forfeited to the state, and the commissioner shall with-
102 in a reasonable time thereafter sell such forfeited cigarettes:
103 Provided, That such seizure and sale shall not be deemed to
104 relieve any person from fine or imprisonment as provided here-
105 in for violation of any provisions of this article. Such sale may
106 be made in any county the tax commissioner deems most con-
107 venient and economical. Notice of such sale shall be published
108 as Class I legal advertisement in compliance with the provisions
109 of article three, chapter fifty-nine of this code, and the publi-
110 cation area for such publication shall be the county wherein
111 such seizure was made and the county wherein the sale is to
112 take place. Notice shall be published at least five days prior
113 to the sale. All taxes and penalties collected under the pro-
114 visions of this section shall be paid into the state treasury and
115 treated as other taxes collected under this article.

(6) Justices of the peace shall have concurrent jurisdiction
with any other courts having jurisdiction for the trial of all
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.

Every person who shall transport cigarettes not stamped
as required by this article upon the public highways, water-
ways, airways, roads or streets of this state shall have in
his actual possession invoices or delivery tickets for such
cigarettes which shall show the true name and the complete
and exact address of the consignor or seller, the true name
and complete and exact address of the consignee, or purchaser,
the quantity and brands of the cigarettes transported and the
true name and complete and exact address of the person
who has or shall assume payment of the West Virginia state
tax, or the tax, if any, of the state or foreign country at
the point of ultimate destination: Provided, That any com-
mon carrier which has issued a bill of lading for a shipment
of cigarettes and is without notice to itself or to any of its
agents or employees that said cigarettes are not stamped
as required by this article shall be deemed to have complied
with this article and the vehicle or vessel in which said
cigarettes are being transported shall not be subject to
confiscation hereunder. In the absence of such invoices,
delivery tickets or bills of lading, as the case may be, the
cigarettes so transported, the vehicle or vessel in which the
cigarettes are being transported and any paraphernalia or
devices used in connection with the unstamped cigarettes,
are declared to be contraband goods and may be seized by
the commissioner, his agents or employees or by any peace
officer of the state without a warrant.

If any person transports unstamped cigarettes in violation
of this section he shall be guilty of a misdemeanor, and,
upon conviction thereof, shall be fined not less than three
hundred dollars nor more than five thousand dollars, or
imprisoned in the county jail not more than one year, or
both fined and imprisoned.

If unstamped cigarettes are found in any vending machine,
both the cigarettes and the vending machine shall be contra-
band goods and may be seized by the commissioner, at the
discretion of the commissioner, his agents or employees or
any peace officer of this state, without a warrant.

Cigarettes and vending machines seized under this section
shall be forthwith sold in the manner provided hereinafter
in this section and such sale shall not relieve the owner of
the sold personal property of any action by the commissioner
for violations of any other sections of this article.

The commissioners shall immediately, after any seizure made
pursuant to this section, institute a proceeding for the con­
fiscation thereof in the circuit court of the county in which
the seizure is made. The court may proceed in a summary
manner and may direct confiscation to the commissioner:
Provided, That any person claiming to be the holder of
security interest in any vehicle or vessel, or vending machine,
the disposition of which is provided for above may present
his petition so alleging and be heard, and in the event it
appears to the court that the property was unlawfully used
by a person other than such claimant, and if the said
claimant acquired his security interest in good faith and
without knowledge that the vehicle or vessel or vending
machine, was going to be so used, the court shall either
waive forfeiture in favor of such claimant and order the
vehicle or vessel or vending machine returned or delivered
to such claimant or if it is found that the value thereof
exceeds the amount of the claim, the court shall order pay­
ment of the amount of the claim out of the proceeds of the
sale.

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.


1 Any term used in this article shall have the same meaning as when used in a comparable context in the laws of the United States relating to income taxes, unless a different meaning is clearly required. Any reference in this article to the laws of the United States shall mean the provisions of the Internal Revenue Code of 1954, as amended, and such other provisions of the laws of the United States as relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States prior to the first day of January, one thousand nine hundred seventy-four shall be given effect in determining the taxes imposed by this article for the tax period beginning the first day of January, one thousand nine hundred seventy-four, and thereafter, but no amendment to the laws of the United States made on or after the first day of January, one thousand nine hundred seventy-four, shall be given effect.

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.

(a) General.—The West Virginia adjusted gross income of a resident individual means his federal adjusted gross income as defined in the laws of the United States for the taxable year with the modifications specified in this section.

(b) Modifications increasing federal adjusted gross income.—There shall be added to federal adjusted gross income:

(1) Interest income on obligations of any state other than this state, or of a political subdivision of any such other state unless created by compact or agreement to which this state is a party;

(2) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States, which the laws of the United States exempt from federal income tax but not from state income taxes;

(3) Income taxes imposed by this state or any other taxing jurisdiction, to the extent deductible in determining federal adjusted gross income and not credited against federal income tax; and

(4) Interest on indebtedness incurred or continued to purchase or carry obligations or securities the income from
which is exempt from tax under this article, to the extent deductible in determining federal adjusted gross income.

(c) Modifications reducing federal adjusted gross income.

There shall be subtracted from federal adjusted gross income:

(1) Interest income on obligations of the United States and its possessions to the extent includible in gross income for federal income tax purposes;

(2) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States to the extent includible in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States;

(3) Any gain from the sale or other disposition of property having a higher fair market value on the first day of January, one thousand nine hundred sixty-one, than the adjusted basis at said date for federal income tax purposes: Provided, That the amount of this adjustment is limited to that portion of any such gain which does not exceed the difference between such fair market value and such adjusted basis: Provided, however, That if such gain is considered a long-term capital gain for federal income tax purposes, the modification shall be limited to fifty per centum of such portion of the gain;

(4) The amount of any refund or credit for overpayment of income taxes imposed by this state, or any other taxing jurisdiction, to the extent properly included in gross income for federal income tax purposes;

(5) Annuities, retirement allowances, returns of contributions and any other benefit received under the public employees retirement system, the department of public safety death, disability and retirement fund, the state teachers retirement system, and all forms of military retirement, including regular armed forces, reserves and national guard, to the extent includible in gross income for federal income tax purposes;

(6) Retirement income received in the form of pensions and annuities after the thirty-first day of December, one
thousand nine hundred seventy-two, by any person who has
attained the age of sixty-five from any source other than
those enumerated in paragraph five of this subsection to the
extent includible in gross income for federal tax purposes.
Provided, That the total modification for all retirement in-
come received from such sources other than those enumerated
in paragraph five of this subsection shall be limited to an
amount in the aggregate not to exceed four thousand dollars
per person; and

(7) Any pay or allowances received after the thirty-first
day of December, one thousand nine hundred seventy-three, by
West Virginia residents as compensation for active service in
the armed forces of the United States: Provided, That such
deduction shall be limited to an amount not to exceed four
thousand dollars.

(d) Modification for West Virginia fiduciary adjustment.
—There shall be added to or subtracted from federal adjusted
gross income, as the case may be, the taxpayer's share, as
beneficiary of an estate or trust, of the West Virginia fiduciary
adjustment determined under section nineteen.

(e) Partners.—The amounts of modifications required to
be made under this section by a partner, which relate to
items of income, gain, loss or deduction of a partnership,
shall be determined under section seventeen.

(f) Husband and wife.—If husband and wife determine
their federal income tax on a joint return but determine their
West Virginia income taxes separately, they shall determine
their West Virginia adjusted gross incomes separately as if
their federal adjusted gross incomes had been determined
separately.

CHAPTER 140
(H. B. 1283—By Mr. Pauley)

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


(a) General.—Any term used in this article shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required by the context or by definition in this article. Any reference in this article to the laws of the United States or to the Internal Revenue Code or to the federal income tax law shall mean the provisions of the laws of the United States as relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States prior to the first day of January, one thousand nine hundred seventy-four, shall be given effect in determining the taxes imposed by this article for the tax period beginning the first day of July, one thousand nine hundred seventy-four, and thereafter, but no amendment to laws of the United States made on or after the first day of January, one thousand nine hundred seventy-four, shall be given effect.

(b) Certain terms defined.—For purposes of this article:

(1) The term “tax commissioner” means the tax commissioner of the state of West Virginia or his delegate.

(2) The term “corporation” means and includes a joint-stock company or any association which is taxable as a corporation under the federal income tax law.

(3) The term “domestic corporation” means any corporation organized under the laws of West Virginia.
(4) The term "foreign corporation" means any corporation other than a domestic corporation.

(5) The term "state" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

(6) The term "taxable year" means the taxable year for which the taxable income of the taxpayer is computed under the federal income tax law.

(7) The term "taxpayer" means a corporation subject to the tax imposed by this article.

(8) The term "tax" includes, within its meaning, interest and penalties unless the intention to give it a more limited meaning is disclosed by the context.

(9) The term "commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(10) The term "compensation" means wages, salaries, commissions and any form of remuneration paid to employees for personal services.

(11) The term "West Virginia taxable income" means the taxable income of a corporation as defined by the laws of the United States for federal income tax purposes, adjusted as provided in section six: Provided, That in the case of a corporation having income from business activity which is taxable without this state, its "West Virginia taxable income" shall be such portion of its taxable income as so defined and adjusted as is allocated or apportioned to this state under the provisions of section seven.

(12) The term "business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

(13) "Nonbusiness income" means all income other than business income.
(14) The term “public utility” means any business activity to which the jurisdiction of the public service commission of West Virginia extends under section one, article two, chapter twenty-four of the code of West Virginia.

(15) The term “this code” means the code of West Virginia, one thousand nine hundred thirty-one, as amended.

(16) The term “this state” means the state of West Virginia.

CHAPTER 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


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 seven, chapter six of this code, the commissioner of employment security shall receive a yearly salary of twenty-three thousand five hundred dollars and the necessary traveling expenses incident to the performance of his duties. Requisition for traveling expenses shall be accompanied by a sworn itemized statement which shall be 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 seven, chapter six of this code, each member of the board shall receive an annual salary of twelve thousand six hundred dollars and the necessary traveling expenses incurred in the performance of his duties.

6 Requisition for traveling expenses shall be accompanied by a sworn and itemized statement which shall be filed with the auditor and preserved as a public record.

9 The salaries and expenses of the members shall be paid 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 any week shall be paid benefits with respect to that week at the weekly rate appearing in Column (C) in Table A in this paragraph, on the line on which in Column (A) there is indicated the employee's wage class, except as otherwise provided under the term "total and partial unemployment" in section three, article one of this chapter. The employee's wage class shall be determined by his base period wages as shown in Column (B) in Table A.
The right of an employee to receive benefits shall not be prejudiced nor the amount thereof be diminished by reason of failure by an employer to pay either the wages earned by the employee or the contribution due on such wages. An individual who is totally unemployed but earns in excess of twenty-five dollars as a result of odd-job or subsidiary work in any benefit week shall be paid benefits for such week in accordance with the provisions of this chapter pertaining to benefits for partial unemployment.

### TABLE A

<table>
<thead>
<tr>
<th>Wage Class</th>
<th>Wages in Base Period</th>
<th>Weekly Benefit Rate</th>
<th>Maximum Benefit in Benefit Year for Total and/or Partial Unemployment</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Column A)</td>
<td>(Column B)</td>
<td>(Column C)</td>
<td>(Column D)</td>
</tr>
<tr>
<td>20 1</td>
<td>Under $ 700.00</td>
<td>Ineligible</td>
<td>$12.00 $312.00</td>
</tr>
<tr>
<td>21 2</td>
<td>700.00—799.99</td>
<td>12.00</td>
<td>338.00</td>
</tr>
<tr>
<td>22 3</td>
<td>800.00—899.99</td>
<td>13.00</td>
<td>364.00</td>
</tr>
<tr>
<td>23 4</td>
<td>900.00—999.99</td>
<td>14.00</td>
<td>390.00</td>
</tr>
<tr>
<td>24 5</td>
<td>1000.00—1149.99</td>
<td>15.00</td>
<td>416.00</td>
</tr>
<tr>
<td>25 6</td>
<td>1150.00—1299.99</td>
<td>16.00</td>
<td>442.00</td>
</tr>
<tr>
<td>26 7</td>
<td>1300.00—1449.99</td>
<td>17.00</td>
<td>468.00</td>
</tr>
<tr>
<td>27 8</td>
<td>1450.00—1599.99</td>
<td>18.00</td>
<td>494.00</td>
</tr>
<tr>
<td>28 9</td>
<td>1600.00—1749.99</td>
<td>19.00</td>
<td>520.00</td>
</tr>
<tr>
<td>29 10</td>
<td>1750.00—1899.99</td>
<td>20.00</td>
<td>546.00</td>
</tr>
<tr>
<td>30 11</td>
<td>1900.00—2049.99</td>
<td>21.00</td>
<td>572.00</td>
</tr>
<tr>
<td>31 12</td>
<td>2050.00—2199.99</td>
<td>22.00</td>
<td>598.00</td>
</tr>
<tr>
<td>32 13</td>
<td>2200.00—2349.99</td>
<td>23.00</td>
<td>624.00</td>
</tr>
<tr>
<td>33 14</td>
<td>2350.00—2499.99</td>
<td>24.00</td>
<td>650.00</td>
</tr>
<tr>
<td>34 15</td>
<td>2500.00—2599.99</td>
<td>25.00</td>
<td>676.00</td>
</tr>
<tr>
<td>35 16</td>
<td>2600.00—2699.99</td>
<td>26.00</td>
<td>702.00</td>
</tr>
<tr>
<td>36 17</td>
<td>2700.00—2799.99</td>
<td>27.00</td>
<td>728.00</td>
</tr>
<tr>
<td>37 18</td>
<td>2800.00—2899.99</td>
<td>28.00</td>
<td>754.00</td>
</tr>
<tr>
<td>38 19</td>
<td>2900.00—2999.99</td>
<td>29.00</td>
<td>780.00</td>
</tr>
<tr>
<td>39 20</td>
<td>3000.00—3099.99</td>
<td>30.00</td>
<td>806.00</td>
</tr>
<tr>
<td>40 21</td>
<td>3100.00—3199.99</td>
<td>31.00</td>
<td>832.00</td>
</tr>
<tr>
<td>41 22</td>
<td>3200.00—3349.99</td>
<td>32.00</td>
<td>858.00</td>
</tr>
<tr>
<td>42 23</td>
<td>3350.00—3499.99</td>
<td>33.00</td>
<td>884.00</td>
</tr>
<tr>
<td>43 24</td>
<td>3500.00—3649.99</td>
<td>34.00</td>
<td>910.00</td>
</tr>
<tr>
<td>44 25</td>
<td>3650.00—3799.99</td>
<td>35.00</td>
<td>936.00</td>
</tr>
</tbody>
</table>
Notwithstanding any of the foregoing provisions of this section, on and after July one, one thousand nine hundred sixty-seven, the maximum weekly benefit rate shall be forty percent of the average weekly wage in West Virginia.

Notwithstanding any of the foregoing provisions of this section, on and after July one, one thousand nine hundred seventy, the maximum weekly benefit rate shall be forty-five percent of the average weekly wage in West Virginia.

Notwithstanding any of the foregoing provisions of this section, on and after July one, one thousand nine hundred seventy-one, the maximum weekly benefit rate shall be fifty percent of the average weekly wage in West Virginia.

Notwithstanding any of the foregoing provisions of this section, on and after July one, one thousand nine hundred seventy-three, the maximum weekly benefit rate shall be fifty-five percent of the average weekly wage in West Virginia.

The commissioner, after he has determined the maximum weekly benefit rate upon the basis of the above formula, shall establish as many additional wage classes as are required, increasing the amount of base period wages required for each class by one hundred fifty dollars, the weekly benefit rate for each class by one dollar, and the maximum benefit by twenty-six dollars. The maximum weekly benefit rate, when computed by the commissioner, in accordance with the foregoing provisions, shall be rounded to the next higher dollar amount, if the computation exceeds forty-nine percent of a dollar amount. Such rounding off to the next higher dollar amount shall result in one additional wage class, with commensurate base period wage requirement of one hundred fifty dollars over the preceding wage class, and with a maximum benefit increase over the preceding wage class of twenty-six dollars. Such an additional wage class shall be published by the commissioner with the table required to be published by the foregoing provisions of this section.
Notwithstanding any of the foregoing provisions of this section, including Table A, on and after July one, one thousand nine hundred seventy-four:

(1) The maximum weekly benefit rate shall be sixty-six and two-thirds percent of the average weekly wage in West Virginia.

(2) The weekly benefit rate [Column (C) of said Table A] in each and every wage class, one through twenty-four, both inclusive [Column (A) of said Table A], shall be increased two dollars, and the maximum benefit in benefit year for total and/or partial unemployment [Column (D) of said Table A] in each and every wage class [Column (A) of said Table A], shall be increased fifty-two dollars.

(3) The commissioner, after he has determined the maximum weekly benefit rate upon the basis of the formula set forth in subdivision (1) above, shall establish as many additional wage classes as are required, increasing the amount of the base period wages required for each wage class by one hundred fifty dollars, establishing the weekly benefit rate for each wage class by rounded dollar amount to be fifty percent of one fifty-second of the median dollar amount of wages in base period for such wage class, and establishing the maximum benefit for each wage class as an amount equal to twenty-six times the weekly benefit rate. The maximum weekly benefit rate, when computed by the commissioner, in accordance with the foregoing provisions, shall be rounded to the next higher dollar amount, if the computation exceeds forty-nine percent of a dollar amount. Such rounding off to the next higher dollar amount shall result in one additional wage class, with commensurate base period wage requirement of one hundred fifty dollars over the preceding wage class, and with a maximum benefit increase over the preceding wage class of twenty-six dollars. Such an additional wage class shall be published by the commissioner with the table required to be published by the foregoing provisions of this section.
After he has established such additional wage classes, the commissioner shall prepare and publish a table setting forth such information.

Average weekly wage shall be computed by dividing the number of employees in West Virginia earning wages in covered employment into the total wages paid to employees in West Virginia in covered employment, and by further dividing said result by fifty-two, and shall be determined from employer wage and contribution reports for the previous calendar year which are furnished to the department on or before June one following such calendar year. The average weekly wage, as determined by the commissioner, shall be rounded to the next higher dollar.

The computation and determination of rates as aforesaid shall be completed annually before July one, and any such new wage class, with its corresponding wages in base period, weekly benefit rate, and maximum benefit in a benefit year established by the commissioner in the foregoing manner effective on a July one, shall apply only to a new claim established by a claimant on and after said July one, and shall not apply to continued claims of a claimant based on his new claim established before said July one.

§21A-6.11. Same—Partial unemployment.

An eligible individual who is partially unemployed in any week shall, upon claim therefor filed within such time and in such manner as the commissioner may by regulation prescribe, be paid benefits for such partial unemployment in an amount equal to his weekly benefit rate, as determined in accordance with section ten of this article, less that part of wages from any source payable to him with respect to such week which is in excess of twenty-five dollars (notwithstanding the reference to fifteen dollars in the definition of partial unemployment contained in section three, article one of this chapter):

Provided, That such amount of benefits if not a multiple of one dollar shall be computed to the next higher multiple of one dollar. Such partial benefits shall be paid to
such individual for the week for which he is claiming benefits without regard to the provisions of subdivisions one and four of section one of this article.

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 commissioner, is hereby authorized and empowered to establish a training program for qualified veteran medical personnel and former military medical corpsmen under the "medex" training program for the training of medical assistants or any similar program.

2 (2) The commissioner, on behalf of the department, may do any and all acts necessary to establish and operate such training program within the state of West Virginia.

3 (3) The commissioner is hereby empowered and authorized to receive funds to finance such program from 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. Poffenberger)

[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; sec-
tions 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 hun-
dred five, three hundred six, three hundred seven, three
hundred eight, three hundred twelve, three hundred thir-
ten, three hundred eighteen, four hundred one, four hun-
dred 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

2. Sales.
5. Letters of Credit.
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 a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement this chapter applies to transactions bearing an appropriate relation to this state.

8 (2) Where one of the following provisions of this chapter specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. Section 2-402.

Applicability of the article on bank deposits and collections. Section 4-102.

Bulk transfers subject to the article on bulk transfers. Section 6-102.

Applicability of the article on investment securities. Section 8-106.

Perfection provisions of the article on secured transactions. Section 9-103.

§46-1-201. General definitions.

1 Subject to additional definitions contained in the subsequent articles of this chapter which are applicable to specific articles or parts thereof, and unless the context otherwise requires, in this chapter:

5 (1) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, setoff, suit in equity and any other proceedings in which rights are determined.

8 (2) "Aggrieved party" means a party entitled to resort to a remedy.
(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this chapter (sections 1-205 and 2-208). Whether an agreement has legal consequences is determined by the provisions of this chapter, if applicable; otherwise by the law of contracts (section 1-103). (Compare "Contract.")

(4) "Bank" means any person engaged in the business of banking.

(5) "Bearer" means the person in possession of an instrument, document of title, or security payable to bearer or indorsed in blank.

(6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading for marine or rail transportation, and includes an air consignment note or air waybill.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence.

(9) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. All persons who sell minerals or the like (including oil and gas) at wellhead or minehead shall be deemed to be persons in the business of selling goods of that kind. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.
(10) "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: NONNEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous." Whether a term or clause is "conspicuous" or not is for decision by the court.

(11) "Contract" means the total legal obligation which results from the parties' agreement as affected by this chapter and any other applicable rules of law. (Compare "Agreement.")

(12) "Creditor" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.

(13) "Defendant" includes a person in the position of defendant in a cross action or counterclaim.

(14) "Delivery" with respect to instruments, documents of title, chattel paper or securities means voluntary transfer of possession.

(15) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

(16) "Fault" means wrongful act, omission or breach.

(17) "Fungible" with respect to goods or securities means goods or securities of which any unit is, by nature
Ch. 143]  UNIFORM COMMERCIAL CODE  813

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 counterfeiting.

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
than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this chapter.

(26) A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person "receives" a notice or notification when

(a) it comes to his attention; or

(b) it is duly delivered at the place of business through which the contract was made or at any other place held out by him as the place for receipt of such communications.

(27) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

(28) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(29) "Party," as distinct from "third party," means a person who has engaged in a transaction or made an agreement within this chapter.

(30) "Person" includes an individual or an organization (see section 1-102).
(31) "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(32) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, issue or reissue, gift or any other voluntary transaction creating an interest in property.

(33) "Purchaser" means a person who takes by purchase.

(34) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(35) "Representative" includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

(36) "Rights" includes remedies.

(37) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (section 2-401) is limited in effect to a reservation of a "security interest." The term also includes any interest of a buyer of accounts or chattel paper, which is subject to article 9. The special property interest of a buyer of goods on identification of such goods to a contract for sale under section 2-401 is not a "security interest," but a buyer may also acquire a "security interest" by complying with article 9. Unless a lease or consignment is intended as security, reservation of title thereunder is not a "security interest" but a consignment is in any event subject to the provisions on consignment sales (section 2-326). Whether a lease is intended as security is to be determined by the facts of each case; however, (a) the inclusion of an option to purchase does not of itself make the lease one intended for security, and (b) an agreement that upon compliance with the terms of the lease the lessee shall become or has the option to become the owner of the
property for no additional consideration or for a nominal consideration does make the lease one intended for security.

(38) "Send" in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.

(39) "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(40) "Surety" includes guarantor.

(41) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(42) "Term" means that portion of an agreement which relates to a particular matter.

(43) "Unauthorized" signature or endorsement means one made without actual, implied or apparent authority and includes a forgery.

(44) "Value": Except as otherwise provided with respect to negotiable instruments and bank collections (sections 3-303, 4-208 and 4-209) a person gives "value" for rights if he acquires them

(a) in return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a chargeback is provided for in the event of difficulties in collection; or

(b) as security for or in total or partial satisfaction of a preexisting claim; or

(c) by accepting delivery pursuant to a preexisting contract for purchase; or
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.
(2) Even though the credit specifically states that it is nontransferable or nonassignable the beneficiary may before performance of the conditions of the credit assign his right to proceeds. Such an assignment is an assignment of an account under article 9 on secured transactions and is governed by that article except that (a) the assignment is ineffective until the letter of credit or advice of credit is delivered to the assignee which delivery constitutes perfection of the security interest under article 9; and (b) the issuer may honor drafts or demands for payment drawn under the credit until it receives a notification of the assignment signed by the beneficiary which reasonably identifies the credit involved in the assignment and contains a request to pay the assignee; and (c) after what reasonably appears to be such a notification has been received the issuer may without dishonor refuse to accept or pay even to a person otherwise entitled to honor until the letter of credit or advice of credit is exhibited to the issuer. (3) Except where the beneficiary has effectively assigned his right to draw or his right to proceeds, nothing in this section limits his right to transfer or negotiate 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.
§46-9-104. 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.


§46-9-308. 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.


§46-9-405. 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.


§46-9-504. 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) Except as otherwise provided in section 9-103 on multiple state transactions and in section 9-104 on excluded transactions, this article applies

(a) to any transaction (regardless of its form) which is intended to create a security interest in personal property or fixtures including goods, documents, instruments, general intangibles, chattel paper or accounts; and also

(b) to any sale of accounts, or chattel paper.

(2) This article applies to security interests created by contract including pledge, assignment, chattel mortgage, chattel trust, trust deed, factor's lien, equipment trust, conditional sale, trust receipt, other lien or title retention contract and lease or consignment intended as security. This article does not apply to statutory liens except as provided in section 9-310.

(3) The application of this article to a security inter-
est in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this article does not apply.


(1) Documents, instruments and ordinary goods.

(a) This subsection applies to documents and instruments and to goods other than those covered by a certificate of title described in subsection (2), mobile goods described in subsection (3), and minerals described in subsection (5).

(b) Except as otherwise provided in this subsection, perfection and the effect of perfection or nonperfection of a security interest in collateral are governed by the law of the jurisdiction where the collateral is when the last event occurs on which is based the assertion that the security interest is perfected or unperfected.

(c) If the parties to a transaction creating a purchase money security interest in goods in one jurisdiction understand at the time that the security interest attaches that the goods will be kept in another jurisdiction, then the law of the other jurisdiction governs the perfection and the effect of perfection or nonperfection of the security interest from the time it attaches until thirty days after the debtor receives possession of the goods and thereafter if the goods are taken to the other jurisdiction before the end of the thirty-day period.

(d) When collateral is brought into and kept in this state while subject to a security interest perfected under the law of the jurisdiction from which the collateral was removed, the security interest remains perfected, but if action is required by part 3 of this article to perfect the security interest,

(i) if the action is not taken before the expiration of the period of perfection in the other jurisdiction or the end of four months after the collateral is brought into this state, whichever period first expires, the security
interest becomes unperfected at the end of that period and
is thereafter deemed to have been unperfected as against
a person who became a purchaser after removal;

(ii) if the action is taken before the expiration of
the period specified in subparagraph (i), the security
interest continues perfected thereafter;

(iii) for the purpose of priority over a buyer of
consumer goods (subsection (2) of section 9-307), the
period of the effectiveness of a filing in the jurisdiction
from which the collateral is removed is governed by the
rules with respect to perfection in subparagraphs (i) and
(ii).

(2) Certificate of title.

(a) This subsection applies to goods covered by a
certificate of title issued under a statute of this state or
of another jurisdiction under the law of which indication
of a security interest on the certificate is required as a
condition of perfection.

(b) Except as otherwise provided in this subsection,
perfection and the effect of perfection or nonperfection of
the security interest are governed by the law (including
the conflict of laws rules) of the jurisdiction issuing the
certificate until four months after the goods are removed
from that jurisdiction and thereafter until the goods are
registered in another jurisdiction, but in any event not
beyond surrender of the certificate. After the expiration
of that period, the goods are not covered by the certificate
of title within the meaning of this section.

(c) Except with respect to the rights of a buyer de-
described in the next paragraph, a security interest, per-
fected in another jurisdiction otherwise than by notation
on a certificate of title, in goods brought into this state
and thereafter covered by a certificate of title issued by
this state is subject to the rules stated in paragraph (d)
of subsection (1).

(d) If goods are brought into this state while a se-
curity interest therein is perfected in any manner under
the law of the jurisdiction from which the goods are re-
moved and a certificate of title is issued by this state and
the certificate does not show that the goods are subject to
the security interest or that they may be subject to secur-
ity interests not shown on the certificate, the security
interest is subordinate to the rights of a buyer of the
goods who is not in the business of selling goods of that
kind to the extent that he gives value and receives de-
livery of the goods after issuance of the certificate and
without knowledge of the security interest.

(3) Accounts, general intangibles and mobile goods.

(a) This subsection applies to accounts (other than an
account described in subsection (5) on minerals) and gen-
eral intangibles and to goods which are mobile and which
are of a type normally used in more than one jurisdiction,
such as motor vehicles, trailers, rolling stock, airplanes,
shipping containers, road building and construction ma-
chinery and commercial harvesting machinery and the
like, if the goods are equipment or are inventory leased
or held for lease by the debtor to others, and are not
covered by a certificate of title described in subsection (2).

(b) The law (including the conflict of laws rules) of
the jurisdiction in which the debtor is located governs the
perfection and the effect of perfection or nonperfection
of the security interest.

(c) If, however, the debtor is located in a jurisdiction
which is not a part of the United States, and which
does not provide for perfection of the security interest
by filing or recording in that jurisdiction, the law of
the jurisdiction in the United States in which the
debtor has its major executive office in the United States
governs the perfection and the effect of perfection or non-
perfection of the security interest through filing. In the
alternative, if the debtor is located in a jurisdiction
which is not a part of the United States or Canada and
the collateral is accounts or general intangibles for money
due or to become due, the security interest may be per-
fected by notification to the account debtor. As used in
(d) A debtor shall be deemed located at his place of business if he has one, at his chief executive office if he has more than one place of business, otherwise at his residence. If, however, the debtor is a foreign air carrier under the Federal Aviation Act of 1958, as amended, it shall be deemed located at the designated office of the agent upon whom service of process may be made on behalf of the foreign air carrier.

(e) A security interest perfected under the law of the jurisdiction of the location of the debtor is perfected until the expiration of four months after a change of the debtor’s location to another jurisdiction, or until perfection would have ceased by the law of the first jurisdiction, whichever period first expires. Unless perfected in the new jurisdiction before the end of that period, it becomes unperfected thereafter and is deemed to have been unperfected as against a person who became a purchaser after the change.

(4) Chattel paper.

The rules stated for goods in subsection (1) apply to a possessor security interest in chattel paper. The rules stated for accounts in subsection (3) apply to a non-possessor security interest in chattel paper, but the security interest may not be perfected by notification to the account debtor.

(5) Minerals.

Perfection and the effect of perfection or nonperfection of a security interest which is created by a debtor who has an interest in minerals or the like (including oil and gas) before extraction and which attaches thereto as extracted, or which attaches to an account resulting from the sale thereof at the wellhead or minehead are governed by the law (including the conflict of laws rules) of the jurisdiction wherein the wellhead or minehead is located.

§46-9-104. Transactions excluded from article.

This article does not apply
(a) to a security interest subject to any statute of the United States such as the Ship Mortgage Act, 1920, to the extent that such statute governs the rights of parties to and third parties affected by transactions in particular types of property; or

(b) to a landlord's lien; or

(c) to a lien given by statute or other rule of law for services or materials except as provided in section 9-310 on priority of such liens; or

(d) to a transfer of a claim for wages, salary or other compensation of an employee; or

(e) to a transfer by a government or governmental subdivision or agency; or

(f) to a sale of accounts or chattel paper as part of a sale of the business out of which they arose, or an assignment of accounts or chattel paper which is for the purpose of collection only, or a transfer of a right to payment under a contract to an assignee who is also to do the performance under the contract or a transfer of a single account to an assignee in whole or partial satisfaction of a preexisting indebtedness; or

(g) to a transfer of an interest in or claim in or under any policy of insurance, except as provided with respect to proceeds (section 9-306) and priorities in proceeds (section 9-312); or

(h) to a right represented by a judgment (other than a judgment taken on a right to payment which was collateral); or

(i) to any right of setoff; or

(j) except to the extent that provision is made for fixtures in section 9-313, to the creation or transfer of an interest in or lien on real estate, including a lease or rents thereunder; or

(k) to a transfer in whole or in part of any claim arising out of tort; or
37 (1) 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;
(g) "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests;

(h) "Goods" includes all things which are moveable at the time the security interest attaches or which are fixtures (section 9-313), but does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like (including oil and gas) before extraction. "Goods" also includes standing timber which is to be cut and removed under a conveyance or contract for sale, the unborn young of animals, and growing crops;

(i) "Instrument" means a negotiable instrument (defined in section 3-104), or a security (defined in section 8-102) or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary endorsement or assignment;

(j) "Mortgage" means a consensual interest created by a real estate mortgage, a trust deed on real estate, or the like;

(k) An advance is made "pursuant to commitment" if the secured party has bound himself to make it, whether or not a subsequent event of default or other event not within his control has relieved or may relieve him from his obligation;

(l) "Security agreement" means an agreement which creates or provides for a security interest;

(m) "Secured party" means a lender, seller or other person in whose favor there is a security interest, including a person to whom accounts or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement or the like are represented by a trustee or other person, the representative is the secured party;

(n) "Transmitting utility" means any person primarily engaged in the railroad, street railway or trolley bus
business, the electric or electronics communications transmission business, the transmission of goods by pipeline, or the transmission or the production and transmission of electricity, steam, gas or water, or the provision of sewer service.

(2) Other definitions applying to this article and the sections in which they appear are:

"Account". Section 9-106.

"Attach". Section 9-203.

"Construction mortgage". Section 9-313 (1).

"Consumer goods". Section 9-109 (1).

"Equipment". Section 9-109 (2).

"Farm products". Section 9-109 (3).

"Fixture". Section 9-313.

"Fixture filing". Section 9-313.

"General intangibles". Section 9-106.

"Inventory". Section 9-109 (4).

"Lien creditor". Section 9-301 (3).

"Proceeds". Section 9-306 (1).

"Purchase money security interest". Section 9-107.

"United States". Section 9-103.

(3) The following definitions in other articles apply to this article:

"Check". Section 3-104.

"Contract for sale". Section 2-106.

"Holder in due course". Section 3-302.

"Note". Section 3-104.

"Sale". Section 2-106.

(4) In addition, article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

§46-9-106. Definitions: "Account"; "general intangibles".

"Account" means any right to payment for goods sold
or leased or for services rendered which is not evidenced
by an instrument or chattel paper, whether or not it has
been earned by performance. "General intangibles"
means any personal property (including things in action)
other than goods, accounts, chattel paper, documents,
instrumemt and money. All rights to payment earned or
unearned under a charter or other contract involving the
use or hire of a vessel and all rights incident to the char-

cer or contract are accounts.

§46-9-114. Consignment.

(1) A person who delivers goods under a consignment
which is not a security interest and who would be re-
quired to file under this article by paragraph (3) (c) of
section 2-326 has priority over a secured party who is or
becomes a creditor of the consignee and who would have
a perfected security interest in the goods if they were
the property of the consignee, and also has priority with
respect to identifiable cash proceeds received on or be-
fore delivery of the goods to a buyer, if

(a) the consignor complies with the filing provision
of the article on sales with respect to consignments (para-
graph (3) (c) of section 2-326) before the consignee re-
ceives possession of the goods; and

(b) the consignor gives notification in writing to the
holder of the security interest if the holder has filed a
financing statement covering the same types of goods be-
fore the date of the filing made by the consignor; and

(c) the holder of the security interest receives the
notification within five years before the consignee receives
possession of the goods; and

(d) the notification states that the consignor expects
to deliver goods on consignment to the consignee, describ-
ing the goods by item or type.

(2) In the case of a consignment which is not a security
interest and in which the requirements of the preceding
subsection have not been met, a person who delivers
goods to another is subordinate to a person who would
§46-9-203. Attachment and enforceability of security interest; proceeds, formal requisites.

(1) Subject to the provisions of section 4-208 on the security interest of a collecting bank and section 9-113 on a security interest arising under the article on sales, a security interest is not enforceable against the debtor or third parties with respect to the collateral and does not attach unless

(a) the collateral is in the possession of the secured party, pursuant to agreement, or the debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops growing or to be grown or timber to be cut, a description of the land concerned; and

(b) value has been given; and

(c) the debtor has rights in the collateral.

(2) A security interest attaches when it becomes enforceable against the debtor with respect to the collateral. Attachment occurs as soon as all of the events specified in subsection (1) have taken place unless explicit agreement postpones the time of attaching.

(3) Unless otherwise agreed a security agreement gives the secured party the rights to proceeds provided by section 9-306.

(4) A transaction may be subject to this article and also to article 7A of chapter 47 relating to small loans and in case of conflict between the provisions of this article and said article 7A or any other such statute, the provisions of said article 7A or such other statute control.

Failure to comply with any applicable statute has only the effect which is specified therein.

§46-9-204. After-acquired property; future advances.

(1) Except as provided in subsection (2), a security agreement may provide that any or all obligations cov-
ered by the security agreement are to be secured by after-
acquired collateral.

(2) No security interest attaches under an after-ac-
quired property clause to consumer goods other than ac-
cessions (section 9-314) when given as additional security
unless the debtor acquires rights in them within ten days
after the secured party gives value.

(3) Obligations covered by a security agreement may
include future advances or other value whether or not
the advances or value are given pursuant to commitment
(subsection (1) of section 9-105).

§46-9-205. Use or disposition of collateral without accounting
permissible.

A security interest is not invalid or fraudulent against
creditors by reason of liberty in the debtor to use, com-
mingle or dispose of all or part of the collateral (includ-
ing returned or repossessed goods) or to collect or com-
promise accounts, or chattel paper, or to accept the return
of goods or make repossessions, or to use, commingle or
dispose of proceeds, or by reason of the failure of the
secured party to require the debtor to account for pro-
ceeds or replace collateral. This section does not relax
the requirements of possession where perfection of a
security interest depends upon possession of the collateral
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) Except as otherwise provided in subsection (2), an
unperfected security interest is subordinate to the rights
of
(a) persons entitled to priority under section 9-312;
(b) a person who becomes a lien creditor before the
security interest is perfected;
(c) in the case of goods, instruments, documents, and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course of business; or is a buyer of farm products in ordinary course of business, to the extent that he gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected;

(d) in the case of accounts and general intangibles, a person who is not a secured party and who is a transferee to the extent that he gives value without knowledge of the security interest and before it is perfected.

(2) If the secured party files with respect to a purchase money security interest before or within ten days after the debtor receives possession of the collateral, he takes priority over the rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches and the time of filing.

(3) A "lien creditor" means a creditor who has acquired a lien on the property involved by attachment, levy or the like and includes an assignee for benefit of creditors from the time of assignment, and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment.

(4) A person who becomes a lien creditor while a security interest is perfected takes subject to the security interest only to the extent that it secures advances made before he becomes a lien creditor or within 45 days thereafter or made without knowledge of the lien or pursuant to a commitment entered into without knowledge of the 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) A financing statement must be filed to perfect all security interests except the following

(a) a security interest in collateral in possession of the secured party under section 9-305;
5  (b) a security interest temporarily perfected in instru-
6  ments or documents without delivery under section
7  9-304 or in proceeds for a 10-day period under section
8  9-306;
9  
10  (c) a security interest created by an assignment of a
11  beneficial interest in a trust or a decedent's estate;
12  
13  (d) a purchase money security interest in consumer
14  goods; but filing is required for a motor vehicle required
15  to be registered; and fixture filing is required for priority
16  over conflicting interests in fixtures to the extent provided
17  in section 9-313;
18  
19  (e) an assignment of accounts which does not alone or
20  in conjunction with other assignments to the same assignee
21  transfer a significant part of the outstanding accounts
22  of the assignor;
23  
24  (f) a security interest of a collecting bank (section
25  4-208) or arising under the article on sales (see section
26  9-113) or covered in subsection (3) of this section;
27  
28  (g) an assignment for the benefit of all the creditors
29  of the transferor, and subsequent transfers by the assignee
30  thereunder.
31  
32  (2) If a secured party assigns a perfected security
33  interest, no filing under this article is required in order
34  to continue the perfected status of the security interest
35  against creditors of and transferees from the original
36  debtor.
37  
38  (3) The filing of a financing statement otherwise re-
39  quired by this article is not necessary or effective to per-
40  fect a security interest in property subject to
41  
42  (a) a statute or treaty of the United States which pro-
43  vides for a national or international registration or a
44  national or international certificate of title or which
45  specifies a place of filing different from that specified in
46  this article for filing of the security interest; or
47  
48  (b) the following statute of this state: Chapter seven-
49  teen-a of this code; but during any period in which
50  collateral is inventory held for sale by a person who is in
the business of selling goods of that kind, the filing provisions of this article (part 4) apply to a security interest in that collateral created by him as debtor; or

(c) a certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection (subsection (2) of section 9-103).

(4) Compliance with a statute or treaty described in subsection (3) is equivalent to the filing of a financing statement under this article, and a security interest in property subject to the statute or treaty can be perfected only by compliance therewith except as provided in section 9-103 on multiple state transactions. Duration and renewal of perfection of a security interest perfected by compliance with the statute or treaty are governed by the provisions of the statute or treaty; in other respects the security interest is subject to this article.

§46-9-304. Perfection of security interest in instruments, documents, and goods covered by documents; perfection by permissive filing; temporary perfection without filing or transfer of possession.

1 (1) A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in money or instruments (other than instruments which constitute part of chattel paper) can be perfected only by the secured party's taking possession, except as provided in subsections (4) and (5) of this section and subsections (2) and (3) of section 9-306 on proceeds.

(2) During the period that goods are in the possession of the issuer of a negotiable document therefor, a security interest in the goods is perfected by perfecting a security interest in the document, and any security interest in the goods otherwise perfected during such period is subject thereto.

(3) A security interest in goods in the possession of a bailee other than one who has issued a negotiable document therefor is perfected by issuance of a document in the name of the secured party or by the bailee's receipt
of notification of the secured party’s interest or by filing
as to the goods.

(4) A security interest in instruments or negotiable
documents is perfected without filing or the taking of
possession for a period of 21 days from the time it attaches
to the extent that it arises for new value given under a
written security agreement.

(5) A security interest remains perfected for a period
of 21 days without filing where a secured party having
a perfected security interest in an instrument, a nego-
tiable document or goods in possession of a bailee other
than one who has issued a negotiable document therefor
(a) makes available to the debtor the goods or docu-
ments representing the goods for the purpose of ultimate
sale or exchange or for the purpose of loading, unloading,
storing, shipping, transshipping, manufacturing, process-
ing or otherwise dealing with them in a manner pre-
liminary to their sale or exchange, but priority between
conflicting security interests in the goods is subject to
subsection (3) of section 9-312; or
(b) delivers the instrument to the debtor for the
purpose of ultimate sale or exchange or of presentation,
collection, renewal or registration of transfer.

(6) After the 21-day period in subsections (4) and (5)
perfection depends upon compliance with applicable pro-
visions of this article.

§46-9-305. When possession by secured party perfects security
interest without filing.

A security interest in letters of credit and advices of
credit (subsection (2) (a) of section 5-116), goods, instru-
mements, money, negotiable documents or chattel paper
may be perfected by the secured party’s taking possession
of the collateral. If such collateral other than goods
covered by a negotiable document is held by a bailee,
the secured party is deemed to have possession from the
time the bailee receives notification of the secured party’s
interest. A security interest is perfected by possession
from the time possession is taken without relation back
and continues only so long as possession is retained,
unless otherwise specified in this article. The security
interest may be otherwise perfected as provided in this
article before or after the period of possession by the
secured party.

§46-9-306. "Proceeds”; secured party’s rights on disposition of
collateral.

(1) "Proceeds” includes whatever is received upon the
sale, exchange, collection or other disposition of collateral
or proceeds. Insurance payable by reason of loss or dam-
age to the collateral is proceeds, except to the extent
that it is payable to a person other than a party to the
security agreement. Money, checks, deposit accounts,
and the like are "cash proceeds.” All other proceeds are
"noncash proceeds.”

(2) Except where this article otherwise provides, a
security interest continues in collateral notwithstanding
sale, exchange or other disposition thereof unless the
disposition was authorized by the secured party in the
security agreement or otherwise, and also continues in
any identifiable proceeds including collections received
by the debtor.

(3) The security interest in proceeds is a continuously
perfected security interest if the interest in the original
collateral was perfected but it ceases to be a perfected
security interest and becomes unperfected 10 days after
receipt of the proceeds by the debtor unless

(a) a filed financing statement covers the original
collateral and the proceeds are collateral in which a
security interest may be perfected by filing in the office
or offices where the financing statement has been filed
and, if the proceeds are acquired with cash proceeds, the
description of collateral in the financing statement indi-
cates the types of property constituting the proceeds; or

(b) a filed financing statement covers the original
collateral and the proceeds are identifiable cash pro-
ceeds; or
(c) the security interest in the proceeds is perfected before the expiration of the ten-day period. Except as provided in this section, a security interest in proceeds can be perfected only by the methods or under the circumstances permitted in this article for original collateral of the same type.

(4) In the event of insolvency proceedings instituted by or against a debtor, a secured party with a perfected security interest in proceeds has a perfected security interest only in the following proceeds:

(a) in identifiable noncash proceeds and in separate deposit accounts containing only proceeds;

(b) in identifiable cash proceeds in the form of money which is neither commingled with other money nor deposited in a deposit account prior to the insolvency proceedings;

(c) in identifiable cash proceeds in the form of checks and the like which are not deposited in a deposit account prior to the insolvency proceedings; and

(d) in all cash and deposit accounts of the debtor in which proceeds have been commingled with other funds, but the perfected security interest under this paragraph (d) is

(i) subject to any right of setoff; and

(ii) limited to an amount not greater than the amount of any cash proceeds received by the debtor within 10 days before the institution of the insolvency proceedings less the sum of (I) the payments to the secured party on account of cash proceeds received by the debtor during such period and (II) the cash proceeds received by the debtor during such period to which the secured party is entitled under paragraphs (a) through (c) of this subsection (4).

(5) If a sale of goods results in an account or chattel paper which is transferred by the seller to a secured party, and if the goods are returned to or are repossessed by the seller or the secured party, the following rules determine priorities:
(a) If the goods were collateral at the time of sale for an indebtedness of the seller which is still unpaid, the original security interest attaches again to the goods and continues as the perfected security interest if it was perfected at the time when the goods were sold. If the security interest was originally perfected by a filing which is still effective, nothing further is required to continue the perfected status; in any other case, the secured party must take possession of the returned or repossessed goods or must file.

(b) An unpaid transferee of the chattel paper has a security interest in the goods against the transferor. Such security interest is prior to a security interest asserted under paragraph (a) to the extent that the transferee of the chattel paper was entitled to priority under section 9-308.

(c) An unpaid transferee of the account has a security interest in the goods against the transferor. Such security interest is subordinate to a security interest asserted under paragraph (a).

(d) A security interest of an unpaid transferee asserted under paragraph (b) or (c) must be perfected for protection against creditors of the transferor and purchasers of the returned or repossessed goods.


(1) A buyer in ordinary course of business (subsection (9) of section 1-201) other than a person buying farm products from a person engaged in farming operations takes free of a security interest created by his seller even though the security interest is perfected and even though the buyer knows of its existence.

(2) In the case of consumer goods, a buyer takes free of a security interest even though perfected if he buys without knowledge of the security interest, for value and for his own personal, family or household purposes unless prior to the purchase the secured party has filed a financing statement covering such goods.
(3) A buyer other than a buyer in ordinary course of business (subsection (1) of this section) takes free of a security interest to the extent that it secures future advances made after the secured party acquires knowledge of the purchase, or more than forty-five days after the purchase, whichever first occurs, unless made pursuant to a commitment entered into without knowledge of the purchase and before the expiration of the forty-five day period.

§46-9-308. Purchase of chattel paper and instruments.

1 A purchaser of chattel paper or an instrument who gives new value and takes possession of it in the ordinary course of his business has priority over a security interest in the chattel paper or instrument

2 (a) which is perfected under section 9-304 (permissive filing and temporary perfection) or under section 9-306 (perfection as to proceeds) if he acts without knowledge that the specific paper or instrument is subject to a security interest; or

3 (b) which is claimed merely as proceeds of inventory subject to a security interest (section 9-306) even though he knows that the specific paper or instrument is subject 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 this part and in the following sections shall govern when applicable: Section 4-208 with respect to the security interests of collecting banks in items being collected, accompanying documents and proceeds; section 9-103 on security interests related to other jurisdictions; section 9-114 on consignments.

2 (2) A perfected security interest in crops for new value given to enable the debtor to produce the crops during the production season and given not more than three months before the crops become growing crops by planting or otherwise takes priority over an earlier per-
ected security interest to the extent that such earlier in-
terest secures obligations due more than six months before
the crops become growing crops by planting or otherwise,
even though the person giving new value had knowledge
of the earlier security interest.

(3) A perfected purchase money security interest in
inventory has priority over a conflicting security interest
in the same inventory and also has priority in identifiable
cash proceeds received on or before the delivery of the
inventory to a buyer if

(a) the purchase money security interest is perfected
at the time the debtor receives possession of the inven-
tory; and

(b) the purchase money secured party gives notifica-
tion in writing to the holder of the conflicting security
interest if the holder had filed a financing statement cover-
ing the same types of inventory (i) before the date of
the filing made by the purchase money secured party, or
(ii) before the beginning of the twenty-one day period
where the purchase money security interest is tem-
porarily perfected without filing or possession (subsection
(5) of section 9-304); and

(c) the holder of the conflicting security interest re-
ceives the notification within five years before the debtor
receives possession of the inventory; and

(d) the notification states that the person giving the
notice has or expects to acquire a purchase money secur-
ity interest in inventory of the debtor, describing such
inventory by item or type.

(4) A purchase money security interest in collateral
other than inventory has priority over a conflicting secur-
ity interest in the same collateral or its proceeds if the
purchase money security interest is perfected at the
time the debtor receives possession of the collateral or
within ten days thereafter.

(5) In all cases not governed by other rules stated in
this section (including cases of purchase money security
interests which do not qualify for the special priorities
set forth in subsections (3) and (4) of this section), priority between conflicting security interests in the same collateral shall be determined according to the following rules:

(a) Conflicting security interests rank according to priority in time of filing or perfection. Priority dates from the time a filing is first made covering the collateral or the time the security interest is first perfected, whichever is earlier, provided that there is no period thereafter when there is neither filing nor perfection.

(b) So long as conflicting security interests are unperfected, the first to attach has priority.

(6) For the purposes of subsection (5) a date of filing or perfection as to collateral is also a date of filing or perfection as to proceeds.

(7) If future advances are made while a security interest is perfected by filing or the taking of possession, the security interest has the same priority for the purposes of subsection (5) with respect to the future advances as it does with respect to the first advance. If a commitment is made before or while the security interest is so perfected, the security interest has the same priority with respect to advances made pursuant thereto. In other cases a perfected security interest has priority from the date the advance is made.

§46-9-313. Priority of security interests in fixtures.

(1) In this section and in the provisions of part 4 of this article referring to fixture filing, unless the context otherwise requires

(a) goods are "fixtures" when they become so related to particular real estate that an interest in them arises under real estate law;

(b) a "fixture filing" is the filing in the office where a mortgage on the real estate would be filed or recorded of a financing statement covering goods which are or are to become fixtures and conforming to the requirements of subsection (5) of section 9-402;
(c) a mortgage is a "construction mortgage" to the extent that it secures an obligation incurred for the construction of an improvement on land including the acquisition cost of the land, if the recorded writing so indicates.

(2) A security interest under this article may be created in goods which are fixtures or may continue in goods which become fixtures, but no security interest exists under this article in ordinary building materials incorporated into an improvement on land.

(3) This article does not prevent creation of an encumbrance upon fixtures pursuant to real estate law.

(4) A perfected security interest in fixtures has priority over the conflicting interest of an encumbrancer or owner of the real estate where

(a) the security interest is a purchase money security interest, the interest of the encumbrancer or owner arises before the goods become fixtures, the security interest is perfected by a fixture filing before the goods become fixtures or within ten days thereafter, and the debtor has an interest of record in the real estate or is in possession of the real estate; or

(b) the security interest is perfected by a fixture filing before the interest of the encumbrancer or owner is of record, the security interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the debtor has an interest of record in the real estate or is in possession of the real estate; or

(c) the fixtures are readily removable factory or office machines or readily removable replacements of domestic appliances which are consumer goods, and before the goods becomes fixtures the security interest is perfected by any method permitted by this article; or

(d) the conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this article.
(5) A security interest in fixtures, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real estate where

(a) the encumbrancer or owner has consented in writing to the security interest or has disclaimed an interest in the goods as fixtures; or

(b) the debtor has a right to remove the goods as against the encumbrancer or owner. If the debtor's right terminates, the priority of the security interest continues for a reasonable time.

(6) Notwithstanding paragraph (a) of subsection (4) but otherwise subject to subsections (4) and (5), a security interest in fixtures is subordinate to a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent that it is given to refinance a construction mortgage, a mortgage has this priority to the same extent as the construction mortgage.

(7) In cases not within the preceding subsections, a security interest in fixtures is subordinate to the conflicting interest of an encumbrancer or owner of the related real estate who is not the debtor.

(8) When the secured party has priority over all owners and encumbrancers of the real estate, he may, on default, subject to the provisions of part 5, remove his collateral from the real estate but he must reimburse any encumbrancer or owner of the real estate who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation.

§46-9-318. Defenses against assignee; modification of contract after notification of assignment; term prohibiting assignment ineffective; identification and proof of assignment.

(1) Unless an account debtor has made an enforceable 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 collateral.
1 (1) The proper place to file in order to perfect a
2 security interest is as follows:
(a) When the collateral is equipment used in farming operations, or farm products, or accounts, or general intangibles arising from or relating to the sale of farm products by a farmer, or consumer goods, then in the office of the county clerk in the county of the debtor's residence or if the debtor is not a resident of this state then in the office of county clerk in the county where the goods are kept, and in addition when the collateral is crops growing or to be grown, in the office of the county clerk in the county where the land is located;

(b) When the collateral is timber to be cut or is minerals or the like (including oil and gas) or accounts subject to subsection (5) of section 9-103, or when the financing statement is filed as a fixture filing (section 9-313) and the collateral is goods which are or are to become fixtures, then in the office where a mortgage on the real estate would be filed or recorded;

(c) In all other cases, in the office of the secretary of state and in addition, if the debtor has a place of business in only one county of this state, also in the office of the county clerk of such county, or, if the debtor has no place of business in this state, but resides in the state, also in the office of the county clerk of the county in which he resides.

(2) A filing which is made in good faith in an improper place or not in all of the places required by this section is nevertheless effective with regard to any collateral as to which the filing complied with the requirements of this article and is also effective with regard to collateral covered by the financing statement against any person who has knowledge of the contents of such financing statement.

(3) A filing which is made in the proper county continues effective for four months after a change to another county of the debtor's residence or place of business or the location of the collateral, whichever controlled the original filing. It becomes ineffective thereafter unless a copy of the financing statement signed by the secured party is filed in the new county within said period. The security interest may also be perfected in the new county
after the expiration of the four-month period; in such
case perfection dates from the time of perfection in the
new county. A change in the use of the collateral does
not impair the effectiveness of the original filing.

(4) The rules stated in section 9-103 determine whether
filing is necessary in this state.

(5) Notwithstanding the preceding subsections, and
subject to subsection (3) of section 9-302, the proper place
to file in order to perfect a security interest in collateral,
including fixtures, of a transmitting utility is the office of
the secretary of state. This filing constitutes a fixture
filing (section 9-313) as to the collateral described therein
which is or is to become fixtures.

(6) For the purposes of this section, the residence of
an organization is its place of business if it has one or
its chief executive office if it has more than one place of
business.

§46-9-402. Formal requisites of financing statement; amend-
ments; mortgage as financing statement.

(1) A financing statement is sufficient if it gives the
names of the debtor and the secured party, is signed by
the debtor, gives an address of the secured party from
which information concerning the security interest may be
obtained, gives a mailing address of the debtor and con-
tains a statement indicating the types, or describing the
items, of collateral. A financing statement may be filed
before a security agreement is made or a security interest
otherwise attaches. When the financing statement covers
crops growing or to be grown, the statement must also
contain a description of the real estate concerned. When
the financing statement covers timber to be cut or covers
minerals or the like (including oil and gas) or accounts
subject to subsection (5) of section 9-103, or when the
financing statement is filed as a fixture filing (section
9-313) and the collateral is goods which are or are to
become fixtures, the statement must also comply with
subsection (5). A copy of the security agreement is
sufficient as a financing statement if it contains the above
information and is signed by the debtor. A carbon, photo-
(2) A financing statement which otherwise complies with subsection (1) is sufficient when it is signed by the secured party instead of the debtor if it is filed to perfect a security interest in

(a) collateral already subject to a security interest in another jurisdiction when it is brought into this state, or when the debtor's location is changed to this state. Such a financing statement must state that the collateral was brought into this state or that the debtor's location was changed to this state under such circumstances; or

(b) proceeds under section 9-306 if the security interest in the original collateral was perfected. Such a financing statement must describe the original collateral; or

(c) collateral as to which the filing has lapsed; or

(d) collateral acquired after a change of name, identity or corporate structure of the debtor (subsection (7)).

(3) A form substantially as follows is sufficient to comply with subsection (1):

Name of debtor
(or assignor) ____________________________

Address ______________________________________

Name of secured party
(or assignee) ____________________________

Address ____________________________

1. This financing statement covers the following types (or items) of property:

(Describe) ______________________________________

2. (If collateral is crops) The above described crops are growing or are to be grown on:

(Describe Real Estate) ____________________________
3. (If applicable) The above goods are to become fixtures on (Describe Real Estate) and this financing statement is to be filed for record in the real estate records. (If the debtor does not have an interest of record) The name of a record owner is ________________________________.

4. (If products of collateral are claimed) products of the collateral are also covered.

(Use whichever applicable) Signature of Debtor (or Assignor)

Signature of Secured Party (or Assignee)

(4) A financing statement may be amended by filing a writing signed by both the debtor and the secured party. An amendment does not extend the period of effectiveness of a financing statement. If any amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment. In this article, unless the context otherwise requires, the term "financing statement" means the original financing statement and any amendments.

(5) A financing statement covering timber to be cut or covering minerals or the like (including oil and gas) or accounts subject to subsection (5) of section 9-103, or a financing statement filed as a fixture filing (section 9-313) where the debtor is not a transmitting utility, must show that it covers this type of collateral, must recite that it is to be filed for record in the real estate records, and the financing statement must contain a description of the real estate sufficient if it were contained in a mortgage of the real estate to give constructive notice of the mortgage under the law of this state. If the debtor does not have an interest of record in the real estate, the financing statement must show the name of a record owner.

(6) A mortgage is effective as a financing statement filed as a fixture filing from the date of its recording if (a) the goods are described in the mortgage by item or type, (b) the goods are or are to become fixtures related to the real estate described in the mortgage, (c) the mortgage
complies with the requirements for a financing statement in this section other than a recital that it is to be filed in the real estate records, and (d) the mortgage is duly recorded. No fee with reference to the financing statement is required other than the regular recording and satisfaction fees with respect to the mortgage.

(7) A financing statement sufficiently shows the name of the debtor if it gives the individual, partnership or corporate name of the debtor, whether or not it adds other trade names or the names of partners. Where the debtor so changes his name or in the case of an organization its name, identity or corporate structure that a filed financing statement becomes seriously misleading, the filing is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the change, unless a new appropriate financing statement is filed before the expiration of that time. A filed financing statement remains effective with respect to collateral transferred by the debtor even though the secured party knows of or consents to the transfer.

(8) A financing statement substantially complying with the requirements of this section is effective even though it 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) Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this article.

(2) Except as provided in subsection (6) or in subsection (8), a filed financing statement is effective for a period of five years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of the five-year period, unless a continuation statement is filed prior to the lapse. If a security interest perfected by filing exists at the time insolvency proceedings are commenced by or against the debtor, the security interest remains perfected until termination of the insolvency proceedings and thereafter for a period of sixty days or until expiration of the five-year period,
whichever occurs later. Upon lapse the security interest becomes unperfected, unless it is perfected without filing. If the security interest becomes unperfected upon lapse, it is deemed to have been unperfected as against a person who became a purchaser or lien creditor before lapse.

(3) A continuation statement may be filed by the secured party within six months prior to the expiration of the five-year period specified in subsection (2). Any such continuation statement must be signed by the secured party, identify the original statement by file number and state that the original statement is still effective. A continuation statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with subsection (2) of section 9-405, including payment of the required fee. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for five years after the last date to which the filing was effective whereupon it lapses in the same manner as provided in subsection (2) unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it immediately if he has retained a microfilm or other photographic record, or in other cases after one year after the lapse. The filing officer shall so arrange matters by physical annexation of financing statements to continuation statements or other related filings, or by other means, that if he physically destroys the financing statements of a period more than five years past, those which have been continued by a continuation statement or which are still effective under subsection (6) shall be retained.

(4) Except as provided in subsection (7), a filing officer shall mark each statement with a file number and with the date and hour of filing and shall hold the statement or a microfilm or other photographic copy thereof
for public inspection. In addition the filing officer shall
index the statements according to the name of the debtor
and shall note in the index the file number and the ad-
dress of the debtor given in the statement.

(5) The uniform fee for filing and indexing and for
stamping a copy furnished by the secured party to show
the date and place of filing for an original financing state-
ment or for a continuation statement shall be $1.00 if the
statement is in the standard form prescribed by the sec-
retary of state and otherwise shall be $5.00, plus in each
case, if the financing statement is subject to subsection
(5) of section 9-402, $1.00. The uniform fee for each name
more than one required to be indexed shall be $1.00. The
secured party may at his option show a trade name for
any person and an extra uniform indexing fee of $1.00
shall be paid with respect thereto.

(6) If the debtor is a transmitting utility (subsection
(5) of section 9-401) and a filed financing statement so
states, it is effective until a termination statement is
filed. A real estate mortgage which is effective as a
fixture filing under subsection (6) of section 9-402 remains
effective as a fixture filing until the mortgage is released
or satisfied of record or its effectiveness otherwise termi-
nates as to the real estate.

(7) When a financing statement covers timber to be
cut or covers minerals or the like (including oil and gas)
or accounts subject to subsection (5) of section 9-103, or
is filed as a fixture filing, it shall be filed for record and
the filing officer shall index it under the names of the
debtor and any owner of record shown on the financing
statement in the same fashion as if they were the mort-
gagors in a mortgage of the real estate described, and, to
the extent that the law of this state provides for indexing
of mortgages under the name of the mortgagee, under the
name of the secured party as if he were the mortgagee
thereunder, or where indexing is by description in the
same fashion as if the financing statement were a mort-
gage of the real estate described.

(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.


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.
If the filing officer has a microfilm or other photographic record of the financing statement, and of any related continuation statement, statement of assignment and statement of release, he may remove the originals from the files at any time after receipt of the termination statement, or if he has no such record, he may remove them from the files at any time after one year after receipt of the termination statement.

(3) If the termination statement is in the standard form prescribed by the secretary of state, the uniform fee for filing and indexing the termination statement shall be $1.00, and otherwise shall be $5.00, plus in each case an additional fee of $1.00 for each name more than one against which the termination statement is required to be indexed.

§46-9-405. Assignment of security interest; duties of filing officer; fees.

(1) A financing statement may disclose an assignment of a security interest in the collateral described in the financing statement by indication in the financing statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face or back of the statement. On presentation to the filing officer of such a financing statement the filing officer shall mark the same as provided in section 9-403 (4). The uniform fee for filing, indexing and furnishing filing data for a financing statement so indicating an assignment shall be $1.00 if the statement is in the standard form prescribed by the secretary of state and otherwise shall be $5.00, plus in each case an additional fee of $1.00 for each name more than one against which the financing statement is required to be indexed.

(2) A secured party may assign of record all or a part of his rights under a financing statement by the filing in the place where the original financing statement was filed of a separate written statement of assignment signed by the secured party of record and setting forth the name of the secured party of record and the debtor, the file number and the date of filing of the financing statement and the name and address of the assignee and containing a descrip-
tion of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. On presentation to the filing officer of such a separate statement, the filing officer shall mark such separate statement with the date and hour of the filing. He shall note the assignment on the index of the financing statement, or in the case of a fixture filing, or a filing covering timber to be cut, or covering minerals or the like (including oil and gas) or accounts subject to subsection (5) of section 9-103, he shall index the assignment under the name of the assignor as grantor and, to the extent that the law of this state provides for indexing the assignment of a mortgage under the name of the assignee, he shall index the assignment of the financing statement under the name of the assignee. The uniform fee for filing, indexing and furnishing filing data about such a separate statement of assignment shall be $1.00 if the statement is in the standard form prescribed by the secretary of state and otherwise shall be $5.00, plus in each case an additional fee of $1.00 for each name more than one against which the statement of assignment is required to be indexed. Notwithstanding the provisions of this subsection, an assignment of record of a security interest in a fixture contained in a mortgage effective as a fixture filing (subsection (6) of section 9-402) may be made only by an assignment of the mortgage in the manner provided by the law of this state other than this chapter.

After the disclosure or filing of an assignment under this section, the assignee is the secured party of record.

§46-9-406. Release of collateral; duties of filing officer; fees.

A secured party of record may by his signed statement release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released, the name and address of the debtor, the name and address of the secured party, and the file number of the financing statement. A statement of release signed by a person other than the secured party of record must be accompanied by a separate written statement of assign-
ment signed by the secured party of record and complying with subsection (2) of section 9-405, including payment of the required fee. Upon presentation of such a statement of release to the filing officer he shall mark the statement with the hour and date of filing and shall note the same upon the margin of the index of the filing of the financing statement. The uniform fee for filing and noting such a statement of release shall be $1.00 if the statement is in the standard form prescribed by the secretary of state and otherwise shall be $5.00, plus in each case an additional fee of $1.00 for each name more than one against which the statement of release is required to be indexed.

§46-9-407. Information from filing officer.

(1) If the person filing any financing statement, termination statement, statement of assignment, or statement of release, furnishes the filing officer a copy thereof, the filing officer shall upon request note upon the copy the file number and date and hour of the filing of the original and deliver or send the copy to such person.

(2) Upon request of any person, the secretary of state shall issue his certificate showing whether there is on file in his office on the date and hour stated therein, any presently effective financing statement naming a particular debtor and any statement of assignment thereof and if there is, giving the date and hour of filing of each such statement and the names and addresses of each secured party therein. The uniform fee for such a certificate shall be $2.00 if the request for the certificate is in the standard form prescribed by the secretary of state and otherwise shall be $5.00 plus fifty cents for each financing statement and for each statement of assignment reported therein. Upon request the filing officer shall furnish a copy of any filed financing statement or statement of assignment for a uniform fee of fifty cents per page.

§46-9-408. Financing statements covering consigned or leased goods.

A consignor or lessor of goods may file a financing statement using the terms "consignor," "consignee,"
“lessor,” “lessee” or the like instead of the terms specified in section 9-402. The provisions of this part shall apply as appropriate to such a financing statement but its filing shall not of itself be a factor in determining whether or not the consignment or lease is intended as security (section 1-201(37)). However, if it is determined for other reasons that the consignment or lease is so intended, a security interest of the consignor or lessor which attaches to the consigned or leased goods is perfected by such filing.

PART 5. DEFAULT.

§46-9-501. Default; procedure when security agreement covers both real and personal property.

(1) When a debtor is in default under a security agreement, a secured party has the rights and remedies provided in this part and except as limited by subsection (3) those provided in the security agreement. He may reduce his claim to judgment, foreclose or otherwise enforce the security interest by any available judicial procedure. If the collateral is documents the secured party may proceed either as to the documents or as to the goods covered thereby. A secured party in possession has the rights, remedies and duties provided in section 9-207. The rights and remedies referred to in this subsection are cumulative.

(2) After default, the debtor has the rights and remedies provided in this part, those provided in the security agreement and those provided in section 9-207.

(3) To the extent that they give rights to the debtor and impose duties on the secured party, the rules stated in the subsections referred to below may not be waived or varied except as provided with respect to compulsory disposition of collateral (subsection (3) of section 9-504 and section 9-505) and with respect to redemption of collateral (section 9-506) but the parties may by agreement determine the standards by which the fulfillment of these rights and duties is to be measured if such standards are not manifestly unreasonable:

1 (1) When so agreed and in any event on default the secured party is entitled to notify an account debtor or the obligor on an instrument to make payment to him whether or not the assignor was theretofore making collections on the collateral, and also to take control of any proceeds to which he is entitled under section 9-306.

2 (2) A secured party who by agreement is entitled to
charge back uncollected collateral or otherwise to full or limited recourse against the debtor and who undertakes to collect from the account debtors or obligors must proceed in a commercially reasonable manner and may deduct his reasonable expenses of realization from the collections. If the security agreement secures an indebtedness, the secured party must account to the debtor for any surplus, and unless otherwise agreed, the debtor is liable for any deficiency. But, if the underlying transaction was a sale of accounts or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security 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 otherwise dispose of any or all of the collateral in its then condition or following any commercially reasonable preparation or processing. Any sale of goods is subject to the article on sales (article 2). The proceeds of disposition shall be applied in the order following to

(a) the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and, to the extent provided for in the agreement and not prohibited by law, the reasonable attorneys' fees and legal expenses incurred by the secured party;

(b) the satisfaction of indebtedness secured by the security interest under which the disposition is made;

(c) the satisfaction of indebtedness secured by any subordinate security interest in the collateral if written notification of demand therefor is received before distribution of the proceeds is completed. If requested by the secured party, the holder of a subordinate security interest must seasonably furnish reasonable proof of his interest, and unless he does so, the secured party need not comply with his demand.

2. (2) If the security interest secures an indebtedness, the secured party must account to the debtor for any surplus, and, unless otherwise agreed, the debtor is liable
for any deficiency. But if the underlying transaction was a
sale of accounts or chattel paper, the debtor is entitled to
any surplus or is liable for any deficiency only if the
security agreement so provides.

(3) Disposition of the collateral may be by public or
private proceedings and may be made by way of one or
more contracts. Sale or other disposition may be as a unit
or in parcels and at any time and place and on any terms
but every aspect of the disposition including the method,
manner, time, place and terms must be commercially rea-
sonable. Unless collateral is perishable or threatens to
decline speedily in value or is of a type customarily sold
on a recognized market, reasonable notification of the time
and place of any public sale or reasonable notification of
the time after which any private sale or other intended
disposition is to be made shall be sent by the secured
party to the debtor, if he has not signed after default a
statement renouncing or modifying his right to notifica-
tion of sale. In the case of consumer goods no other noti-
ification need be sent. In other cases notification shall be
sent to any other secured party from whom the secured
party has received (before sending his notification to the
debtor or before the debtor's renunciation of his rights)
written notice of a claim of an interest in the collateral.
The secured party may buy at any public sale and if the
collateral is of a type customarily sold in a recognized
market or is of a type which is the subject of widely
distributed standard price quotations he may buy at pri-
ivate sale.

(4) When collateral is disposed of by a secured party
after default the disposition transfers to a purchaser for
value all of the debtor's rights therein, discharges the
security interest under which it is made and any security
interest or lien subordinate thereto. The purchaser takes
free of all such rights and interests even though the se-
cured party fails to comply with the requirements of this
part or of any judicial proceedings

(a) in the case of a public sale, if the purchaser has
no knowledge of any defects in the sale and if he does not
buy in collusion with the secured party, other bidders or the person conducting the sale; or

(b) in any other case, if the purchaser acts in good faith.

(5) A person who is liable to a secured party under a guaranty, endorsement, repurchase agreement or the like and who receives a transfer of collateral from the secured party or is subrogated to his rights has thereafter the rights and duties of the secured party. Such a transfer of collateral is not a sale or disposition of the collateral under this article.

§46-9-505. Compulsory disposition of collateral; acceptance of the collateral as discharge of obligation.

(1) If the debtor has paid sixty percent of the cash price in the case of a purchase money security interest in consumer goods or sixty percent of the loan in the case of another security interest in consumer goods, and has not signed after default a statement renouncing or modifying his rights under this part a secured party who has taken possession of collateral must dispose of it under section 9-504 and if he fails to do so within ninety days after he takes possession the debtor at his option may recover in conversion or under section 9-507 (1) on secured party's liability.

(2) In any other case involving consumer goods or any other collateral a secured party in possession may, after default, propose to retain the collateral in satisfaction of the obligation. Written notice of such proposal shall be sent to the debtor if he has not signed after default a statement renouncing or modifying his rights under this subsection. In the case of consumer goods no other notice need be given. In other cases notice shall be sent to any other secured party from whom the secured party has received (before sending his notice to the debtor or before the debtor's renunciation of his rights) written notice of a claim of an interest in the collateral. If the secured party receives objection in writing from a person entitled to receive notification within twenty-one days after the
notice was sent, the secured party must dispose of the collateral under section 9-504. In the absence of such written objection the secured party may retain the collateral in satisfaction of the debtor's obligation.

ARTICLE 11. EFFECTIVE DATE AND TRANSITION PROVISIONS.

§46-11-101. Effective date.
1 This act shall become effective at 12:01 A. M. on the first day of July, one thousand nine hundred seventy-five.

1 The provisions of section 102, article 10 of this chapter shall continue to apply to the new Uniform Commercial Code and for this purpose the old Uniform Commercial Code and new Uniform Commercial Code shall be considered one continuous statute.

§46-11-103. Transition to new code—General rule.
1 Transactions validly entered into after the first day of July, one thousand nine hundred sixty-four, and before the first day of July, one thousand nine hundred seventy-five, and which were subject to the provisions of the old Uniform Commercial Code and which would be subject to this chapter as amended if they had been entered into after the effective date of the new Uniform Commercial Code and the rights, duties and interests flowing from such transactions remain valid after the latter date and may be terminated, completed, consummated or enforced as required or permitted by the new Uniform Commercial Code. Security interests arising out of such transactions which are perfected when the new Uniform Commercial Code becomes effective shall remain perfected until they lapse as provided in the new Uniform Commercial Code, and may be continued as
permitted by the new Uniform Commercial Code, except as stated in section 11-105. In any instance in which a person who under the new Uniform Commercial Code would be a transmitting utility has perfected a security interest under the provisions of subsection (5) of the former provisions of section 9-302 of this chapter, such security interest shall remain perfected with the same priority rights as if the new Uniform Commercial Code had been in effect at the time such security interest was perfected and such person had at such time filed a financing statement thereunder as a transmitting utility.

§46-11-104. Transition provision on change of requirement of filing.

A security interest for the perfection of which filing or the taking of possession was required under the old Uniform Commercial Code and which attached prior to the effective date of the new Uniform Commercial Code but was not perfected shall be deemed perfected on the effective date of the new Uniform Commercial Code if the new Uniform Commercial Code permits perfection without filing or authorizes filing in the office or offices where a prior ineffective filing was made.

§46-11-105. Transition provision on change of place of filing.

(1) A financing statement or continuation statement filed prior to the first day of July, one thousand nine hundred seventy-five, which shall not have lapsed prior to the first day of July, one thousand nine hundred seventy-five, shall remain effective for the period provided in the old Code, but not less than five years after the filing.

(2) With respect to any collateral acquired by the debtor subsequent to the effective date of the new Uniform Commercial Code, any effective financing statement or continuation statement described in this section shall apply only if the filing or filings are in the office or offices that would be appropriate to perfect the security interests in the new collateral under the new Uniform Commercial Code.

(3) The effectiveness of any financing statement or
continuation statement filed prior to the first day of July, one thousand nine hundred seventy-five, may be con- tinued by a continuation statement as permitted by the new Uniform Commercial Code, except that if the new Uniform Commercial Code requires a filing in an office where there was no previous financing statement, a new financing statement conforming to section 11-106 shall be filed in that office.

(4) If the record of a mortgage of real estate would have been effective as a fixture filing of goods described therein if the new Uniform Commercial Code had been in effect on the date of recording the mortgage, the mortgage shall be deemed effective as a fixture filing as to such goods under subsection (6) of section 9-402 of the new Uniform Commercial Code on the effective date of the new Uniform Commercial Code.

§46-11-106. Required refilings.

(1) If a security interest is perfected or has priority when this act takes effect as to all persons or as to certain persons without any filing or recording, and if the filing of a financing statement would be required for the perfection or priority of the security interest against those persons under the new Uniform Commercial Code, the perfection and priority rights of the security interest continue until three years after the effective date of the new Uniform Commercial Code. The perfection will then lapse unless a financing statement is filed as provided in subsection (4) or unless the security interest is perfected otherwise than by filing.

(2) If a security interest is perfected when the new Uniform Commercial Code takes effect under a law other than the Uniform Commercial Code which requires no further filing, refiling or recording to continue its perfection, perfection continues until and will lapse three years after the new Uniform Commercial Code takes effect, unless a financing statement is filed as provided in subsection (4) or unless the security interest is perfected otherwise than by filing, or unless under subsection (3) 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.


§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.

The West Virginia department of veterans affairs is hereby designated as the state agency to administer the provisions of this act. The director of the department of veterans affairs shall do all things necessary for the proper administration thereof. The director, with the advice and consent of the veterans council, may adopt and promulgate such reasonable rules and regulations, not inconsistent herewith, as may be necessary to effect the purposes of this act, including regulations concerning evidence or other data required to establish eligibility and qualifications for the bonus as herein provided. The director shall prepare and furnish all necessary forms which shall be distributed by him through...
such veterans and other organizations as he may deem most practicable.

The department of veterans affairs may employ such additional personnel as may be necessary for the proper administration of this act, subject, however, to the approval of the commissioner of finance and administration, who must also approve the salaries and other compensation for such personnel.

The governor may appoint a veterans advisory committee, consisting of representatives of veterans organizations chartered under acts of Congress and operating in this state, to advise and counsel with the director in the administration of this act. Such committee shall meet on the call of the director at such times and places as he may specify.

§2. Veterans entitled to bonus.

In grateful recognition of their services in time of grave national emergency, a cash bonus as herein provided shall be paid to veterans of the Vietnam conflict. Such bonus shall be paid to all persons who rendered active service in the armed forces of the United States during the Vietnam conflict between the first day of August, one thousand nine hundred sixty-four, and the twenty-eighth day of March, one thousand nine hundred seventy-three, both dates inclusive, who were bona fide residents of the state of West Virginia at the time of their entry into such service and for a period of at least six months immediately prior thereto, who have not been separated from such armed forces under conditions other than honorable and who within the period specified above, actively served in such armed forces for a period of at least ninety days. Such bonus shall also be paid to any person, otherwise eligible under the preceding sentence, who rendered active service in the armed forces of the United States prior to the first day of August, one thousand nine hundred sixty-four, and who received a Vietnam armed forces expeditionary medal. Such cash bonus shall also be paid to any veteran, otherwise qualified under either of the two sentences next preceding, who was discharged within ninety days after entering the armed forces because of a service-connected dis-
As used in this act, “armed forces” means the army, navy, air force, marine corps and coast guard of the United States.

As used in this act, “active duty” means full-time active service in the armed forces with full duty pay status, but shall not include time absent from leave, absent over leave, while in confinement or any other time classified by the respective branches of the armed forces as “bad” or “lost” time.

§3. Payment of bonus to relatives of deceased veterans.

The bonus to which any deceased veteran would have been entitled, had he lived, shall be paid only to the following surviving relatives of such veteran, provided that such relatives are residents of this state when application for payment is made and if such relatives are living at the time payment is made: Any unremarried widow or widower, or, if none, any child or children under the age of eighteen, or if none, any parent or parents. The categories of persons listed shall be treated as separate categories listed in order of entitlement and where there be more than one member of a class, the bonus shall be paid to each member according to his proportional share. Where a deceased veteran’s death was connected with such service and resulted from such service during the time period specified, however, the surviving relatives shall be paid, in accordance with the same order of entitlement, the sum of five hundred dollars in lieu of any bonus to which the deceased might have been entitled if living.

As used in this act, “unremarried widow” or “unremarried widower” means the spouse of a deceased veteran, legally married to the veteran at the time of his death, who has not remarried at the time of making application.

As used in this act, “child” means the natural child, adopted child or stepchild of the deceased veteran upon whose service eligibility is derived and who has not attained the age of eighteen years at the time of making application.

As used in this act, “parent” means either the natural, step, or adoptive father or mother of, or person standing in loco parentis to, the deceased veteran upon whose service eligibility is derived.
§ 4. **Amount of bonus.**

The amount of such bonus shall be calculated on the basis of twenty dollars per month for each month of active service, or major fraction thereof, for veterans who received the Vietnam armed forces expeditionary medal or the Vietnam service medal, up to four hundred dollars, and ten dollars per month for each month of active service, or major fraction thereof, for veterans who have not received the Vietnam armed forces expeditionary medal or the Vietnam service medal, up to three hundred dollars. Not more than one bonus shall be paid to or on behalf of the service of any one veteran.

§ 5. **Limitation on time of filing application.**

No bonus shall be paid to any person, otherwise entitled thereto, unless application therefor shall be filed with the department of veterans affairs on or before the thirty-first day of December, one thousand nine hundred seventy-six. No warrant for the payment of any bonus shall be issued or reissued to any applicant after the thirty-first day of December, one thousand nine hundred seventy-eight.

§ 6. **Determination by director of the validity of claims.**

Upon receipt of an application for benefits hereunder, the director shall, as soon as may be practicable, determine the validity of the claim. As soon as such determination has been made, the director shall mail to the applicant a warrant in the amount of the bonus payment he finds to be due. If the determination is made that no benefits hereunder are payable then the director shall mail to the applicant a notification denying benefits and citing the reason or reasons for such denial.

Any applicant who is aggrieved by any such determination of the director may demand that his claim be reviewed as hereinafter provided. Such demand for review shall be filed with the director, in writing, within sixty days after the date on which the warrant of award or notice of denial was mailed to the applicant. Upon receipt of such demand for review the director shall certify the demand, together with all files and records relating to the application, to a board.
of review. Unless such demand for review is duly filed with the director, all findings and orders of the director with reference to such claim shall be final and conclusive upon the applicant.

§7. Review board hearing.

For the purposes of this act, the veterans council of the department of veterans affairs is hereby designated as the “Vietnam Veterans Bonus Board of Review.” Under rules and regulations adopted by the veterans council, any one or more members of the board of review may conduct hearings on a demand by an applicant for review of the determination of the director, and may report his or their findings thereon, together with the entire record of the case, to the board of review for its final determination and decision.

If the number of demands for review hereunder shall become too numerous to be handled expeditiously by the veterans council, the governor, upon the recommendation of the council, may appoint one or more additional boards of review. Additional boards shall consist of not more than three members, one of whom shall be a lawyer, who shall have the same qualifications as the members of the veterans council, and who shall serve at the will and pleasure of the governor for such time as may be necessary for the purposes of this act. Each such additional board of review shall have the same authority and its final decision shall have the same force and effect as that of the veterans council under the provisions of this act.

Upon receipt from the director of the files and records relating to any claim, the board, or a member or members thereof as the case may be, shall fix a time and place for a hearing thereon. The applicant shall be notified of the time and place fixed and shall be informed of his right to demand a public hearing if he so desires. At the hearing the claim shall be reexamined de novo and the submission of additional evidence may be required or permitted. Upon the conclusion of such hearing the board of review, on the basis of the record and the recommendations, if any, made by the member or members who conducted the hearing, shall enter its
§8. Court review of final orders of review board.

Within thirty days after notification of the entry of any final order of a board of review, the director or the applicant affected may petition for review of such order by the West Virginia supreme court of appeals in the same manner and within the same period of time as is provided by section four, article five, chapter twenty-three of the code, for judicial review of final decisions by the workmen’s compensation appeal board.


All bonus payments and other expenses and costs of administering this act shall be paid from the Vietnam veterans bonus fund, otherwise established by law. Any balance remaining in such fund after all such bonus payments and other expenses and costs have been made shall be transferred to the Vietnam Veterans bonus sinking fund and used solely for the payment of the bonus bonds.
§10. Penalty for making false statements.

Any person who shall knowingly make any false or misleading statement or representation, oral or written, in support of any claim for a bonus under the provisions of this act, shall be guilty of a felony, and, upon conviction thereof, shall be punished by imprisonment in the penitentiary for not less than one nor more than five years.

§11. Penalty for filing more than one application.

Only one application shall be filed by any veteran or by any person who claims that he is entitled to a share of the bonus payable in the case of any deceased veteran. Any person who, with intent to defraud, violates the provisions of this section shall be guilty of a felony, and, upon conviction thereof, shall be punished by a fine of not less than five hundred dollars nor more than one thousand dollars, or by imprisonment in the penitentiary for not less than one nor 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.

The bonus provided by this act is hereby declared to be a gift or gratuity made as a token of appreciation for the service rendered by the veteran to the people of West Virginia in time of grave national emergency and is in no sense compensation for such services. The money received as such bonus shall be exempt from taxation and such money, or any claim therefor, shall not be subject to garnishment, attachment or levy of execution. A claim for payment of a bonus under the provisions of this act shall not be assignable for any purpose whatsoever.

§13. Collection of fees or charges; penalty.

No fee or charge shall be made by any person, attorney, agent or representative for any service in connection with the filing of an application for payment of a bonus hereunder, except such fees as are provided by law for the performance of official duties by a duly elected or appointed officer of this state or a political subdivision thereof. No person shall, for a consideration, discount or attempt to discount or ad-
vance money upon any warrant issued for payment of any
bonus provided for in this act.

If an applicant shall employ an attorney to represent him
in connection with the prosecution of his claim before a
board of review, or before the supreme court of appeals, the
attorney shall file with the director an executed copy of
his contract of employment, and the total amount of the fee
therein provided shall not exceed twenty-five percent of the
amount under dispute.

Any person who violates any provision of this section
shall be guilty of a misdemeanor, and, upon conviction there-
of, shall be punished by a fine of not less than twenty-five
dollars nor more than five hundred dollars, or by imprisonment
in the county jail for not less than ten days nor more than
twelve months, or by both such fine and imprisonment.

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.]
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 provisions of this chapter to subscribe to the workmen's compensation fund, and which knowingly fails to subscribe thereto, or which knowingly fails to make any report or perform any other act or duty required by the commissioner within the time specified by the commissioner, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not
more than five thousand dollars. Any person or firm, or the
officer of any corporation, who knowingly makes a false report
or statement under oath, affidavit or certification respecting any
information required by the commissioner, or who shall know-
ingly testify falsely in any proceeding before the commissioner,
shall be deemed guilty of perjury, and, upon conviction there-
of, shall be punished as provided by law.

§23-1-17. Annual report by commissioner and occupational
pneumoconiosis board.

Annually, on or about the fifteenth day of September in
each year, the commissioner and the occupational pneu-
moconiosis board shall make a report as of the thirtieth day of
June addressed to the governor, which shall include a state-
ment of the causes of the injuries for which the awards were
made, an explanation of the diagnostic techniques used by the
occupational pneumoconiosis board and all examining physi-
cians to determine the presence of disease, the extent of im-
pairment attributable thereto, a description of the scientific
support for such techniques, and a summary of public and
private research relating to problems and prevention of occupa-
tional diseases. The report shall include a detailed statement
of all disbursements, and the condition of the fund, together
with any specific recommendations for improvements in the
workmen's compensation law and for more efficient and
responsive administration thereof, which the commissioner
may deem appropriate. Copies of all annual reports shall be
filed with the secretary of state and shall be made available
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.
§23-2-4. 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.
§23-2-7. 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.


§23-2-1. Employers and employees subject to chapter.

1 The state of West Virginia and all governmental agencies or departments created by it, including county boards of education, political subdivisions of the state and emergency service organizations organized under article five, chapter fifteen of this code, and all persons, firms, associations and corporations regularly employing another person or persons for the purpose of carrying on any form of industry, service or business in this state, are employers within the meaning of this chapter and (except for employers of five or fewer full-time employees in agricultural service) are hereby required to subscribe to and pay premiums into the workmen’s compensation fund for the protection of their employees and shall be subject to all requirements of this chapter and all rules and regulations prescribed by the commissioner with reference to rates, classification and premium payment.

16 This chapter shall not apply to employers of employees in domestic service or persons whose employment is prohibited by law nor to employees of an employer while employed without the state except in cases of temporary employment without the state nor to employees of casual employers nor shall a member of a firm of employers or any official of an association or of a corporate employer, including a manager or any elective or appointive official of the state, county, county court, board of education, municipality, other political subdivision of the state or emergency service organization organized as afore-said, whose term of office is definitely fixed by law, be deemed an employee within the meaning of this chapter. An employer is deemed to be a casual employer when the number of his employees does not exceed three and the period of employment is temporary, intermittent and sporadic in nature and does not exceed ten calendar days in any calendar quarter.

32 Employers who are not required to subscribe to the workmen’s compensation fund may voluntarily elect to subscribe to
and pay premiums into the fund for the protection of their em-
ployees and in such case shall be subject to all requirements
of this chapter and all rules and regulations prescribed by the
commissioner with reference to rates, classifications and pre-
mium payments and shall afford to them the protection of this
chapter, including section six of this article, but the failure of
such employers to elect to subscribe to and to pay premiums
into the fund shall not impose any liability upon them other
than such liability as would exist notwithstanding the provisions
of this chapter.

Employees subject to this chapter are all persons in the
service of employers and employed by them for the purpose of
carrying on the industry, business, service or work in which
they are engaged, including persons regularly employed in the
state whose duties necessitate employment of a temporary or
transitory nature by the same employer without the state,
checkweighmen employed according to law, all members of
rescue teams assisting in mine accidents with the consent of
the owner who, in such case, shall be deemed the employer,
or at the direction of the director of the department of mines
and all forest fire fighters who, under the supervision of the
director of the department of natural resources or his designated
representative, assist in the prevention, confinement and sup-
pression of any forest fire.

The premium and actual expenses in connection with govern-
mental agencies and departments of the state of West Virginia
shall be paid out of the state treasury from appropriations made
for such agencies and departments, in the same manner as other
disbursements are made by such agencies and departments.

County courts, municipalities, other political subdivisions
of the state, county boards of education, emergency service or-
ganizations organized as aforesaid and duly incorporated
volunteer fire departments or companies shall provide for the
funds to pay their prescribed premiums into the fund and
such premiums and premiums of state agencies and depart-
ments, including county boards of education, shall be paid
into the fund in the same manner as herein provided for
other employers subject to this chapter. In addition to its
usual and ordinary meaning, the term "employer" or "em-
ployers," as used in this chapter, shall be taken to extend to and
include any duly incorporated volunteer fire department or company or emergency service organization organized as aforesaid and to individuals or organizations employing "volunteers" and, in addition to its usual and ordinary meaning, the term "employee" or "employees," as used in this chapter, shall be taken to extend to and include all of the members of any such department, company or organization and to such volunteers. All duly incorporated volunteer fire departments or companies and emergency service organizations organized as aforesaid shall be placed in a separate group or class of subscribers to be established by the commissioner and such departments, companies or organizations shall pay into the fund such premiums (computed, notwithstanding the provisions of section five of this article, on such basis as to the commissioner shall seem right and proper) as may be necessary to keep such group or class entirely self-supporting. For the purposes of establishing a premium rate for "volunteers," their rate of pay shall be deemed to be equivalent to the state minimum wage.

Any employer whose employment in this state is to be for a definite or limited period which could not be considered "regularly employing" within the meaning of this section may elect to pay into the workmen's compensation fund the premiums herein provided for and, at the time of making application to the commissioner, such employer shall furnish a statement under oath showing the probable length of time the employment will continue in this state, the character of the work, an estimate of the monthly payroll and any other information which may be required by the commissioner. At the time of making application such employer shall deposit with the state compensation commissioner to the credit of the workmen's compensation fund the amount required by section five of this article, which amount shall be returned to such employer if his application be rejected by the commissioner. Upon notice to such employer of the acceptance of his application by the commissioner, he shall be an employer within the meaning of this chapter and subject to all of its provisions.

Any foreign corporation employer electing to comply with the provisions of this chapter and to receive the benefits
hereunder shall, at the time of making application to the commissioner, in addition to other requirements of this chapter, furnish such commissioner with a certificate from the secretary of state showing that it has complied with all the requirements necessary to enable it legally to do business in this state and no application of such foreign corporation employer shall be accepted by the commissioner until such certificate is filed.

For the purpose of this chapter, a mine shall be adjudged within this state when the main opening, drift, shaft or slope is located wholly within this state.

Any employee within the meaning of this chapter whose employment necessitates his temporary absence from this state in connection with such employment, and such absence is directly incidental to carrying on an industry in this state, who shall have received injury during such absence in the course of and resulting from his employment shall not be denied the right to participate in the workmen’s compensation fund.


The commissioner shall prepare report forms for the use of, and furnish the same to, employers subject to this chapter. Every employer receiving from the commissioner any form or forms with direction for completion and returning the same shall return the same, within the period fixed by the commissioner, completed so as to answer fully and correctly all pertinent questions therein propounded, and if unable to do so, shall give good and sufficient reasons for such failure. Every employer subject to the provisions of this chapter, shall make application to the commissioner on the forms prescribed by the commissioner for such purpose; and any employer who shall terminate his business or for any other reason is no longer subject to this chapter shall so notify the commissioner on forms to be furnished by the commissioner for that purpose.

§23-2-4. Classification of industries; accounts; rate of premiums.

The commissioner shall distribute into groups or classes the employments subject to this chapter, in accordance with the nature of the business and the degree of hazard incident thereto. And the commissioner shall have power, in like man-
The commissioner shall keep an accurate account of all money or moneys paid or credited to the compensation fund, and of the liability incurred and disbursements made against same; and an accurate account of all money or moneys received from each individual subscriber, and of the liability incurred and disbursements made on account of injuries and death of the employees of each subscriber, and of the receipts and incurred liability of each group or class.

In compensable fatal and total permanent disability cases, other than occupational pneumoconiosis, the amount charged against the employer's account shall be such sum as is estimated to be the average cost of such cases to the fund. The amount charged against the employer's account in compensable occupational pneumoconiosis claims for total permanent disability or for death shall be such sum as is estimated to be the average cost of such occupational pneumoconiosis cases to the fund.

It shall be the duty of the commissioner to fix and maintain the lowest possible rates of premiums consistent with the maintenance of a solvent workmen's compensation fund and the creation and maintenance of a reasonable surplus in each group after providing for the payment to maturity of all liability incurred by reason of injury or death to employees entitled to benefits under the provisions of this chapter. A readjustment of rates shall be made yearly on the first day of July, or at any time the same may be necessary. The determination of the lowest possible rates of premiums within the meaning hereof and of the existence of any surplus or deficit in the fund, shall be predicated solely upon the experience and statistical data compiled from the records and files in the commissioner's office under this and prior workmen's compensation laws of this state for the period from the first day of June, one thousand nine hundred thirteen, to the nearest practicable date prior to such adjustment: Provided, That any expected future return, in the nature
of interest or income from invested funds shall be predicated
upon the average realization from investments to the credit of
the compensation fund for the two years next preceding. Any
reserves set up for future liabilities and any commutation of
benefits shall likewise be predicated solely upon prior experi-
ence under this and preceding workmen's compensation laws
and upon expected realization from investments determined by
the respective past periods, as aforesaid.

The commissioner may fix a rate of premiums applicable
alike to all subscribers forming a group or class, and such
rates shall be determined from the record of such group or
class shown upon the books of the commissioner: Provided,
That if any group has a sufficient number of employers with
considerable difference in their degrees of hazard, the com-
missioner may fix a rate for each subscriber of such group,
such rate to be based upon the subscriber’s record on the
books of the commissioner for the twelve months last ending
June thirtieth of the year in which the rate is to become effec-
tive; and the liability part of such record shall include such
cases as have been acted upon by the commissioner during
such twelve months’ period, irrespective of the date the in-
jury was received; and any subscriber in a group so rated,
whose record for such twelve months’ period cannot be ob-
tained, shall be given a rate based upon his record for any
part of such period as may be deemed just and equitable by
the commissioner; and the commissioner shall have author-
ity to fix a reasonable minimum and maximum for any group
to which this individual method of rating is applied, and to
add to the rate determined from the subscriber’s record such
amount as is necessary to liquidate any deficit in the schedule
or to create a reasonable surplus.

It shall be the duty of the commissioner, whenever he
changes any rate, to notify every employer affected thereby
of that fact and of the new rate and when the same takes
effect. It shall also be his duty to furnish to each employer
yearly, or oftener if requested by the employer, a statement
giving the name of each of his employees who were paid
for injury and the amounts so paid during the period covered
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.

For the purpose of creating a workmen’s compensation
fund each employer subject to this chapter shall pay the
premiums of liabilities based upon and being such a percent-
age of the payroll of such employer as may have been
determined by the commissioner and be then in effect. The
premiums shall be paid quarterly on or before the last day
of the next succeeding month for the preceding quarter, and
shall be the prescribed percentage of the total earnings of
all employees within the meaning of this chapter, for such
preceding quarter. The minimum premium to be paid by
any employer for any quarter shall be one dollar and fifty
cents. The premiums and deposits provided for in this
chapter shall be paid by the employers to the state compensa-
tion commissioner, who shall issue receipts for all sums so
received to the state treasurer and retain a copy for his own
records. All sums received by the workmen’s compensation
commissioner as herein provided shall be deposited in the
state treasury to the credit of the workmen’s compensation
fund in the manner now prescribed by law for depositing
money in the state treasury. Each employer shall make a
payroll report to the commissioner for each quarter as
heretofore specified, and such report shall be on the form
or forms prescribed by the commissioner, and furnish all
information required by him.

No employee of an employer required by this chapter to
subscribe and pay premiums to the workmen’s compensation
fund as herein prescribed shall be denied benefits provided by
this chapter because of the failure of his employer to sub-
scribe, or pay premiums into, the workmen’s compensation
fund as herein provided, or because of the employer’s failure
to make the quarterly payroll reports required by the com-
mis sioner: Provided, That any employer required by this
chapter to subscribe and pay premiums to the workmen’s
compensation fund as herein provided and who fails to do
so shall be liable to the workmen’s compensation fund for
all benefits paid from the fund to his employees, as well as
for all premiums otherwise due and owing to said fund as
herein provided: Provided, however, That any employer re-
quired by this chapter to subscribe and pay premiums to
the workmen's compensation fund, or to make the quarterly
payroll reports required by the commissioner, as herein pro-
vided, and who fails to comply with such requirements, shall
be deprived of the benefits and protection afforded by
this chapter, including section six of this article, and shall
be liable as provided in section eight of this article,
as well as for all benefits paid to said employee as provided by
this chapter.

An employer required by this chapter to subscribe and
pay premiums to the workmen's compensation fund, and to
make the quarterly payroll reports required by the com-
missioner as herein provided, and who defaults or fails to
comply with any of said requirements shall be restored to
the benefits and protection of this chapter only upon the
payment into the workmen's compensation fund of all unpaid
premiums, penalties, and charges, provided herein, and the
making of all delinquent quarterly payroll and other reports
required by the commissioner.

Failure by any employer not required by this chapter,
but voluntarily electing to subscribe and pay premiums
to the workmen's compensation fund as herein provid-
ed, to pay premiums as herein provided, or to make
the quarterly payroll reports required by this chapter, shall
deprive the employer so delinquent of the benefits and
protection afforded by this chapter, including section six
of this article, and shall automatically terminate the election
of such employer to pay into the workmen's compensation
fund as herein provided, and such employer shall be
liable for the injury or death of any employee occurring
after the termination of such election, and as pro-
vided in section eight of this article. The commissioner
shall not be required to notify the delinquent employer
of such termination, but he shall notify the employees
of such employer by written notice posted as herein-
after provided for in this section. The termination of
election of such delinquent employer shall date from
twelve o'clock p.m., of the last day of the month in which he fails to pay the premiums or make a pay-roll report, as above provided, for the preceding quarter.

The employer so delinquent may be reinstated upon application under such terms as are prescribed by this chapter and by the commissioner hereunder, after the payment into the workmen's compensation fund of all unpaid premiums, penalties and charges. Such reinstatement shall be in effect from and after the date that the new application is accepted by the commissioner: Provided, That such delinquent employer shall be entitled to the benefits and protection of this chapter until twelve o'clock p.m., of the last day of the month immediately succeeding the month in which his election is terminated, and his employees shall be entitled to compensation for injuries received during such period.

Any employer required by this chapter to subscribe and pay premiums to the workmen's compensation fund, or hereafter electing to avail himself of the benefits of this chapter as herein provided, shall at the time of making application to the commissioner deposit in the workmen's compensation fund an amount estimated to be equal to the amount of the premium which shall be paid by him for the next succeeding quarter. Any employer whose deposit is less than the amount of his premium for the last quarter shall, upon written request from the commissioner mailed to his address as carried upon the books of the commissioner by twelve o'clock p.m., of the last day of the month in which request is mailed, pay to the commissioner a sum sufficient to make his deposit at least equal to the amount of his premium for the last preceding quarter, and failure of any employer to comply with such written request within the time specified shall constitute a default in performance of the requirements of this chapter and shall deprive him of the benefits and protection afforded by this chapter, and shall automatically terminate any voluntary election to pay into the workmen's compensation fund as herein provided, and such employer shall be liable to his employees as provided in section eight of this article; and the commissioner shall not be required
to notify the delinquent employer of such termination or
default, but he shall notify the employees of such employer
by written notice posted as hereafter provided for in this
section. The termination of election of such employer shall
date from twelve o'clock p.m., of the last day of the month
in which he is notified by the commissioner that his deposit
is not equal to the sum of his premium for the last pre-
ceeding quarter. Such employer may be reinstated upon
application under such terms as are prescribed by this
chapter and the rules of the commissioner. The deposit
hereinbefore described shall be credited to the employer's
account on the books of the commissioner and used to pay
premiums and any other sums due the fund when such em-
ployer becomes delinquent in the payment of same.

Upon withdrawal from the fund or termination of election
of any employer, he shall be refunded the balance due him of
his deposit, after deducting all amounts owed by him to the
workmen's compensation fund, and the commissioner shall
notify the employees of such employer of said termination
in such manner as he may deem best and sufficient.

Notices to employees in this section provided for shall be
given by posting written notice that the employer is de-
linquent under the compensation law of West Virginia, and
in the case of employers required by this chapter to subscribe
and pay premiums to the fund, that the delinquent employer
is liable to his employees for injury or death, both in work-
men's compensation benefits and in damages at common
law or by statute; and, in the case of employers not required
by this chapter to subscribe and pay premiums to the fund,
but voluntarily electing to do so as herein provided, that
neither the employer nor the employees of such employer
are protected by said law as to any injury or death sustained
after the date specified in said notice. Such notice shall be
in the form prescribed by the commissioner and shall be
posted in a conspicuous place at the chief works of the
employer, as the same appear in records of the commissioner.
If the said chief works of the employer cannot be found or
identified, then said notices shall be posted at the front
door of the courthouse of the county in which said chief
works are located, according to the records in the commis-
sioner's office. Any person who shall, prior to the reinstatement of the said employer, as hereinbefore provided for, or prior to sixty days after the posting of said notice, whichever shall first occur, remove, deface or render illegible the said notice, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not to exceed five hundred dollars, and the said notice shall state this provision upon its face. The commissioner may require any sheriff, deputy sheriff, constable, or other official of the state of West Virginia, who may be authorized to serve civil process, to post such notice and to make return thereof of the fact of such posting to the commissioner, and any failure of such officer to post any notice within ten days after he shall have received the same from the commissioner, without just cause or excuse, shall constitute a willful failure or refusal to perform a duty required of him by law within the meaning of section twenty-eight, article five, chapter sixty-one of this code. Any person actually injured by reason of such failure shall have an action against said official, and upon any official bond he may have given, for such damages as such person may actually have incurred, but not to exceed, in the case of any surety upon said bond, the amount of the penalty of said bond. Any official posting said notice as herein required shall be entitled to the same fee as is now or may hereafter be provided for the service of process in suits instituted in courts of record in the state of West Virginia, which fee shall be paid by the commissioner out of any funds at his disposal, but shall be charged by him against the account of the employer to whose delinquency such notice relates.

§23-2-5a. Collection of premiums from defaulting employers; civil remedies; injunctive relief; secretary of state to withhold certificates of dissolution.

The commissioner in the name of the state may commence a civil action against an employer who, after due notice, defaults in any payment required by this chapter. If judgment is against the employer he shall pay the costs of the action. Civil actions under this section shall be given preference on the calendar of the court over all other civil actions.
Any payment and interest thereon due and unpaid under this chapter shall be a personal obligation of the employer and shall, in addition thereto, be a lien enforceable against all the property of the employer. Provided, That no such lien shall be enforceable as against a purchaser (including a lien creditor) of real estate or personal property for a valuable consideration without notice, unless docketed as provided in chapter ninety-nine, acts of the Legislature, regular session, one thousand nine hundred forty-three.

In addition to all other civil remedies prescribed herein the commissioner may in the name of the state distress upon any personal property, including intangible property, of any employer delinquent for any payment and interest thereon. If the commissioner has good reason to believe that such property or a substantial portion thereof is about to be removed from the county in which it is situated, he may likewise distress in the name of the state before such delinquency occurs. For such purpose, the commissioner may require the services of a sheriff of any county in the state in levying such distress in the county in which the sheriff is an officer and in which such personal property is situated. A sheriff so collecting any payments and interest thereon shall be entitled to such compensation as is provided by law for his services in the levy and enforcement of executions.

In case a business subject to the payments and interests thereon imposed under this chapter shall be operated in connection with a receivership or insolvency proceeding in any state court in this state, the court under whose direction such business is operated shall, by the entry of a proper order or decree in the cause, make provisions, so far as the assets in administration will permit, for the regular payment of such payments as the same become due.

The secretary of state of this state shall withhold the issuance of any certificate of dissolution or withdrawal in the case of any corporation organized under the laws of this state, or organized under the laws of any other state and admitted to do business in this state, until notified by the commissioner that all payments and interest thereon against any such corporation which is an employer under this chapter have been
paid or that provision satisfactory to the commissioner has
been made for payment.

In any case when an employer defaults in payments, or in-
terest thereon, for as many as two calendar quarters, which
quarters need not be consecutive, and remains delinquent after
due notice, and the commissioner has been unable to collect
such payments by any of the other civil remedies prescribed
herein, the commissioner may bring action in the circuit court
of Kanawha County to enjoin such employer from continuing
to carry on the business in which such liability was incurred:
Provided, That the commissioner may as an alternative to this
action require such delinquent employer to file a bond in the
form prescribed by the commissioner with satisfactory surety
in an amount not less than fifty percent more than the pay-
ments and interest due.


Any employer subject to this chapter who shall subscribe
and pay into the workmen's compensation fund the premiums
provided by this chapter or who shall elect to make direct pay-
ments of compensation as herein provided, shall not be liable
to respond in damages at common law or by statute for the
injury or death of any employee, however occurring, after
so subscribing or electing, and during any period in which such
employer shall not be in default in the payment of such pre-
miums or direct payments and shall have complied fully with
all other provisions of this chapter. The continuation in the
service of such employer shall be deemed a waiver by the em-
ployee and by the parents of any minor employee of the right
of action as aforesaid, which the employee or his or her par-
ents would otherwise have: Provided, That in case of em-
ployers not required by this chapter to subscribe and pay
premiums into the workmen's compensation fund, the injured
employee has remained in such employer's service with no-
tice that his employer has elected to pay into the workmen's
compensation fund the premiums provided by this chapter, or
has elected to make direct payments as aforesaid.

§23-2-7. Benefits of chapter may not be waived by contract or
regulation.

No employer or employee shall exempt himself from the
burden or waive the benefits of this chapter by any contract, agreement, rule or regulation, and any such contract, agreement, 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.

All employers required by this chapter to subscribe to and pay premiums into the workmen's compensation fund, except the state of West Virginia, the governmental agencies or departments created by it, and municipalities and political subdivisions of the state, and who do not subscribe to and pay premiums into the workmen's compensation fund as required by this chapter and have not elected to pay individually and directly or from benefit funds compensation and expenses to injured employees or fatally injured employees' dependents under the provisions of section nine of this article, or having so subscribed or elected, shall be in default in the payment of same, or not having otherwise fully complied with the provisions of section five or section nine of this article, shall be liable to their employees (within the meaning of this article) for all damages suffered by reason of personal injuries sustained in the course of employment caused by the wrongful act, neglect or default of the employer or any of the employer's officers, agents or employees while acting within the scope of their employment and in the course of their employment and also to the personal representatives of such employees where death results from such personal injuries, and in any action by any such employee or personal representative thereof, such defendant shall not avail himself of the following common-law defenses: The defense of the fellow-servant rule; the defense of the assumption of risk; or the defense of contributory negligence; and further shall not avail himself of any defense that the negligence in question was that of someone whose duties are prescribed by statute: Provided, That such provision depriving a defendant employer of certain common-law defenses under the circumstances therein set forth shall not apply to an action brought against a county court, board of education, municipality, or other political subdivision of the state or against any employer not required to cover his employees under the provisions of this chapter.
§23-2-9. Election of employer to provide own system of compensation.

Notwithstanding anything contained in this chapter, employers subject to this chapter who are of sufficient financial responsibility to insure the payment of compensation to injured employees and the dependents of fatally injured employees, whether in the form of pecuniary compensation or medical attention, funeral expenses or otherwise as herein provided, of the value at least equal to the compensation provided in this chapter, or employers of such financial responsibility who maintain their own benefit funds, or system of compensation, to which their employees are not required or permitted to contribute, or such employers as shall furnish bond or other security to insure such payments, may, upon a finding of such facts by the compensation commissioner, elect to pay individually and directly, or from such benefit funds, department or association, such compensation and expenses to injured employees or fatally injured employees' dependents. The compensation commissioner shall require security or bond from such employer, to be approved by him, and of such amount as is by him considered adequate and sufficient to compel or secure to such employees, or their dependents, payment of the compensation and expenses herein provided for, which shall in no event be less than the compensation paid or furnished out of the state workmen's compensation fund in similar cases to injured employees or the dependents of fatally injured employees whose employers contribute to such fund. Any employer electing under this section shall on or before the twentieth day of the first month of each quarter, for the preceding quarter, file with the commissioner a sworn statement of the total earnings of all his employees subject to this chapter for such preceding quarter, and shall pay into the workmen's compensation fund a sum sufficient to pay his proper proportion of the expenses of the administration of this chapter, and a sum sufficient to pay his proper portion of the expenses for claims for those employers who are delinquent in the payment of premiums, as may be determined by the commissioner. The commissioner shall make and publish rules and regulations governing the mode and manner of making application, and the nature and extent of the proof required to justify the find-
ing of facts by the commissioner, to consider and pass upon
such election by employers subject to this chapter, which rules
and regulations shall be general in their application. Any
employer subject to this chapter who shall elect to carry his
own risk and who has complied with the requirements of this
section and the rules of the compensation commissioner shall
not be liable to respond in damages at common law or by
statute for the injury or death of any employee, however oc-
curring, after such election and during the period that he is
allowed by the commissioner to carry his own risk.

Any employer whose record upon the books of the compen-
sation commissioner shows a liability against the workmen’s
compensation fund incurred on account of injury to or death
of any of his employees, in excess of premiums paid by such
employer, shall not be granted the right, individually and di-
rectly or from such benefit funds, department or association,
to compensate his injured employees and the dependents of
his fatally injured employees until he has paid into the work-
men’s compensation fund the amount of such excess of liability
over premiums paid, including his proper proportion of the
liability incurred on account of explosions, catastrophes or
second injuries as defined in section one, article three of this
chapter, occurring within the state and charged against such
fund.

All employers who have heretofore elected, or shall here-
after elect, to pay compensation and expenses directly as pro-
vided in this section, shall, unless they give the catastrophe and
second injury security or bond hereinafter provided for, pay in-
to the surplus fund referred to in section one, article three of
this chapter, upon the same basis and in the same percentages,
subject to the limitations herein set forth, as funds are set
aside for the maintenance of the surplus fund out of payments
made by premium-paying subscribers, such payments to be
made at the same time as hereinbefore provided with respect
to payment of proportion of expenses of administration. In
case there be a catastrophe or second injury, as defined in
section one, article three of this chapter, to the employees of
any employer making such payments, the employer shall not
be liable to pay compensation or expenses arising from or
necessitated by the catastrophe or second injury, and such
compensation and expenses shall not be charged against such employer, but such compensation and expenses shall be paid from the surplus fund in the same manner and to the same extent as in the case of premium-paying subscribers.

If an employer elect to make payments into the surplus fund as aforesaid, then the bond or other security required by this section shall be of such amount as the commissioner considers adequate and sufficient to compel or secure to the employees or their dependents payment of compensation and expenses, except any compensation and expenses that may arise from, or be necessitated by, any catastrophe or second injury, as defined in section one, article three of this chapter, which last are secured by and shall be paid from the surplus fund as hereinbefore provided.

If any employer elect not to make payments into the surplus fund, as hereinbefore provided, then, in addition to bond or security in the amount hereinbefore set forth, such employer shall furnish catastrophe and second injury security or bond, approved by the commissioner, in such additional amount as the commissioner shall consider adequate and sufficient to compel or secure payment of all compensation and expenses arising from, or necessitated by, any catastrophe or second injury that might thereafter ensue.

All employers hereafter making application to carry their own risk under the provisions of this section, shall with such application, make a written statement as to whether such employer elects to make payments as aforesaid into the surplus fund or not to make such payments and to give catastrophe and second injury security or bond hereinbefore in such case provided for.

All employers who have heretofore elected to carry their own risk under the provisions of this section shall be deemed to have elected to make payments into the surplus fund unless, within thirty days after the effective date of this act, they notify the commissioner in writing to the contrary: Provided, That such employers, as have heretofore elected, under the rules heretofore promulgated by the commissioner, not to make payments into the surplus fund, shall be deemed to have elected to give the catastrophe and second injury security
or bond hereinbefore provided for and not to make payments
into the surplus fund. Any catastrophe and second injury
security or bond heretofore given under rules and regulations
promulgated by the commissioner and approved by him shall
be valid under this section, and any election heretofore made
under rules and regulations of the commissioner to make pay-
ments into the surplus fund shall be valid and protective to the
person so electing from and after the date of such election.

In any case under the provisions of this section that shall
require the payment of compensation or benefits by an em-
ployer in periodical payments, and the nature of the case
makes it possible to compute the present value of all future
payments, the commissioner may, in his discretion, at any
time compute and permit or require to be paid into the work-
men's compensation fund an amount equal to the present value
of all unpaid compensation for which liability exists, in trust;
and thereupon such employer shall be discharged from any
further liability upon such award, and payment of the same
shall be assumed by the workmen's compensation fund.

§23-2-10. Application of chapter to interstate commerce; extra-
territorial coverage.

(a) In case any employer within the meaning of this
chapter is also engaged in interstate or foreign commerce,
and for whom a rule of liability or method of compensation
has been established by the Congress of the United States,
this chapter shall apply to him only to the extent that his
mutual connection with work in this state is clearly separable
and distinguishable from his interstate work, and to the extent
that such work in this state is clearly separable and distinguish-
able from his interstate work, such employer shall be subject to
the terms and provisions of this chapter in like manner as all
other employers hereunder. Payments of premiums shall be on
the basis of the payroll of those employees who perform work
in this state only.

Unless and until the Congress of the United States has
by appropriate legislation established a rule of liability or
method of compensation governing employers and employees
engaged in commerce within the purview of the commerce
clause of the federal Constitution (article I, section 8), section
one of this article shall apply without regard to the interstate or intrastate character or nature of the work or business engaged in: Provided, That this chapter shall not apply to employees of steam railroads, or steam railroads partly electrified, or express companies, engaged in interstate commerce.

(b) Whenever, with respect to an employee of an employer who is a subscriber in good standing to the workmen's compensation fund or an employer who has elected to pay compensation directly, as provided in section nine of this article, there is a possibility of conflict with respect to the application of workmen's compensation laws because the contract of employment is entered into and all or some portion of the work is performed or is to be performed in a state or states other than this state, the employer and the employee may agree to be bound by the laws of this state or by the laws of such other state in which all or some portion of the work of the employee is to be performed. Such agreement shall be in writing and filed with the commissioner within ten days after execution thereof and shall remain in effect until terminated or modified by agreement of the parties similarly filed. If the parties agree to be bound by the laws of this state, an employee injured within the terms and provisions of this chapter shall be entitled to benefits under this chapter regardless of the situs of the injury or exposure to occupational pneumoconiosis or other occupational disease, and the rights of the employee and his dependents under the laws of this state shall be the exclusive remedy against the employer on account of injury, disease or death in the course of and as a result of the employment.

If the parties agree to be bound by the laws of another state and the employer has complied with the laws of that state, the rights of the employee and his dependents under the laws of that state shall be the exclusive remedy against the employer on an account of injury, disease or death in the course of and as a result of the employment without regard to the situs of the injury or exposure to occupational pneumoconiosis or other occupational disease.

If the employee is a resident of a state other than this state and is subject to the terms and provisions of the workmen's compensation law or similar laws of a state other than
this state, such employee and his dependents shall not be entitled to the benefits payable under this chapter on account of injury, disease or death in the course of and as a result of employment temporarily within this state, and the rights of such employee and his dependents under the laws of such other state shall be the exclusive remedy against the employer on account of such injury, disease or death.

If any employee or his dependents be awarded workmen's compensation benefits or recover damages from the employer under the laws of another state for an injury received in the course of and resulting from the employment, the amount so awarded or recovered, whether paid or to be paid in future installments, shall be credited against the amount of any benefits payable under this chapter for the same injury.


Payments unpaid on the date on which due and payable, as prescribed by the commissioner, shall after the first fifteen days bear interest at the rate of one percent per month until payment plus accrued interest is received by the commissioner. Interest collected pursuant to this section shall be paid into the 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.

Subject to the provisions and limitations elsewhere in this chapter set forth, the commissioner shall disburse the workmen's compensation fund to the employees of employers subject to this chapter, which employees have received personal injuries in the course of and resulting from their covered employment or to the dependents, if any, of such employees in case death has ensued, according to the provisions hereinafter made; and also for the expenses of the administration of this chapter, as provided in section two, article one of this chapter.

For the purposes of this chapter the terms “injury” and “personal injury” shall include occupational pneumoconiosis and any other occupational disease, as hereinafter defined, and the commissioner shall likewise disburse the workmen's compensation fund to the employees of such employers in whose employment such employees have been exposed to the hazards of occupational pneumoconiosis or other occupational disease and in this state have contracted occupational pneumoconiosis or other occupational disease, or have suffered a perceptible aggravation of an existing pneumoconiosis or other occupational disease, or to the dependents, if any, of such employees, in case death has ensued, according to the provisions hereinafter made: Provided, That compensation shall not be payable for the disease of occupational pneumoconiosis, or death resulting therefrom, unless the employee has been exposed to the hazards of occupational pneumoconiosis in the state of West Virginia over a continuous period of not less than two years during the ten years immediately preceding the date of his last exposure to such hazards. An application for benefits on account of occupational pneumoconiosis shall set forth the name of the employer or employers and the time worked for each, and the commissioner may allocate to and divide any charges resulting from such claim among the employers by whom the claimant was employed for as much as sixty days during the period of three years immediately preceding the date of last exposure to the hazards of occupational pneumo-
coniosis. The allocation shall be based upon the time and degree of exposure with each employer.

For the purposes of this chapter disability or death resulting from occupational pneumoconiosis, as defined in the immediately succeeding sentence, shall be treated and compensated as an injury by accident.

Occupational pneumoconiosis is a disease of the lungs caused by the inhalation of minute particles of dust over a period of time due to causes and conditions arising out of and in the course of the employment. The term "occupational pneumoconiosis" shall include, but shall not be limited to such diseases as silicosis, anthracosilicosis, coal worker's pneumoconiosis, commonly known as black lung or miner's asthma, silico-tuberculosis (silicosis accompanied by active tuberculosis of the lungs), coal worker's pneumoconiosis accompanied by active tuberculosis of the lungs, asbestosis, siderosis, anthrax and any and all other dust diseases of the lungs and conditions and diseases caused by occupational pneumoconiosis which are not specifically designated herein meeting the definition of occupational pneumoconiosis set forth in the immediately preceding sentence.

X-ray evidence shall not necessarily be held conclusive insofar as it bears upon the absence of occupational pneumoconiosis.

For the purposes of this chapter, occupational disease means a disease incurred in the course of and resulting from employment. No ordinary disease of life to which the general public is exposed outside of the employment shall be compensable except when it follows as an incident of occupational disease as defined in this chapter. Except in the case of occupational pneumoconiosis, a disease shall be deemed to have been incurred in the course of or to have resulted from the employment only if it is apparent to the rational mind, upon consideration of all the circumstances (1) that there is a direct causal connection between the conditions under which work is performed and the occupational disease, (2) that it can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment, (3) that it can be fairly traced to the employment
as the proximate cause, (4) that it does not come from a hazard to which workmen would have been equally exposed outside of the employment, (5) that it is incidental to the character of the business and not independent of the relation of employer and employee, and (6) that it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a natural consequence, though it need not have been foreseen or expected before its contraction.

Except in the case of silicosis, no award shall be made under the provisions of this chapter for any occupational disease contracted prior to the first day of July, one thousand nine hundred forty-nine. An employee shall be deemed to have contracted an occupational disease within the meaning of this paragraph if the disease or condition has developed to such an extent that it can be diagnosed as an occupational disease.

Claims for occupational disease as hereinbefore defined, except occupational pneumoconiosis, shall be processed in 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.

Upon a finding by the commissioner that a claimant has sustained a compensable injury within the meaning of section one of this article, and upon proof by proper physician's report, or otherwise, that disability will last longer than three days as provided in section five of this article, the commissioner shall immediately commence payment of temporary total disability benefits to the claimant in the amounts provided for in sections six and fourteen of this article, without waiting for the expiration of the thirty-day period during which objections may be filed to such findings as provided in section one, article five of this chapter. The commissioner shall give immediate notice to the employer of his findings and of the commencement of such payments.

The commissioner shall determine whether or not the claimant has sustained a compensable injury within the meaning
of section one of this article, and shall commence pay-
ment of temporary total disability benefits as provided
herein within fifteen days of receipt of the employee’s or
employer’s report of injury, whichever is received sooner,
and receipt of either a proper physician’s report or any other in-
formation necessary for a determination.

Where the employer is a subscriber to the workmen’s com-
pensation fund under the provisions of article three of this
chapter, and upon the findings aforesaid, the commissioner
shall mail all workmen’s compensation checks paying tem-
porary total disability benefits directly to the claimant and not
to the employer for delivery to the claimant.

Where the employer has elected to carry his own risk under
section nine, article two of this chapter, and upon the findings
aforesaid, the commissioner shall immediately issue a pay
order directing the employer to pay such amounts as are due
the claimant for temporary total disability benefits.

In the event that an employer files a timely objection to any
finding or order of the commissioner, as provided in section
one, article five of this chapter, with respect to the payment or
continued payment of temporary total disability benefits, as
provided herein, the commissioner shall continue to pay to the
claimant such benefits during the period of such disability un-
less it is subsequently found by the commissioner that the clai-
mant was not entitled to receive the temporary total disability
benefits, or any part thereof, so paid, in which event the com-
missioner shall, where the employer is a subscriber to the fund,
credit said employer’s account with the amount of the overpay-
ment; and, where the employer has elected to carry his own
risk, the commissioner shall refund to such employer the
amount of the overpayment. The amounts so credited to a sub-
scriber or repaid to a self-insurer shall be charged by the com-
missioner to the surplus fund created by section one, article
three of this chapter. If the final decision in any case determines
that a claimant was not lawfully entitled to benefits paid to him
pursuant to a prior decision, such amount of benefits so paid
shall be deemed overpaid. The commissioner may recover such
amount by civil action or in any manner provided in this code
for the collection of past-due payment and shall withhold, in
§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.

The commissioner shall establish, and alter from time to time as he may determine to be appropriate a schedule of the maximum reasonable amounts to be paid to physicians, surgeons, hospitals or other persons, firms or corporations for the rendering of treatment to injured employees under this chapter.

The commissioner shall disburse and pay from the funds for such personal injuries to such employees as may be entitled thereto hereunder as follows:

(a) Such sums for medicines, medical, surgical, dental and hospital treatment, crutches, artificial limbs and such other and additional approved mechanical appliances and devices, as may be reasonably required and as are, in the case of medical, surgical, dental or hospital treatment only, within the maximum amount provided for by schedule established by the commissioner as aforesaid, but not as to any one injured employee in excess of seven thousand five hundred dollars:

Provided, That in special cases where the treatment required, in the opinion of competent medical authority, is such as to necessitate an expenditure in excess of said sum of seven thousand five hundred dollars, the commissioner may pay out of any available funds such additional sum as may be necessary, but such additional sum shall not be charged to the account of the employer.

(b) Payment for such medicine, medical, surgical, dental and hospital treatment, crutches, artificial limbs and such other and additional approved mechanical appliances and devices authorized under subdivision (a) hereof may be made to the injured employee, or to the person, firm or corporation who or which has rendered such treatment or furnished any
of the items specified above, or who has advanced payment
for same, as the commissioner may deem proper, but no
such payments or disbursements shall be made or awarded
by him unless duly verified statements on forms prescribed
by the commissioner shall be filed with the commissioner
within one year after the cessation of such treatment or the
delivery of such appliances: Provided, That no payment here-
under shall be made unless such verified statement shows
no charge for or with respect to such treatment or for or
with respect to any of the items specified above has been or
will be made against the injured employee or any other
person, firm or corporation, and when an employee covered
under the provisions of this chapter is injured in the course
of and as a result of his employment and is accepted for
medical, surgical, dental or hospital treatment, the person,
firm or corporation rendering such treatment is hereby
prohibited from making any charge or charges therefor or
with respect thereto against the injured employee or any
other person, firm or corporation which would result in a
total charge for the treatment rendered in excess of the
maximum amount set forth therefor in the commissioner's
schedule established as aforesaid.

(c) No employer shall enter into any contracts with any
hospital, its physicians, officers, agents or employees to
render medical, dental or hospital service or to give medical
or surgical attention therein to any employee for injury
compensable within the purview of this chapter, and no
employer shall permit or require any employee to contribute,
directly or indirectly, to any fund for the payment of such
medical, surgical, dental or hospital service within such
hospital for such compensable injury. Any employer violat-
ing this section shall be liable in damages to his employees as
provided in section eight, article two of this chapter, and
any employer or hospital or agent or employee thereof violat-
ing the provisions of this section shall be guilty of a misde-
meanor, and, upon conviction thereof, shall be sentenced to
pay a fine not exceeding one thousand dollars or undergo
imprisonment not exceeding one year, or both.

(d) When an injury has been reported to the commissioner
by the employer without protest, the commissioner may pay,
or order an employer who or which made the election and
who or which received the permission mentioned in section
nine, article two of this chapter to pay, within the maximum
amount provided by schedule established by the commissioner
as aforesaid, bills for medical or hospital services without
requiring the injured employee to file an application for
benefits.

§23-4-6. Classification of disability benefits.

Where compensation is due an employee under the provi-
sions of this chapter for personal injury, such compensation
shall be as provided in the following schedule:

(a) The expressions “average weekly wage earnings, wher-
ever earned, of the injured employee, at the date of injury” and
“average weekly wage in West Virginia,” as used in this chap-
ter, shall have the meaning and shall be computed as set forth
in section fourteen of this article.

(b) If the injury causes temporary total disability, the em-
ployee shall receive during the continuance thereof weekly
benefits as follows: A maximum weekly benefit to be computed
on the basis of sixty-six and two-thirds percent of the average
weekly earnings, wherever earned, of the injured employee, at
the date of injury, not to exceed the percentage of the average
weekly wage in West Virginia, as follows: On or after July
one, one thousand nine hundred sixty-nine, forty-five percent;
on or after July one, one thousand nine hundred seventy, fifty
percent; on or after July one, one thousand nine hundred sev-
enty-one, fifty-five percent; on or after July one, one thousand
nine hundred seventy-three, sixty percent; on or after July one,
one thousand nine hundred seventy-four, eighty percent; on
or after July one, one thousand nine hundred seventy-five, one
hundred percent.

The minimum weekly benefits paid hereunder shall not be
less than twenty-six dollars per week for injuries occurring on
or after July one, one thousand nine hundred sixty-nine; not
less than thirty-five dollars per week for injuries occurring on
or after July one, one thousand nine hundred seventy-one; not
less than forty dollars per week for injuries occurring on or
after July one, one thousand nine hundred seventy-three and
not less than forty-five dollars per week for injuries occurring on or after July one, one thousand nine hundred seventy-four.

(c) Subdivision (b) shall be limited as follows: Aggregate award for a single injury causing temporary disability shall be for a period not exceeding two hundred eight weeks.

(d) If the injury causes permanent total disability, benefits shall be payable during the remainder of life at the maximum or minimum weekly benefits as provided in subdivision (b) of this section for temporary total disability. A permanent disability of eighty-five percent or more shall be deemed a permanent total disability for the purpose of this section.

(e) If the injury causes permanent disability less than permanent total disability, the percentage of disability to total disability shall be determined and the award computed on the basis of four weeks compensation for each percent of disability determined, at the following maximum or minimum benefit rates: Sixty-six and two-thirds percent of the average weekly earnings, wherever earned, of the injured employee, at the date of injury, not to exceed the percentage of the average weekly wage in West Virginia, as follows: On or after July one, one thousand nine hundred sixty-nine, forty-five percent; on or after July one, one thousand nine hundred seventy, fifty percent; on or after July one, one thousand nine hundred seventy-one, fifty-five percent; on or after July one, one thousand nine hundred seventy-three, sixty percent.

The minimum weekly benefit under this subdivision shall be as provided in subdivision (b) of this section for temporary total disability.

(f) If the injury results in the total loss by severance of any of the members named in this subdivision, the percentage of disability shall be determined by the commissioner, with the following table establishing the minimum percentage of disability. In determining the percentage of disability, the commissioner may be guided by but shall not be limited to the disabilities enumerated in the following table, and in no event shall the disability be less than that specified in the following table:
The loss of a great toe shall be considered a ten percent disability.

The loss of a great toe (one phalanx) shall be considered a five percent disability.

The loss of other toes shall be considered a four percent disability.

The loss of other toes (one phalanx) shall be considered a two percent disability.

The loss of all toes shall be considered a twenty-five percent disability.

The loss of forepart of foot shall be considered a thirty percent disability.

The loss of foot shall be considered a thirty-five percent disability.

The loss of a leg shall be considered a forty-five percent disability.

The loss of thigh shall be considered a fifty percent disability.

The loss of thigh at hip joint shall be considered a sixty percent disability.

The loss of a little or fourth finger (one phalanx) shall be considered a three percent disability.

The loss of little or fourth finger shall be considered a five percent disability.

The loss of ring or third finger (one phalanx) shall be considered a three percent disability.

The loss of ring or third finger shall be considered a five percent disability.

The loss of middle or second finger (one phalanx) shall be considered a three percent disability.

The loss of middle or second finger shall be considered a seven percent disability.

The loss of index or first finger (one phalanx) shall be considered a six percent disability.
The loss of index or first finger shall be considered a ten percent disability.

The loss of thumb (one phalanx) shall be considered a twelve percent disability.

The loss of thumb shall be considered a twenty percent disability.

The loss of thumb and index finger shall be considered a thirty-two percent disability.

The loss of index and middle finger shall be considered a twenty percent disability.

The loss of middle and ring finger shall be considered a fifteen percent disability.

The loss of ring and little finger shall be considered a ten percent disability.

The loss of thumb, index and middle finger shall be considered a forty percent disability.

The loss of index, middle and ring finger shall be considered a thirty percent disability.

The loss of middle, ring and little finger shall be considered a twenty percent disability.

The loss of four fingers shall be considered a thirty-two percent disability.

The loss of hand shall be considered a fifty percent disability.

The loss of forearm shall be considered a fifty-five percent disability.

The loss of arm shall be considered a sixty percent disability.

The total and irrecoverable loss of the sight of one eye shall be considered a thirty-three percent disability. For the partial loss of vision in one, or both eyes, the percentage of disability shall be determined by the commissioner, using as a basis the total loss of one eye.

The total and irrecoverable loss of the hearing of one ear
shall be considered a fifteen percent disability, and the injured employee shall be entitled to compensation for a period of sixty weeks. The total and irrecoverable loss of hearing of both ears shall be considered a forty-five percent disability, and the injured employee shall be entitled to compensation for a period of one hundred eighty weeks.

For the partial loss of hearing in one, or both ears, the percentage of disability shall be determined by the commissioner, using as a basis the total loss of hearing in both ears.

Should a claimant sustain a compensable injury which results in the total loss by severance of any of the bodily members named in this subdivision, die from sickness or noncompensable injury before the commissioner makes the proper award for such injury, the commissioner shall make such award to claimant's dependents as defined in this chapter, if any; such payment to be made in the same installments that would have been paid to claimant if living: Provided, That no payment shall be made to any widow of such claimant after her remarriage, and that this liability shall not accrue to the estate of such claimant and shall not be subject to any debts of, or charges against, such estate.

(g) Should a claimant to whom has been made a permanent partial award of from one percent to eighty-four percent, both inclusive, die from sickness or noncompensable injury, the unpaid balance of such award shall be paid to claimant's dependents as defined in this chapter, if any; such payment to be made in the same installments that would have been paid to claimant if living: Provided, That no payment shall be made to any widow of such claimant after her remarriage, and that this liability shall not accrue to the estate of such claimant and shall not be subject to any debts of, or charges against, such estate.

(h) For the purpose of the immediately preceding paragraph, a finding of the occupational pneumoconiosis board shall have the force and effect of an award.

(i) The award for permanent disabilities intermediate to those fixed by the foregoing schedule and permanent disability of from one percent to eighty-four percent shall be the same
proportion and shall be computed and allowed by the commissioner.

(j) The percentage of all permanent disabilities other than those enumerated in subdivision (f) of this section shall be determined by the commissioner, and awards made in accordance with the provisions of subdivisions (d) or (e) of this section. Where there has been an injury to a member as distinguished from total loss by severance of that member, the commissioner in determining the percentage of disability may be guided by but shall not be limited to the disabilities enumerated in subdivision (f) of this section.

(k) Compensation payable under any subdivision of this section shall not exceed the maximum nor be less than the weekly benefits specified in subdivision (b) of this section.

(l) Temporary total disability benefits payable under subdivision (b) of this section shall not be deductible from permanent partial disability awards payable under subdivision (e) or (f) of this section. Compensation, either total temporary or permanent partial, under this section shall be payable only to the injured employee and the right thereto shall not vest in his or her estate, except that any unpaid compensation which would have been paid or payable to the employee up to the time of his death, if he had lived, shall be paid to the dependents of such injured employee if there be such dependents at the time of death.

(m) The following permanent disabilities shall be conclusively presumed to be total in character:

Loss of both eyes or the sight thereof.

Loss of both hands or the use thereof.

Loss of both feet or the use thereof.

Loss of one hand and one foot or the use thereof.

In all other cases permanent disability shall be determined by the commissioner in accordance with the facts in the case, and award made in accordance with the provisions of subdivision (d) or (e).

(n) A disability which renders the injured employee unable
to engage in substantial gainful activity requiring skills or
abilities comparable to those of any gainful activity in which
he has previously engaged with some regularity and over a
substantial period of time shall be considered in determining
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.

If an employee is found to be permanently disabled due to occupational pneumoconiosis, as defined in section one of this article, the percentage of permanent disability shall be determined by the commissioner in accordance with the facts in the case and with the advice and recommendation of the occupational pneumoconiosis board. Compensation shall be paid therefor in the same manner and at the same rate as is provided for permanent disability under the provisions of subdivisions (d), (e), (g), (h), (i), (j), (k), (m) and (n) of the preceding section of this article.

If the employee dies from occupational pneumoconiosis, the benefits shall be as provided for in section ten of this article; as to such benefits sections eleven to fourteen, inclusive, of this article shall apply.

In cases of permanent disability or death due to occupational pneumoconiosis, as defined in section one of this article, accompanied by active tuberculosis of the lungs, compensation shall be payable as for disability or death due to occupational pneumoconiosis alone.

The provisions of section sixteen, article four and sections one-a, one-b, one-c and one-d, article five of this chapter providing for the further adjustment of claims shall be applicable to the claim of any claimant who receives a permanent partial disability award for occupational pneumoconiosis.

§23-4-8a. Occupational pneumoconiosis board—Composition; term of office; duties; quorum; remuneration.

The occupational pneumoconiosis board shall consist of five licensed physicians, who shall be appointed by the commissioner. No person shall be appointed as a member of
such board, or as a consultant thereto, who has not by special
study or experience, or both, acquired special knowledge of
pulmonary diseases. All members of the occupational pneumo-
coniosis board shall be physicians of good professional stand-
ing, admitted to practice medicine and surgery in this state,
and two of them shall be roentgenologists. One of the
board shall be designated annually as chairman by the com-
missoner. The term of office of each member of such board
shall be six years. The three members of the existing board,
as redesignated herein, in office on the effective date of this
act shall continue to serve until their terms expire and until
their successors have been appointed and have qualified. Any
member of the board may be appointed to any number of
terms. The function of the board shall be to determine all
medical questions relating to cases of compensation for occu-
pational pneumoconiosis under the direction and supervision
of the commissioner. Any three members of the board shall
constitute a quorum for the transaction of its business, if at
least one of the members present is a roentgenologist. The
commissioner, from time to time, shall fix the per diem salary,
computed on the basis of actual time devoted to the discharge
of their duties, to be paid each member of such board, and they
shall also be entitled to reasonable and necessary traveling and
other expenses incurred while actually engaged in the per-
formance of their duties.

§23-4-9. Physical and vocational rehabilitation.

In cases where an employee has sustained a permanent dis-
ability, or has sustained injuries likely to result in permanent
disability, and such fact has been determined by the com-
missoner, and the employee can be physically and vocation-
ally rehabilitated and returned to remunerative employment
by vocational training, by the use of crutches, artificial limbs,
or other approved mechanical appliances, or by medicines,
medical, surgical, dental or hospital treatment, the commis-
sioner shall forthwith, after due notice to the employer, ex-
pend such an amount as may be necessary for the aforesaid
purposes: Provided, That such expenditure for vocational re-
habilitation shall not exceed two thousand dollars for any one
injured employee: Provided, however, That no payment shall
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
18 In every case in which the commissioner shall order physical
19 or vocational rehabilitation of a claimant as provided herein,
20 the claimant shall, during the time he is receiving any voca-
21 tional rehabilitation or rehabilitative treatment that renders
22 him totally disabled during the period thereof, be compensated
23 on a temporary total disability basis for such period, unless
24 he is being paid compensation under an award granted prior
25 to the time such rehabilitation is authorized by the commis-
26 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
remains an invalid. The commissioner has the discretion to
distribute the payments to the children in more than one
household as he may deem just and equitable.

(3) A wholly dependent father or mother until death.

(4) Any other wholly dependent person for a period of
six years after the death of the deceased employee.

(c) If the deceased employee leaves no wholly dependent
person, but there are partially dependent persons at the time
of death, the payment shall be fifty dollars a month, to con-
tinue for such portion of the period of six years after the
death, as the commissioner may determine, but no such par-
tially dependent person shall receive compensation payments
as a result of the death of more than one employee.

Compensation under subdivisions (b) and (c) hereof shall,
except as may be specifically provided to the contrary therein,
cease upon the death of the dependent, and the right thereto
shall not vest in his or her estate.

(d) Dependent, as used in this chapter, shall mean a
widow, invalid widower, child under eighteen years of age,
or under twenty-three years of age when a full-time student
as provided herein, invalid child or posthumous child, who,
at the time of the injury causing death, is dependent in whole
or in part for his or her support upon the earnings of the
employee, stepchild under eighteen years of age, or under
twenty-three years of age when a full-time student as provided
herein, child under eighteen years of age legally adopted
prior to the injury causing death, or under twenty-three years
of age when a full-time student as provided herein, father,
mother, grandfather or grandmother, who at the time of the
injury causing death, is dependent in whole or in part for his
or her support upon the earnings of the employee; and invalid
brother or sister wholly dependent for his or her support upon
the earnings of the employee at the time of the injury causing
death.

§23-4-16. Commissioner's jurisdiction over case continuous; modi-
ification of finding or order; time limitation on
awards; reimbursement of claimant for expenses.

The power and jurisdiction of the commissioner over each
case shall be continuing and he may from time to time, after
due notice to the employer, make such modifications or changes
with respect to former findings or orders as may be justified:
Provided, That no further award may be made in fatal cases
arising after March seventh, one thousand nine hundred
twenty-nine, except within two years after the death of the
employee, or in case of nonfatal injuries, on and after March
seventh, one thousand nine hundred twenty-nine, except within
three years after payments for temporary disability shall have
ceased or not more than two times within five years after the
commissioner shall have made the last payment in the original
award or any subsequent increase thereto in any permanent
disability case: Provided, however, That no such modification
or change may be made in any case in which no award has been
made, except within three years after the date of injury: Pro-
vided further, That a further award may be made for medical
benefits only at any time. In any case in which an injured
employee shall make application for a further adjustment
of his claim, if such application be in writing and filed within
the applicable time limit as prescribed herein, the commissioner
shall pass upon and determine the merits of such application
within thirty days after the filing thereof.

If such application is based on a report of any medical
examination made of the claimant and submitted by the
claimant to the commissioner in support of his application,
and the claim is opened for further consideration and additional
award is later made, the claimant shall be reimbursed for the
expenses of such examination. Such reimbursement shall be
made by the commissioner to the claimant, in addition to all
other benefits awarded, upon due proof of the amount thereof
being furnished the commissioner by the claimant, but shall in
no case exceed the sum of one hundred dollars.

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-1. Disabled workmen's relief fund created.

For the relief of persons who are receiving workmen's
compensation benefits by virtue of and under the laws of
this state in amounts less than the minimum amount payable
under the laws in effect on July one, one thousand nine
hundred seventy-three, there is hereby created a separate
fund to be known as the "Disabled Workmen's Relief Fund,"
which fund shall consist of such sums as are from time to time
made available to carry out the objects and purposes of
this article. Said fund shall be in the custody of the state
treasurer and disbursements therefrom shall be made upon
requisition signed by the commissioner to those persons
entitled to participate therein and in such amounts to each
participant as is provided in section three of this article.

§23-4A-2. To whom benefits paid.

In order to participate in the disabled workmen's relief
fund, an individual must be receiving workmen's compensa-
tion benefits by virtue of and under the laws of this state
in amounts less than the minimum amount payable under
the laws in effect on July one, one thousand nine hundred
seventy-three, and be receiving such benefits under a perma-
nent total disability award or be receiving such benefits
because of the death of an employee.


Each individual entitled to participate in the disabled
workmen's relief fund shall be entitled to receive payments
without application (except that an application shall be re-
quired under section five of this article) from said fund of
an amount equal to the difference between the minimum
amount payable under the rates in effect as of July one, one
thousand nine hundred seventy-three that is, the express
and specific monetary amounts set forth in sections six and
ten of article four of this chapter as of July one, one
thousand nine hundred seventy-three, and the amount said
individual is in fact receiving by virtue of and under the
laws of this state. The first such payment shall be made
concurrently with the payment to him of workmen's com-
ensation on August one, one thousand nine hundred seventy-
four and subsequent payments shall be made during the
period thereafter in which such participant shall be entitled
to workmen's compensation benefits by virtue of and under
the laws of this state.
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.

Except by this section provided compensation shall be paid only to such employees or their dependents, and shall be exempt from all claims of creditors and from any attachment, execution or assignment other than compensation to counsel for legal services, under the provisions of, and subject to the limitations contained in section five, article five of this chapter. Payments may be made in such periodical installments as may seem best to the commissioner in each case but in no event less frequently than semimonthly for any temporary award and monthly for any permanent award. In all cases where compensation is awarded or increased, the amount thereof shall be calculated and paid from the date of disability.

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.]
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.

The medium security school of the Cabell County youth center shall be maintained at the Cabell County farm at Ona, West Virginia, by the board of supervisors as one of the divisions of the Cabell County youth center. It may be used for the detention of juveniles pending hearing before the juvenile court of Cabell County within the discretion of the judge of said court; and it shall be used for the training of juveniles who have been adjudged delinquent and committed thereto by said court. It shall not be deemed a penal institution, a jail or a prison. It shall be conducted and respected as comparable to a "school away from home." There shall be maintained at the school, or in close proximity thereto, by the board of supervisors, sufficient classrooms and equipment for the proper education and training during the regular nine months school period, of all juveniles residing in said medium security school. The board of education of Cabell County, at its own expense, shall furnish sufficient teachers of proper qualifications to adequately
staff said classrooms and to furnish proper educational training for all those committed to said school, to the end that those so committed shall be allowed and required to progress in education and in spiritual and moral development in preparation for a return to a normal life.

The board of supervisors may appoint an assistant director in charge of the medium security school who shall be answerable to the executive director and to the board. The assistant director in charge of the medium security school shall be provided with such other personnel as to the board may seem necessary to assist in maintaining the school, securing the custody of the juveniles therein, and carrying out general supervision of the school to the end that order and discipline shall be maintained. Compensation to be paid the assistant director and all personnel of said school shall be fixed by the board and paid as hereinafter provided.

The board of supervisors, shall, within its discretion, have the power and authority to accept juveniles upon commitment by the juvenile courts of other counties in West Virginia, and to make arrangements with the county court of such counties for the payment of the fair per capita, per diem cost for each juvenile so committed, and which payments shall be credited to the fiscal account of the Cabell County youth center.

The procedure for the release of juveniles committed to the medium security school shall be as follows:

After a juvenile has been committed to the school he shall be advised by the executive director of his right to apply in writing for release. He shall be afforded and may sign a petition in which he shall state the reasons he thinks are grounds for his release. The executive director shall then call a meeting with the assistant director, the teachers and all other paid employees who have had personal contract with and supervision of said juvenile and said staff shall then review the petition and shall make such recommendations as they deem proper to the next meeting of the board of supervisors. After review of the juvenile's petition and record the board may take such action as to it may seem proper. If the board be of opinion to recommend the release of the juvenile, it shall then submit such recommendation to the juvenile court over the sig-
nature of the executive director, the president of the board and
the teacher that last had the juvenile in school.

Within a reasonable time thereafter the juvenile court shall
review the case history of the juvenile and after considering
the recommendations of the staff and the board, shall enter
such order as to the court may seem to be in the best interest
of the juvenile.

§4. Foster homes division.

The foster homes division of the Cabell County youth
center shall be erected and maintained at the Cabell County
farm at Ona, West Virginia, as homes for Cabell County
children who are orphans, homeless, neglected or deserted,
or who, if permitted to run ungoverned or undisciplined, are
apt to become delinquent, and which said children are within
the age prescribed by the statutes of this state for juveniles.

The board of supervisors of the Cabell County youth
center shall cause to be erected and maintained at said farm
sufficient cottages and of capacity to comfortably house in
each cottage not more than twenty children. Each cottage
when children are housed therein shall have as “cottage
parents” a husband and wife team in charge, both of whom
shall be persons of good moral character, experienced in
child care, having proper understanding of children and
temperamentally fit to care and rear them. Each cottage
shall be conducted comparable to a well-ordered home, with
proper supervision and understanding discipline maintained
by the “cottage parents.” The children therein housed shall
be treated as members of a well-ordered family where there
is proper intellectual, physical, spiritual and exemplary moral
training. Each child shall be given a home therein so long
as its need therefor exists and it remains a juvenile or until
a satisfactory permanent home has been found or it is placed
for adoption.

A part of the facilities of the foster homes division may
be utilized for a diagnostic clinic and treatment center.

The foster homes division shall be made available for
any and all Cabell County children now or hereafter to be
under the control of the state or county department of
welfare, all Cabell County children cared for by any of the
other welfare agencies, youth or child centers, private homes
or institutions within the county.

Both the West Virginia and Cabell County departments of
welfare, at the earliest practicable time after the facilities
hereinabove provided have been made ready to receive said
children, shall appear before the juvenile court of Cabell
County and bring to the court's attention the name of each
and every child then in Cabell County and in the custody of
both of the said departments, the whereabouts of each child,
and all the facts and circumstances which to the department
or the court may appear pertinent with relation to each
child, and all of which the court shall consider, and having
so considered shall then enter an order committing said
child to the foster homes division, or releasing it to the
department as to the court may seem just and proper, and
the court may from time to time make such other and further
orders for the disposition of said child or children as may
be just or proper: Provided, That the above procedure shall
apply only to children of school age. All children of pre-
school age may be maintained at said foster homes division
or elsewhere, within the sound discretion of the departmen
t of welfare, but wherein children in preschool age are placed
in said foster division, then such placement shall be by
order of the juvenile court of Cabell County in the same
manner as hereinabove provided for all other children.

For the support and maintenance of the children placed
in said foster homes division by the departments of welfare,
they shall contribute the standard amount paid by the depart-
ments to private foster homes in other counties of the state.
The money so contributed shall be paid to the county court
of Cabell County and by that court set aside for the use of
said foster homes division.

The "cottage parents" and all other personnel required
for the efficient operation of said cottages in which children
are maintained shall be carefully selected by the West Virginia
department of welfare. Said "cottage parents" under the
guidance and supervision of the West Virginia department
of welfare, shall be responsible for the supervision and
training of all the children committed to their care; for
keeping them in school during school terms and hours; for
teaching them to do a reasonable amount of work, and for
making each cottage as nearly self-supporting as possible.
The husband member of the “cottage parents” shall lead
and teach the older male children under his care, at
reasonable times and seasons, in agricultural practices and
methods, which may include gardening, truck farming, fruit
growing, poultry raising, dairying, and like occupations, and
upon such land as may be assigned by the board of super­
visors for such purposes. The wife member of the “cottage
parents” shall lead and teach the older female children
under her care, at reasonable times, in the art and practices
of homemaking which may include cooking, laundering,
cleaning, and the like.

The children residing in said foster homes shall be re­
quired, when within school age, and when their health and
physical condition permits, to attend the public schools.
The board of education of said county shall make provisions
for them in the public school at Ona, West Virginia, or if
any one or more of them be in a grade higher than is taught
at Ona, then provision therefor shall be made in a school
wherein such grade is taught.

Complete supervision of the foster homes division, to­
gether with the employment and discharge of any and all
personnel including “cottage parents” shall be under the
West Virginia department of welfare. The salary of each
person so employed shall be reasonable and be determined
by the department, and when approved by the board of
supervisors shall be certified for payment as is provided in
section six hereof. In advance of the submission by the
board of supervisors of the estimate of all monetary needs
of the Cabell County youth center to the county court as
provided in section six hereof, the West Virginia department
of welfare shall furnish to the board of supervisors an
estimate of all reasonable monetary needs of the foster
homes division for the next fiscal year, said estimate shall
cover all anticipated costs for services for all employees
and personnel employed in the reasonable operation of said
foster homes, and all other reasonable expenses incident
thereto, and which said estimate shall be certified to the board of supervisors and by that board included in the estimate rendered to the county court of Cabell County as 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.
§1. Definitions.

1. Unless the context clearly indicates otherwise:

2. "Board" means the board of park commissioners of the city of Huntington.

3. "City" means the city of Huntington, in the counties of Cabell and Wayne.

4. "Commissioners" means the commissioners of the board of park commissioners of the city of Huntington.

5. "Control" means the right and authority to manage, direct, order and otherwise exercise dominion over.

6. "Park district" means the area within the corporate boundaries of the city of Huntington, as the boundaries are, or may be in the future, established.

7. "Park system" means public parks, arboretums, arenas, athletic fields and facilities, cemeteries, concession stands, gardens, golf courses, museums, parkways and boulevards, playgrounds, ponds and lakes, restaurants and lodges, skating rinks, skiing facilities, stadiums, theaters, zoos and other public park and recreational facilities.

8. "Public office" means any elective office, whether federal, state or municipal, where the office holder is elected by the public at large and is obligated to perform duties as an office holder.

§2. 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 the city of Huntington, as heretofore created and established
by the acts hereby amended and reenacted, shall be to establish, own, develop and operate a park system for the benefit, health, safety, welfare, pleasure and relaxation of the inhabitants of the park district.

(b) The board shall consist of six commissioners who shall be elected and continue in office as follows:

(1) Commissioners shall be nominated and elected in the general election for state officers on the first Tuesday after the first Monday in November, and in the manner prescribed by the general law for the nomination and election of district officers and shall be elected for terms of six years. Two of said commissioners shall be elected every two years to fill staggered terms of office due to expire as heretofore established by the acts hereby amended and reenacted. Each commissioner's term shall commence on the first day of January following his election and continue until his successor is elected and qualified.

(2) The commissioners in office upon the effective date of this act under the authority of the acts hereby amended and reenacted, shall continue in office for the term for which they were elected.

(c) Not more than three commissioners shall be members of the same political party.

(d) No commissioner shall hold any other elected public office.

(e) Commissioners shall receive no compensation for their services as commissioners, but they shall be entitled to reimbursement for all reasonable and necessary expenses actually incurred in the performance of their duties as commissioners.

(f) Commissioners shall have no personal financial interest, directly or indirectly, in any contract entered into by the board, or hold any remunerative position in connection with the establishment, construction, improvement, extension, development, maintenance or operation of any of the property under their control as commissioners.
§3. Vacancies in office of park commissioners.

Any vacancy which may occur in the office of park commissioner, by death, resignation, refusal to serve, or otherwise, shall be filled by the board of park commissioners at its first regular meeting thereafter, by appointment of a suitable person, who is a member of the same political party as the board member whose death, resignation, refusal to serve or otherwise shall have caused the vacancy, and the person so appointed shall hold office until the next election for park commissioners, when a person shall be elected for the remainder of the unexpired 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.

(a) After appointment or election, and before entering upon his duties as commissioner, each new commissioner shall take the following oath as administered by the clerk of the city of Huntington:

"I __________ do solemnly swear that I will faithfully perform the duties as a member of the board of park commissioners of the city of Huntington during the term for which I was elected, to the best of my ability according to law."

(b) At the board's first meeting and every year thereafter, the board shall elect one of its members as president, and another member as vice president. The board shall elect a secretary who need not be a member of the board, as well as elect a member of the board who shall serve as treasurer. The board shall have the power to appoint from among its members such other officers as it deems necessary and to delegate such duties and authority to these other officers as is consistent with carrying out the purpose of this charter. Any officer may be removed from office, although not relieved of his duties as a commissioner, by a vote of the majority of commissioners present and voting.

(c) The officers of the board shall have the following specified duties and any duty which is reasonably inferred there-
from and which is consistent with carrying out the purposes of this charter.

(1) President — The president shall perform such duties as ordinarily devolve upon the presiding officer of a deliberative body, except that he shall have a vote upon each and every question, as every other commissioner, but he shall have only one vote on each question. Additionally, the president shall:

(a) Act as chief administrative officer and legal representative of the board; (b) represent and speak for the board to other organizations and to the public; (c) appoint committees and delegate duties; (d) sign letters or documents necessary to carry out the will of the board.

(2) Vice President — The vice president shall assume the duties of the president in case of the absence or incapacity of the president and shall become president on the death, resignation or permanent incapacity of the president as determined by the board.

(3) Secretary — The Secretary shall be the chief recording and corresponding officer and the custodian of the records of the board. The duties of the secretary shall be to: (a) Take careful and authentic notes of the proceedings of the meetings as a basis for preparing the minutes; (b) prepare and certify the correctness of the minutes and enter them in the official minute book; (c) read or circulate the minutes to the board for correction and approval; (d) enter any corrections approved by the commissioners in the minute book and initial them; (e) record and attest by his signature the approved minutes as the official minutes of the board, with the date of approval; (f) provide the presiding officer of the assembly with the exact wording of a pending motion or of one previously acted on; (g) prepare a list of members and call the roll when directed by the presiding officer; (h) read all papers, documents, or communications as directed by the presiding officer; (i) bring to each meeting the minute book, a copy of ordinances, rules, and policies, a list of the members, a list of standing and special committees, and a copy of the parliamentary authority adopted by the organization; (j) search the minutes for information requested by officers or members; (k) assist the presiding officer before each meeting in preparing a detailed agenda;
(l) preserve all records, reports, and official documents of the board except those specifically assigned to the custody of others as well as preserve all papers containing evidence of title, contracts and obligations; (m) prepare and send required notices of meetings and proposals; (n) provide the chairman of each special committee with a list of his committee members, a copy of the motion referring the subject to the committee, and instructions and other documents that may be useful; (o) provide the chairman of each standing committee with a copy of all proposals referred to it, instructions, or material that may be useful; (p) authenticate official documents by his signature; (q) carry on the official correspondence of the board as directed, except correspondence assigned to other officers; (r) make available the minute book for public inspection as a public record; (s) codify and preserve all ordinances enacted by the board.

For this service the secretary, who is not a commissioner, may receive such compensation as the board may allow. Before entering upon the duties of his office, the secretary shall enter into a bond with one or more sureties deemed sufficient by the board and approved by the board, conditioned upon the faithful performance of his duties, the bond to be payable to the board of park commissioners of the city of Huntington, in such penal sum as the board determines, which bond shall be filed with the board for safekeeping. In the secretary's absence, the board may appoint a secretary pro tempore.

(4) Treasurer — The treasurer shall be responsible for the collection, safekeeping, investing and expenditure of all funds and assets of the board, and for keeping an accurate financial record thereof which record shall be available for public inspection. Before entering upon the duties of his office, the treasurer shall enter into a bond with one or more sureties deemed sufficient by the board, and approved by the board, conditioned upon the faithful discharge of his duties and the accounting for and paying over, as may be required, all moneys which may come into his possession by virtue of his office. Such bond shall be in such penal sum as the board may require, payable to the board of park commissioners of the city of Huntington, and filed with the board for safekeeping.
§5. Meetings; quorum; parliamentary authority; office.

(a) The commissioners shall select a regular time and place for meetings of the board which meetings shall be open to the public. Not less than four members shall constitute a quorum to transact business. Special meetings, also open to the public, may be called by the president, or at the request of two members, by the secretary. The concurrence of four members of the board shall be required to decide all questions involving the expenditure of money.

(b) All meetings of the board shall be conducted under the rules of parliamentary procedure as established by the Sturgis Standard Code of Parliamentary Procedure.

(c) The board shall have and maintain an office in a location of its own choosing in facilities presently owned by the board and which office shall be open to the public during normal business hours.

§6. Board a public corporate body; perpetual existence; seal; powers.

The board of park commissioners of the city of Huntington shall be a public corporate body, although not a municipal corporation, and shall have perpetual existence and a common seal. The board shall have powers to:

(1) Purchase, hold, own, sell, convey or lease or take lease of real or personal property;

(2) Receive any gift, grant, donation, bequest, devise or trust funds;

(3) Sue and be sued;

(4) Contract and be contracted with;

(5) Do any and all things and acts which may be necessary, appropriate, convenient or incidental to carry out and effectuate the purposes and provisions of this charter;

(6) Retain complete and exclusive control and management of all of the properties owned by the board and dispose of the same as in the board’s opinion will best serve the purposes of this charter and the interests of the public;
(7) Acquire in the board's name by purchase, lease, or by exercise of the power of eminent domain, or otherwise, such lands, structures or bodies of water, located anywhere within the state of West Virginia, as the board shall determine to be necessary, appropriate, convenient or incidental to the establishment, construction, improvement, extension, development, maintenance or operation of a park system;

(8) Establish, construct, improve, extend, develop, maintain and operate a park system;

(9) Employ such persons as, in its opinion, may be necessary for the establishment, construction, improvement, extension, development, maintenance, operation or management of the property under its control, at such wages, salaries or fees as it shall deem proper, and the board shall have full control of all employees;

(10) Promulgate those ordinances, rules and regulations necessary to maintain the property belonging to the board as places of beauty, education and recreation or necessary to promote the health, property, lives, decency, morality and good order of the independent park district, its inhabitants and members of the general public making use of such property owned or controlled by the board, or necessary to regulate the use of or driving upon the property owned or controlled by the board;

(11) Abate, or cause to be abated, all nuisances affecting the board's property or persons thereupon;

(12) Regulate or prohibit the placing of signs, billboards, posters and advertisements upon the board's property, or adjacent thereto;

(13) Keep the board's property in good order and free from obstruction for the use and benefit of the public;

(14) Construct, improve, maintain, repair, operate, curb or recurb, pave or repave, grade or regrade, surface or re-surface roads, bridges, sewers, culverts, sidewalks, public ways, easements and other public works upon lands controlled or owned by the board;

(15) Enter into contracts, agreements, leases and other
legal obligations extending beyond a period of one fiscal year; provided that the contract, agreement, lease or other legal obligation does not require the expenditure of tax revenues;

(16) Enter into intergovernmental agreements as any municipal corporation would be so entitled to enter into according to law and under such conditions as are required by law of municipal corporations before they enter intergovernmental agreements; provided, every such intergovernmental agreement shall, prior to and as a condition precedent to its becoming effective, be submitted to the attorney general of the state of West Virginia who shall determine whether the agreement is in proper form and is compatible with the laws of this state;

(17) Provide by contract with the city of Huntington for the joint construction of sewers and other public works upon property owned or controlled by the board, to be paid for by joint funds;

(18) Spend moneys of the board to effectuate the purposes set forth in this charter.

§7. Financing and financial powers.

The board shall have the following powers to:

(1) Make reasonable charges to the public for services offered or goods sold by the board or for the privilege of using any of the recreational or other facilities provided in parks or upon other lands owned or controlled by the board.

(2) Annually levy on each one hundred dollars of the assessed valuation of the property taxable in said park district, according to the last assessment thereof for state and county purposes, as follows:

On Class 1 property, one and one-half cents; on Class II property, three cents; on Class IV property, six cents; except that the board may levy a lesser amount, in which case the above levies shall be reduced proportionately. These levies shall be made at the time and in the manner provided by article eight, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; except that
the levies shall be included in the maximum rates for the city of Huntington as established by law.

After the board has made the levy, it shall certify to the finance director of the city of Huntington the amount of the said levy, and the finance director shall thereupon extend the levy upon the tax tickets, and all levies made by the board shall be collected by the finance director who shall occupy a fiduciary relationship with the board, and then such levy funds shall be paid to the board upon written order of the board signed by the president of the board and countersigned by the secretary of the board.

(3) Assess the cost of improvements to or construction of streets, sidewalks, sewers, curbs, alleys, public ways or easements, or portions thereof, upon the abutting property owners whose property lies within the park district. Such assessments shall require approval of a majority of the commissioners present and voting, and shall be commenced and conducted in such manner as is prescribed by article eighteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended.

(4) The city of Huntington and the counties of Cabell and Wayne are hereby empowered and authorized to issue, in the manner prescribed by law, revenue bonds or general obligation bonds, for the purpose of raising funds to establish, construct, improve, extend, develop, maintain or operate, a system of public parks and recreational facilities for the city or counties, or to refund any bonds of the city or counties, the proceeds of which were expended in the establishing, constructing, improving, extending, developing, maintaining or operating of such public park and recreation system or any part thereof. Any bonds issued for any of the purposes stated in this section shall contain in the title or subtitle thereto the words “public park and recreation bonds,” in order to identify the same, and shall be of such form, denomination and maturity and shall bear such rate of interest as shall be fixed by ordinance of the governing body of the city or counties. The governing body may provide for the issuance of bonds for other lawful purposes of the city or counties in the same ordinance in which provision shall be made for the issuance of
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.

Whenever the governing body of the city or counties and
65 the requisite majority of the legal votes cast at the election
66 thereon shall authorize in the manner prescribed by law, the
67 issuance of bonds for the purpose of establishing, constructing,
68 improving, extending, developing, maintaining or operating, or
69 any combination of the foregoing, a system of public parks and
70 recreational facilities for the city or counties, or for refunding
71 any outstanding bonds, the proceeds of which were applied to
72 any of said purposes, said bonds shall be issued and delivered
73 to the board to be by it sold in the manner prescribed by law,
74 and the proceeds thereof shall be paid into the treasury of the
75 board, and the same shall be applied and utilized by the board
76 for the purposes prescribed by the ordinance authorizing the
77 issuance of such bonds. In any ordinance for the issuance of
78 bonds for such purposes, it shall be a sufficient statement of
79 the purposes for creating the debt to specify that the same is
80 for purposes of establishing, constructing, improving, extend-
81 ing, developing, maintaining or operating, or any combination
82 of the foregoing, a public park and recreation system for the
83 city or counties, without specifying the particular establish-
84 ment, construction, improvement, extension, development,
85 maintenance or operation contemplated; but an ordinance for
86 refunding bonds shall designate the issue and the number of
87 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.
(6) Create trusts of such kind as will expedite the efficient management of the property and other assets owned or controlled by the board. The trustee, whether individual or corporate, in any such trust shall have a fiduciary relationship with the board and may be removed by the board for good cause shown or for a breach of the fiduciary relationship with the board.

§8. Law enforcement.

(a) The board is authorized and empowered to employ as many park rangers as the board shall deem proper and necessary. Park rangers shall have the power to make arrests for violations of ordinances promulgated by the board upon the property under the jurisdiction of the board. Park rangers may not carry a gun without obtaining a license therefor as required by law.

(b) Police officers employed by the city of Huntington, members of the West Virginia department of public safety, sheriff's deputies and constables when acting within their respective counties of Cabell or Wayne, are hereby authorized and empowered to make arrests for violations of ordinances promulgated by the board upon property within the park district which is under the jurisdiction of the board; and all of the foregoing officers of the law, except members of the Huntington police department, are hereby authorized and empowered to make arrests for violations of ordinances promulgated by the board upon property under the jurisdiction of the board which is outside of the park district.

(c) For violations of board ordinances committed within the city of Huntington, jurisdiction of all warrants relating thereto to be issued is hereby granted to the municipal judge of the city of Huntington; further, all persons arrested under such ordinances shall be tried by the municipal judge of the city of Huntington. For violations of board ordinances committed outside of the city of Huntington, jurisdiction of all warrants relating thereto to be issued is hereby granted to such courts as have criminal jurisdiction of misdemeanors committed upon property outside the city of Huntington which is owned or controlled by the board.
§9. Title to property.

1 The title to all parks, parkways, playgrounds, athletic fields, cemeteries, boulevards and other property, real, personal and mixed, vested in the board of park commissioners under the power and authority of the acts hereby amended and reenacted shall be and remain vested in the board of park commissioners of the city of Huntington as herein reconstituted.

8 Notwithstanding any provisions of this chapter to the contrary, the board is hereby authorized and empowered to grant and convey to any municipality, town, village, county or to the state of West Virginia, all right, title, control and interest, jurisdiction and maintenance of any streets or boulevards owned by the board, whenever the board deems such action to be necessary or convenient and proper and in the 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 lines for a state park for the use and benefit of the public,
not exceeding ten acres, situate in Winfield district in the
county of Marion, near the mouth of Prickett's creek, but
so as to include the site of Prickett's Fort, which was erected
for the protection of the pioneers of the Upper Monongahela
valley from the ravages of Indian warfare. It is further
authorized to procure an option, or options, thereon; to
contract for the payment of the purchase price out of any
moneys which may hereafter be appropriated for that purpose;
to participate in, and plan for, recreational and historical
development of Prickett's Fort; and, to assist The Prickett's
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.

The county court of Putnam County is hereby authorized
and empowered to establish, equip, maintain, operate and
manage an emergency clinic and hospital and is further
authorized and empowered to enter into agreements or con-
tracts with other hospitals, public or private to effectuate
such purpose.
§2. Appropriation and levy.

The cost thereof and of so doing may be provided for by said county court out of any funds in the hands of said court not otherwise appropriated or may be provided for by special levy.

§3. Care of poor.

Such court shall at all times reserve in said buildings all such room as shall be necessary to care for the poor, who are a county charge, as prescribed by law.

§4. Discrimination prohibited.

Said court shall make no discrimination among the patients 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.

The Legislature hereby finds and declares that the sale and conveyance of portions of that certain tract or parcel of land known as the Roane county industrial park, formerly the Roane county airport, located on the waters of Spring creek, in Spencer magisterial district, Roane
county, by the county court of Roane county for industrial development purposes for less than an adequate consideration and notwithstanding any provision of general law relating to sale or lease of lands by county courts to the contrary, is for a public purpose and is necessary for the public good. The Legislature hereby finds and declares that said land is peculiarly suited for such use and will, if so sold for such use, produce tax revenues for said county equal to or in excess of the fair market value of the said property. The Legislature hereby finds and declares that the said county court has negotiated, subject to authorization by the Legislature, the sale of a portion thereof containing approximately five acres to said Interstate Manufacturing Company, a corporation, for the price and sum of three thousand dollars and the sale of another portion thereof containing approximately thirty-eight acres to said Norris Industries, Inc., a corporation, for the price and sum of ten thousand dollars; that the said proposed sales include also the necessary ingress, egress and utility easements to and from said respective properties and the public highway and utility lines; that a substantial investment will be necessary by said Norris Industries, Inc., a corporation, to level said land and improve the same for industrial use; that both of said corporations will provide substantial employment, and income and tax revenues to said county; and that in the particular circumstances existing in regard to the said property, the method of accomplishing its industrial development, which is hereby declared to be a public purpose, would be best accomplished by the method set forth in this section.

Based upon the above legislative findings and declarations, the county court of Roane county, notwithstanding any provision of general law relating to sale or lease of lands by county courts to the contrary, is hereby authorized and empowered to sell and convey a portion containing approximately five acres of that certain tract or parcel of land known as the Roane county industrial park, situate in Spencer magisterial district, Roane county, to Interstate Manufacturing Company, a corporation, for the price and sum of three thousand dollars, under
such other terms and conditions as, in the sole discretion of the said county court, will insure the use of the said land for the public purpose of industrial development.

Based upon the above legislative findings and declarations, the county court of Roane county, notwithstanding any provision of general law relating to sale or lease of lands by county courts to the contrary, is hereby authorized and empowered to sell and convey a portion containing approximately thirty-eight acres of that certain tract or parcel of land known as the Roane county industrial park, formerly the Roane county airport, situate in Spencer magisterial district, Roane county, to Norris Industries, Inc., a corporation, for the price and sum of ten thousand dollars, under such other terms and conditions as in the sole discretion of the said county court, will insure the use of the said land for the public purpose 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.

The City of Welch, a municipal corporation, in the County of McDowell, West Virginia, is hereby authorized to lease a parcel of the real property conveyed to it by the Norfolk and Western Railway Company by deed dated February 16, 1962, and of record in Deed Book No. 256, page 287, in the Office of the Clerk of the County Court of McDowell County, which parcel to be leased is described as follows:

Beginning at point in the northeasterly boundary of land conveyed to the City of Welch by the Norfolk and Western Railway Company, recorded in the Office of the Clerk of the County Court of McDowell County in Deed Book No. 256, Page No. 287, at about Station 710+48.70; thence with said property line for a distance of 250.00' on a radius of 1128.10'; thence with said property line for a distance of 80.00' to a point on a radius curve of 421.67'; thence S 41° 00' E 47.50' to a point in the northwest edge of the sidewalk on the northwesterly end of the City Hall Building of the City of Welch; thence N 49° 00' E 247.00', more or less, to a point in the street 12.30' from the northeasterly corner of the Welch City Hall Building; thence S 41° 00' E 67.00' parallel to and 4' from the eastern line of the aforesaid Welch City Hall to the center line of the old Norfolk and Western Railway tracks; thence with the center line of the aforesaid tracks 120.00' to a point; thence leaving center line of aforesaid tracks and with the western line of Parcel No. 1, N 55° 00' W 120.00' to the point of beginning, containing 0.51 acres, more or less.
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.
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

Resolves 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
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 trials 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.
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.
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.

Requesting the Governor to designate May 1 of each year as LAW DAY U.S.A.

WHEREAS, In order to re dedicate 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 syl­
labus of the points adjudicated in each case in which an opinion
is written and in which a majority of the justices thereof con­
curred, 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 Legis­
lature may prescribe by law whether the election of such
judges is to be on a partisan or nonpartisan basis. Upon the ef­
fective 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 cir­
cuit. 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 elec­
tion 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 supersedeas 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.


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.


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 heretofore established is hereby continued. The court shall appoint a director thereof and such assistants and secretaries as it deems necessary to perform the duties of the office as specified in section seventeen of this article and such other duties as may be specified by the court. Such appointees shall serve at the will and pleasure of the court and shall receive such compensation as may be fixed from time to time by the court. They shall also be reimbursed out of the state treasury for all reasonable and necessary expenses actually incurred for travel, meals and lodging incident to the performance of their duties as such appointees. The director, when so directed by the court, shall cause a seal of office to be made for such office of such design as the court 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 director or assistant director shall engage directly or indirectly 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.

Notwithstanding any charter provision to the contrary, any city may provide by charter provision and any municipality may provide by ordinance for the creation and maintenance of a police or municipal court, for the appointment or election of an officer to be known as police court judge or municipal court judge, and for his compensation, and authorize the exercise by such court or judge of such of the jurisdiction and the judicial powers, authority and duties set forth in section one of this article and similar or related judicial powers, authority and duties enumerated in any applicable charter provisions, as set forth in the charter or ordinance. Such court or judge shall in all events have the criminal jurisdiction of a justice of the 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.

Persons in the following categories shall not be required to obtain licenses or permits as indicated:

(a) Bona fide resident landowners or their resident children, or resident parents, or bona fide resident tenants of such land, may hunt, trap or fish on their own land during open season in accordance with the laws and regulations applying to such hunting, trapping and fishing without obtaining a license to do so unless such lands have been designated as a wildlife refuge or preserve.

(b) Any bona fide resident of this state who is totally blind may fish in this state without obtaining a fishing license to do so. A written statement or certificate from a duly licensed physician of this state showing the said resident to be totally blind shall serve in lieu of a fishing license and shall be carried on the person of said resident at all times while he is fishing in this state.

(c) All residents of West Virginia on active duty in the armed forces of the United States of America, while on leave or furlough, shall have the right and privilege to hunt, trap or fish in season in West Virginia without obtaining a license to do so. Leave or furlough papers shall serve in lieu of any such license and shall be carried on the person at all times while trapping, hunting or fishing.

(d) In accordance with the provisions of section twenty-seven of this article, any resident sixty-five years of age or older shall not be required to have a license to hunt, trap or fish during the legal seasons in West Virginia, but in lieu of
such license any such person shall at all times while hunting,
trapping or fishing, carry on his person a card issued by the
director stating his name, address and date of birth.

(e) Residents of the state of Maryland who carry hunting or
fishing licenses valid in that state may hunt or fish from the
West Virginia banks of the Potomac river without obtaining
licenses to do so, but such hunting or fishing shall be confined
to the fish and waterfowl of the river proper and not on its
tributaries: Provided, That the state of Maryland shall first
enter into a reciprocal agreement with the director extending a
like privilege of hunting and fishing on the Potomac river from
the Maryland banks of said river to licensed residents of West
Virginia, without requiring said residents to obtain Maryland
hunting and fishing licenses.

(f) Residents of the state of Ohio who carry hunting or fish-
ing licenses valid in that state may hunt or fish on the Ohio river
or from the West Virginia banks of said river without obtain-
ing licenses to do so, but such hunting or fishing shall be con-
fined to fish and waterfowl of the river proper and not on its
tributaries: Provided, That the state of Ohio shall first enter
into a reciprocal agreement with the director extending a like
privilege of hunting and fishing from the Ohio banks of said
river to licensed residents of West Virginia without requiring
said residents to obtain Ohio hunting and fishing licenses. In
the event the state of Ohio accords this privilege to residents
of West Virginia, such Ohio residents will not be required to
obtain the license provided for by section forty-two of this
article.

(g) Any resident of West Virginia who was honorably dis-
charged from the armed forces of the United States of Amer-
ica, and who receives a veteran's pension based on total
permanent service connected disability as certified to by
the veterans administration, shall be permitted to hunt, trap or
fish in this state without obtaining a license therefor. The di-
rector shall promulgate rules and regulations setting forth the
procedure for the certification of the veteran, manner of ap-
plying for and receiving the certification and requirements as
to identification while said veteran is hunting, trapping or
fishing.
(h) Any disabled veteran, who is a resident of West Virginia, and who, as certified to by the commissioner of motor vehicles, is eligible to be exempt from the payment of any fee on account of registration of any motor vehicle owned by such disabled veteran as provided for in section eight, article ten, chapter seventeen-a of this code, shall be permitted to hunt, trap or fish in this state without obtaining a license therefor. The director shall promulgate rules and regulations setting forth the procedure for the certification of the disabled veteran, manner of applying for and receiving the certification, and requirements as to identification while said disabled veteran is hunting, trapping or fishing.

(i) Any resident or in-patient in any state mental health, health or benevolent institution or facility may fish in this state, under proper supervision of the institution involved, without obtaining a fishing license to do so. A written statement or certificate signed by the superintendent of the mental health, health or benevolent institution or facility in which the resident or in-patient, as the case may be, is institutionalized shall serve in lieu of a fishing license and shall be carried on the person of the resident or in-patient at all times while he is fishing in this state.

Resolutions authorizing studies by the Joint Committee on Government and Finance.

(They may be found in the House and Senate Journals of the session, and are indexed under tabular indices of House Concurrent Resolutions in the Journals of the session.)

House Concurrent

8. Administration and personnel policies of the Department of Public Safety

9. Energy shortages, natural resources and the conservation thereof

10. Interest rates and finance charges
## DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

### Regular and First Extraordinary Sessions, 1974

#### HOUSE BILLS

<table>
<thead>
<tr>
<th>Bill No.</th>
<th>Chapter</th>
</tr>
</thead>
<tbody>
<tr>
<td>627</td>
<td>35</td>
</tr>
<tr>
<td>633</td>
<td>146</td>
</tr>
<tr>
<td>635</td>
<td>21</td>
</tr>
<tr>
<td>643</td>
<td>152</td>
</tr>
<tr>
<td>646</td>
<td>122</td>
</tr>
<tr>
<td>651</td>
<td>86</td>
</tr>
<tr>
<td>668</td>
<td>125</td>
</tr>
<tr>
<td>679</td>
<td>62</td>
</tr>
<tr>
<td>684</td>
<td>36</td>
</tr>
<tr>
<td>686</td>
<td>71</td>
</tr>
<tr>
<td>692</td>
<td>68</td>
</tr>
<tr>
<td>694</td>
<td>58</td>
</tr>
<tr>
<td>697</td>
<td>52</td>
</tr>
<tr>
<td>704</td>
<td>73</td>
</tr>
<tr>
<td>705</td>
<td>45</td>
</tr>
<tr>
<td>708</td>
<td>137</td>
</tr>
<tr>
<td>714</td>
<td>93</td>
</tr>
<tr>
<td>718</td>
<td>31</td>
</tr>
<tr>
<td>720</td>
<td>84</td>
</tr>
<tr>
<td>725</td>
<td>57</td>
</tr>
<tr>
<td>734</td>
<td>39</td>
</tr>
<tr>
<td>735</td>
<td>60</td>
</tr>
<tr>
<td>740</td>
<td>55</td>
</tr>
<tr>
<td>743</td>
<td>87</td>
</tr>
<tr>
<td>754</td>
<td>47</td>
</tr>
<tr>
<td>779</td>
<td>74</td>
</tr>
<tr>
<td>781</td>
<td>21</td>
</tr>
<tr>
<td>795</td>
<td>69</td>
</tr>
<tr>
<td>797</td>
<td>2</td>
</tr>
<tr>
<td>811</td>
<td>105</td>
</tr>
<tr>
<td>821</td>
<td>145</td>
</tr>
<tr>
<td>823</td>
<td>43</td>
</tr>
<tr>
<td>827</td>
<td>115</td>
</tr>
<tr>
<td>831</td>
<td>64</td>
</tr>
<tr>
<td>840</td>
<td>76</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Bill No.</th>
<th>Chapter</th>
</tr>
</thead>
<tbody>
<tr>
<td>841</td>
<td>107</td>
</tr>
<tr>
<td>842</td>
<td>144</td>
</tr>
<tr>
<td>844</td>
<td>46</td>
</tr>
<tr>
<td>849</td>
<td>1</td>
</tr>
<tr>
<td>860</td>
<td>4</td>
</tr>
<tr>
<td>897</td>
<td>148</td>
</tr>
<tr>
<td>902</td>
<td>14</td>
</tr>
<tr>
<td>907</td>
<td>10</td>
</tr>
<tr>
<td>910</td>
<td>66</td>
</tr>
<tr>
<td>912</td>
<td>6</td>
</tr>
<tr>
<td>913</td>
<td>81</td>
</tr>
<tr>
<td>923</td>
<td>85</td>
</tr>
<tr>
<td>937</td>
<td>117</td>
</tr>
<tr>
<td>939</td>
<td>111</td>
</tr>
<tr>
<td>941</td>
<td>126</td>
</tr>
<tr>
<td>972</td>
<td>23</td>
</tr>
<tr>
<td>980</td>
<td>119</td>
</tr>
<tr>
<td>984</td>
<td>95</td>
</tr>
<tr>
<td>986</td>
<td>136</td>
</tr>
<tr>
<td>998</td>
<td>106</td>
</tr>
<tr>
<td>1004</td>
<td>22</td>
</tr>
<tr>
<td>1007</td>
<td>5</td>
</tr>
<tr>
<td>1015</td>
<td>118</td>
</tr>
<tr>
<td>1023</td>
<td>17</td>
</tr>
<tr>
<td>1024</td>
<td>8</td>
</tr>
<tr>
<td>1029</td>
<td>90</td>
</tr>
<tr>
<td>1032</td>
<td>75</td>
</tr>
<tr>
<td>1043</td>
<td>89</td>
</tr>
<tr>
<td>1044</td>
<td>48</td>
</tr>
<tr>
<td>1047</td>
<td>34</td>
</tr>
<tr>
<td>1072</td>
<td>56</td>
</tr>
<tr>
<td>1073</td>
<td>139</td>
</tr>
<tr>
<td>1079</td>
<td>96</td>
</tr>
<tr>
<td>1080</td>
<td>26</td>
</tr>
<tr>
<td>1081</td>
<td>38</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Bill No.</th>
<th>Chapter</th>
</tr>
</thead>
<tbody>
<tr>
<td>1091</td>
<td>31</td>
</tr>
<tr>
<td>1094</td>
<td>113</td>
</tr>
<tr>
<td>1101</td>
<td>30</td>
</tr>
<tr>
<td>1112</td>
<td>100</td>
</tr>
<tr>
<td>1115</td>
<td>59</td>
</tr>
<tr>
<td>1125</td>
<td>11</td>
</tr>
<tr>
<td>1139</td>
<td>99</td>
</tr>
<tr>
<td>1140</td>
<td>103</td>
</tr>
<tr>
<td>1141</td>
<td>102</td>
</tr>
<tr>
<td>1147</td>
<td>28</td>
</tr>
<tr>
<td>1149</td>
<td>29</td>
</tr>
<tr>
<td>1152</td>
<td>33</td>
</tr>
<tr>
<td>1153</td>
<td>3</td>
</tr>
<tr>
<td>1178</td>
<td>70</td>
</tr>
<tr>
<td>1180</td>
<td>101</td>
</tr>
<tr>
<td>1189</td>
<td>44</td>
</tr>
<tr>
<td>1199</td>
<td>24</td>
</tr>
<tr>
<td>1227</td>
<td>94</td>
</tr>
<tr>
<td>1229</td>
<td>134</td>
</tr>
<tr>
<td>1243</td>
<td>42</td>
</tr>
<tr>
<td>1270</td>
<td>32</td>
</tr>
<tr>
<td>1271</td>
<td>123</td>
</tr>
<tr>
<td>1278</td>
<td>19</td>
</tr>
<tr>
<td>1279</td>
<td>147</td>
</tr>
<tr>
<td>1283</td>
<td>140</td>
</tr>
<tr>
<td>1287</td>
<td>150</td>
</tr>
<tr>
<td>1305</td>
<td>18</td>
</tr>
<tr>
<td>1307</td>
<td>27</td>
</tr>
<tr>
<td>1343</td>
<td>132</td>
</tr>
<tr>
<td>1351</td>
<td>63</td>
</tr>
<tr>
<td>1362</td>
<td>149</td>
</tr>
<tr>
<td>1363</td>
<td>108</td>
</tr>
<tr>
<td>1364</td>
<td>133</td>
</tr>
<tr>
<td>1365</td>
<td>37</td>
</tr>
</tbody>
</table>

### First Extraordinary Session, 1974

<table>
<thead>
<tr>
<th>Bill No.</th>
<th>Chapter</th>
</tr>
</thead>
<tbody>
<tr>
<td>215</td>
<td>3</td>
</tr>
<tr>
<td>216</td>
<td>2</td>
</tr>
<tr>
<td>219</td>
<td>1</td>
</tr>
</tbody>
</table>

#### SENATE BILLS

<table>
<thead>
<tr>
<th>Bill No.</th>
<th>Chapter</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>80</td>
</tr>
<tr>
<td>5</td>
<td>78</td>
</tr>
<tr>
<td>15</td>
<td>77</td>
</tr>
<tr>
<td>19</td>
<td>138</td>
</tr>
<tr>
<td>23</td>
<td>128</td>
</tr>
<tr>
<td>37</td>
<td>109</td>
</tr>
<tr>
<td>39</td>
<td>135</td>
</tr>
<tr>
<td>42</td>
<td>116</td>
</tr>
<tr>
<td>52</td>
<td>72</td>
</tr>
<tr>
<td>60</td>
<td>143</td>
</tr>
<tr>
<td>76</td>
<td>83</td>
</tr>
<tr>
<td>79</td>
<td>129</td>
</tr>
<tr>
<td>81</td>
<td>124</td>
</tr>
<tr>
<td>83</td>
<td>88</td>
</tr>
<tr>
<td>107</td>
<td>13</td>
</tr>
<tr>
<td>139</td>
<td>142</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Bill No.</th>
<th>Chapter</th>
</tr>
</thead>
<tbody>
<tr>
<td>158</td>
<td>63</td>
</tr>
<tr>
<td>159</td>
<td>131</td>
</tr>
<tr>
<td>163</td>
<td>40</td>
</tr>
<tr>
<td>236</td>
<td>97</td>
</tr>
<tr>
<td>239</td>
<td>127</td>
</tr>
<tr>
<td>240</td>
<td>12</td>
</tr>
<tr>
<td>257</td>
<td>141</td>
</tr>
<tr>
<td>258</td>
<td>16</td>
</tr>
<tr>
<td>303</td>
<td>72</td>
</tr>
<tr>
<td>307</td>
<td>121</td>
</tr>
<tr>
<td>309</td>
<td>61</td>
</tr>
<tr>
<td>325</td>
<td>104</td>
</tr>
<tr>
<td>329</td>
<td>49</td>
</tr>
<tr>
<td>337</td>
<td>50</td>
</tr>
<tr>
<td>350</td>
<td>41</td>
</tr>
<tr>
<td>352</td>
<td>112</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Bill No.</th>
<th>Chapter</th>
</tr>
</thead>
<tbody>
<tr>
<td>362</td>
<td>9</td>
</tr>
<tr>
<td>367</td>
<td>15</td>
</tr>
<tr>
<td>369</td>
<td>151</td>
</tr>
<tr>
<td>371</td>
<td>120</td>
</tr>
<tr>
<td>372</td>
<td>98</td>
</tr>
<tr>
<td>387</td>
<td>79</td>
</tr>
<tr>
<td>396</td>
<td>82</td>
</tr>
<tr>
<td>403</td>
<td>53</td>
</tr>
<tr>
<td>423</td>
<td>130</td>
</tr>
<tr>
<td>473</td>
<td>20</td>
</tr>
<tr>
<td>482</td>
<td>25</td>
</tr>
<tr>
<td>503</td>
<td>67</td>
</tr>
<tr>
<td>506</td>
<td>110</td>
</tr>
<tr>
<td>521</td>
<td>54</td>
</tr>
<tr>
<td>522</td>
<td>92</td>
</tr>
<tr>
<td>539</td>
<td>7</td>
</tr>
</tbody>
</table>

[971]
## TOPICAL INDEX

### ACTS AMENDED:

<table>
<thead>
<tr>
<th>Acts</th>
<th>Sess.</th>
<th>Ch.</th>
<th>Sec.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1925 Reg.</td>
<td>26</td>
<td>1-9</td>
<td>Huntington Park Commission</td>
<td>919</td>
</tr>
<tr>
<td>1927 Reg.</td>
<td>48</td>
<td>2</td>
<td>Prickett’s Fort State Park Commission</td>
<td>931</td>
</tr>
<tr>
<td>1963 Reg.</td>
<td>202</td>
<td>3, 4</td>
<td>Cabell County Youth Center</td>
<td>914</td>
</tr>
<tr>
<td>1970 Reg.</td>
<td>35</td>
<td>2, 5, 12</td>
<td>Hancock County Common Pleas Court</td>
<td>357</td>
</tr>
<tr>
<td>1970 Reg.</td>
<td>38</td>
<td>9</td>
<td>Salary of Judge, Intermediate Court of Kanawha County</td>
<td>360</td>
</tr>
<tr>
<td>1971 Reg.</td>
<td>36</td>
<td>2, 4</td>
<td>Intermediate Court of McDowell County—Jurisdiction and salary of Judge</td>
<td>360</td>
</tr>
<tr>
<td>1972 Reg.</td>
<td>30</td>
<td>2, 24</td>
<td>Jurisdiction and salary of Judge, Cabell County Common Pleas Court</td>
<td>352</td>
</tr>
<tr>
<td>1972 Reg.</td>
<td>31</td>
<td>2, 4</td>
<td>Domestic Relations Court of Cabell County</td>
<td>353</td>
</tr>
<tr>
<td>1972 Reg.</td>
<td>38</td>
<td>3, 5, 8, 9</td>
<td>Intermediate Court of Raleigh County</td>
<td>362</td>
</tr>
<tr>
<td>1973 Reg.</td>
<td>10</td>
<td>2, 4</td>
<td>Transferring amounts between items of appropriations</td>
<td>17</td>
</tr>
<tr>
<td>1973 Reg.</td>
<td>10</td>
<td>2, 4</td>
<td>Supplementary appropriation—Governor’s Office</td>
<td>19</td>
</tr>
<tr>
<td>1973 Reg.</td>
<td>31</td>
<td>1, 2</td>
<td>Cabell County Common Pleas Court</td>
<td>352</td>
</tr>
</tbody>
</table>

### ADMINISTRATORS:

See Executors and Administrators.

### AGRICULTURE:

- Commercial fertilizer
  - General provisions | 1 | 1
  - See Commercial Fertilizers.

### AIRPORTS:

- County airport authorities
  - Powers generally | 2 | 14
  - Power to employ attorneys | 2 | 14

### ALCOHOLIC LIQUORS:

- Taxation
  - Purchases outside corporate limits of municipalities | 3 | 16
  - Collection and distribution | 3 | 16
  - Limitations | 3 | 16
  - Rate | 3 | 16

### APPROPRIATIONS:

- Supplementary
  - Governor’s Office—Emergency Relief | 5 | 20
  - Transferring amounts within total appropriation
    - Alcohol Beverage Control Commissioner | 4 | 19
    - Andrew S. Rowan Memorial Home | 4 | 18
    - Attorney General | 4 | 18
    - Denmar State Hospital | 4 | 19
    - Forestry Camp for Boys (Davis) | 4 | 18
    - Hopemont State Hospital | 4 | 19
    - Huttonsville Correctional Center | 4 | 18
    - State Tax Department | 4 | 18
    - West Virginia Children’s Home | 4 | 18
    - West Virginia Racing Commission | 4 | 19

### ASSESSOR:

- Compensation | 18 | 333
- Classification of counties for purpose of determining | 18 | 331
<table>
<thead>
<tr>
<th>BANKING INSTITUTIONS:</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Actions, defined</td>
<td>6</td>
<td>45</td>
</tr>
<tr>
<td>Charges allowed in certain cases</td>
<td>12</td>
<td>60</td>
</tr>
<tr>
<td>Defined</td>
<td>6</td>
<td>45</td>
</tr>
<tr>
<td>Definitions generally</td>
<td>6</td>
<td>45</td>
</tr>
<tr>
<td>Industrial banks</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Advertising</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Requirements and prohibitions</td>
<td>6</td>
<td>42</td>
</tr>
<tr>
<td>Application for authority to organize</td>
<td>6</td>
<td>27</td>
</tr>
<tr>
<td>Contents</td>
<td>6</td>
<td></td>
</tr>
<tr>
<td>Forms</td>
<td>6</td>
<td>28</td>
</tr>
<tr>
<td>Board of banking and financial institutions</td>
<td>6</td>
<td>28</td>
</tr>
<tr>
<td>Investigation of proposed Industrial bank</td>
<td>6</td>
<td></td>
</tr>
<tr>
<td>Bonds, surety</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Chief executive officer and other officers</td>
<td>6</td>
<td>39</td>
</tr>
<tr>
<td>Branch banks</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Penalties</td>
<td>6</td>
<td>37</td>
</tr>
<tr>
<td>Prohibited</td>
<td>6</td>
<td>36</td>
</tr>
<tr>
<td>Cash reserves</td>
<td>6</td>
<td>35</td>
</tr>
<tr>
<td>Citation</td>
<td>6</td>
<td>24</td>
</tr>
<tr>
<td>Definition</td>
<td>6</td>
<td>25</td>
</tr>
<tr>
<td>Depositors</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Federal deposit insurance</td>
<td>6</td>
<td>29</td>
</tr>
<tr>
<td>Termination</td>
<td>6</td>
<td>30</td>
</tr>
<tr>
<td>Directors</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Election</td>
<td>6</td>
<td>38</td>
</tr>
<tr>
<td>Minimum amount of stock to be owned by</td>
<td>6</td>
<td>39</td>
</tr>
<tr>
<td>Residence requirements</td>
<td>6</td>
<td>38</td>
</tr>
<tr>
<td>Dividends</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Declaration by directors</td>
<td>6</td>
<td>41</td>
</tr>
<tr>
<td>Payment</td>
<td>6</td>
<td>41</td>
</tr>
<tr>
<td>Federal deposit insurance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Requirements</td>
<td>6</td>
<td>29</td>
</tr>
<tr>
<td>Termination</td>
<td>6</td>
<td>30</td>
</tr>
<tr>
<td>Incorporation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Agreement of Incorporation</td>
<td>6</td>
<td>26</td>
</tr>
<tr>
<td>Application for authority to organize</td>
<td>6</td>
<td>27</td>
</tr>
<tr>
<td>Contents</td>
<td>6</td>
<td>27</td>
</tr>
<tr>
<td>Forms</td>
<td>6</td>
<td>28</td>
</tr>
<tr>
<td>Certificate, issuance</td>
<td>6</td>
<td>27</td>
</tr>
<tr>
<td>Incorporators, agreement</td>
<td>6</td>
<td>26</td>
</tr>
<tr>
<td>Procedure</td>
<td>6</td>
<td>26</td>
</tr>
<tr>
<td>Requirements</td>
<td>6</td>
<td>26</td>
</tr>
<tr>
<td>Insurance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Federal deposit Insurance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Requirements</td>
<td>6</td>
<td>29</td>
</tr>
<tr>
<td>Termination</td>
<td>6</td>
<td>30</td>
</tr>
<tr>
<td>Investigations of proposed Industrial bank</td>
<td>6</td>
<td>28</td>
</tr>
<tr>
<td>List of stockholders</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Kept by president, manager or treasurer</td>
<td>6</td>
<td>40</td>
</tr>
<tr>
<td>Open to inspection by any stockholder</td>
<td>6</td>
<td>40</td>
</tr>
<tr>
<td>Officers and employees</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bonds, surety</td>
<td>6</td>
<td>39</td>
</tr>
<tr>
<td>Election by directors</td>
<td>6</td>
<td>39</td>
</tr>
<tr>
<td>List of stockholders</td>
<td>6</td>
<td>40</td>
</tr>
<tr>
<td>Off premises facility</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Limited facility permitted</td>
<td>6</td>
<td>37</td>
</tr>
<tr>
<td>Powers</td>
<td>6</td>
<td>30</td>
</tr>
<tr>
<td>Limitation</td>
<td>6</td>
<td>30</td>
</tr>
<tr>
<td>Records, list of stockholders</td>
<td>6</td>
<td>40</td>
</tr>
<tr>
<td>Stock, limitation on purchases by stockholders</td>
<td>6</td>
<td>37</td>
</tr>
<tr>
<td>Topic</td>
<td>Ch.</td>
<td>Page</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>-----</td>
<td>------</td>
</tr>
<tr>
<td>Banking institutions—(continued):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Industrial banks—(continued):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Subrogation</td>
<td>6</td>
<td>37</td>
</tr>
<tr>
<td>Supervision and control</td>
<td>6</td>
<td>36</td>
</tr>
<tr>
<td>Installment notes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Interest charges</td>
<td>12</td>
<td>165</td>
</tr>
<tr>
<td>Negotiability</td>
<td>12</td>
<td>60</td>
</tr>
<tr>
<td>Interest</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Allowed</td>
<td>12</td>
<td>60</td>
</tr>
<tr>
<td>Legal rate of interest</td>
<td>12</td>
<td>164</td>
</tr>
<tr>
<td>Loans, interest allowed</td>
<td>12</td>
<td>60</td>
</tr>
<tr>
<td>Repayable in installments</td>
<td>12</td>
<td>165</td>
</tr>
<tr>
<td>Mobile units</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Banking from mobile units prohibited</td>
<td>7</td>
<td>51</td>
</tr>
<tr>
<td>Reserves</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Computation</td>
<td>6</td>
<td>49</td>
</tr>
<tr>
<td>Penalties for failure to maintain</td>
<td>6</td>
<td>50</td>
</tr>
<tr>
<td>Reports required</td>
<td>6</td>
<td>50</td>
</tr>
<tr>
<td>Required</td>
<td>6</td>
<td>49</td>
</tr>
<tr>
<td>Trust powers</td>
<td>6</td>
<td>48</td>
</tr>
<tr>
<td>Blennerhassett Historical Commission:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Advisory council generally</td>
<td>61</td>
<td>502</td>
</tr>
<tr>
<td>Duration of commission</td>
<td>61</td>
<td>502</td>
</tr>
<tr>
<td>Board of Regents:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>See Universities and Colleges.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Boards and Commissions:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Boards of examination or registration</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Compensation and expenses of members</td>
<td>96</td>
<td>640</td>
</tr>
<tr>
<td>Boards of Education:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>County boards of education</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Aging</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Transportation for participants in projects operated or approved by the commission on aging</td>
<td>116</td>
<td>683</td>
</tr>
<tr>
<td>Closing schools, authority for</td>
<td>116</td>
<td>682</td>
</tr>
<tr>
<td>Consolidation of schools, authority for</td>
<td>116</td>
<td>682</td>
</tr>
<tr>
<td>Control of schools generally</td>
<td>116</td>
<td>682</td>
</tr>
<tr>
<td>Funds, quasi-public funds defined</td>
<td>116</td>
<td>684</td>
</tr>
<tr>
<td>High schools</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Authority of county boards</td>
<td>116</td>
<td>682</td>
</tr>
<tr>
<td>Dormitories, establishment and maintenance</td>
<td>116</td>
<td>684</td>
</tr>
<tr>
<td>Insurance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Drivers of school buses, trucks, etc.</td>
<td>116</td>
<td>683</td>
</tr>
<tr>
<td>Professional liability insurance</td>
<td>116</td>
<td>684</td>
</tr>
<tr>
<td>Public liability insurance</td>
<td>116</td>
<td>684</td>
</tr>
<tr>
<td>Requirements</td>
<td>116</td>
<td>684</td>
</tr>
<tr>
<td>Legal counsel, employment</td>
<td>116</td>
<td>684</td>
</tr>
<tr>
<td>Powers, general authority of boards</td>
<td>116</td>
<td>682</td>
</tr>
<tr>
<td>Transportation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Across county lines</td>
<td>116</td>
<td>683</td>
</tr>
<tr>
<td>Agreements between counties</td>
<td>116</td>
<td>683</td>
</tr>
<tr>
<td>Authority of boards</td>
<td>116</td>
<td>683</td>
</tr>
<tr>
<td>Children residing more than two miles from school</td>
<td>116</td>
<td>683</td>
</tr>
<tr>
<td>Projects operated or approved by commission on aging</td>
<td>116</td>
<td>683</td>
</tr>
<tr>
<td>State board of education</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Authority to contract for programs, services and facilities</td>
<td>115</td>
<td>681</td>
</tr>
</tbody>
</table>
### TOPICAL INDEX

#### BOND ISSUES:

<table>
<thead>
<tr>
<th>Subject</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Counties, districts and municipalities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amount of indebtedness for which bonds may be issued</td>
<td>8</td>
<td>53</td>
</tr>
<tr>
<td>Limitation on amount of indebtedness</td>
<td>8</td>
<td>53</td>
</tr>
<tr>
<td>Prohibited purposes</td>
<td>8</td>
<td>52</td>
</tr>
<tr>
<td>Purposes for which bonds may be issued</td>
<td>8</td>
<td>52</td>
</tr>
<tr>
<td>Sewing defined</td>
<td>8</td>
<td>54</td>
</tr>
</tbody>
</table>

#### BUILDING AND LOAN ASSOCIATIONS:

<table>
<thead>
<tr>
<th>Subject</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Investments</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Certain associations may make loans permitted to be made by federal associations doing business in state</td>
<td>113</td>
<td>677</td>
</tr>
<tr>
<td>Loans</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Certain associations may make loans permitted to be made by federal associations doing business in state</td>
<td>113</td>
<td>677</td>
</tr>
<tr>
<td>Mobile Units</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Banking from mobile units prohibited</td>
<td>7</td>
<td>51</td>
</tr>
</tbody>
</table>

#### BUILDINGS:

<table>
<thead>
<tr>
<th>Subject</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Handicapped persons and public buildings and facilities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Application of article</td>
<td>98</td>
<td>642</td>
</tr>
<tr>
<td>Circuit courts, enforcement of article</td>
<td>98</td>
<td>648</td>
</tr>
<tr>
<td>Declaration of public policy</td>
<td>98</td>
<td>645</td>
</tr>
<tr>
<td>Director of division of vocational rehabilitation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Authority</td>
<td>98</td>
<td>646</td>
</tr>
<tr>
<td>Enforcement of article</td>
<td>98</td>
<td>648</td>
</tr>
<tr>
<td>Rules and regulations</td>
<td>98</td>
<td>646</td>
</tr>
<tr>
<td>Enforcement of article</td>
<td>98</td>
<td>648</td>
</tr>
<tr>
<td>Public building or facility defined</td>
<td>98</td>
<td>645</td>
</tr>
<tr>
<td>Purpose of article</td>
<td>98</td>
<td>645</td>
</tr>
<tr>
<td>Rules and regulations</td>
<td>98</td>
<td>646</td>
</tr>
<tr>
<td>State board of public buildings</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Appointments</td>
<td>98</td>
<td>647</td>
</tr>
<tr>
<td>Compensation</td>
<td>98</td>
<td>647</td>
</tr>
<tr>
<td>Created</td>
<td>98</td>
<td>647</td>
</tr>
<tr>
<td>Expenses</td>
<td>98</td>
<td>647</td>
</tr>
<tr>
<td>Membership</td>
<td>98</td>
<td>647</td>
</tr>
</tbody>
</table>

#### BURIAL:

<table>
<thead>
<tr>
<th>Subject</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pre-need burial contracts</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Application of article</td>
<td>95</td>
<td>639</td>
</tr>
<tr>
<td>Deposit of funds</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Money paid to be deposited within ten days</td>
<td>95</td>
<td>639</td>
</tr>
<tr>
<td>Generally</td>
<td>95</td>
<td>639</td>
</tr>
</tbody>
</table>

#### BUSINESS AND OCCUPATION TAX:

<table>
<thead>
<tr>
<th>Subject</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compounding products</td>
<td>133</td>
<td>779</td>
</tr>
<tr>
<td>Exemptions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>General provisions</td>
<td>134</td>
<td>781</td>
</tr>
<tr>
<td>Intoxicating liquors</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Private clubs</td>
<td></td>
<td></td>
</tr>
<tr>
<td>No exemption from gross sale of liquors and food</td>
<td>134</td>
<td>782</td>
</tr>
<tr>
<td>Manufacturing and compounding products</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rate of tax</td>
<td>133</td>
<td>779</td>
</tr>
<tr>
<td>Poultry, processing</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Exempt</td>
<td>133</td>
<td>780</td>
</tr>
<tr>
<td>Rate of tax</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Manufacturing or compounding products</td>
<td>133</td>
<td>779</td>
</tr>
<tr>
<td>Turkeys, processing</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Exempt</td>
<td>133</td>
<td>780</td>
</tr>
</tbody>
</table>
### BUSINESS DEVELOPMENT CORPORATION:

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Financial institutions as members of corporation</td>
<td>14</td>
<td>323</td>
</tr>
<tr>
<td>Loans to corporations by members</td>
<td>14</td>
<td>323</td>
</tr>
</tbody>
</table>

### BUSINESS FRANCHISE REGISTRATION TAX:

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business defined</td>
<td>132</td>
<td>778</td>
</tr>
<tr>
<td>Certificate defined</td>
<td>132</td>
<td>778</td>
</tr>
<tr>
<td>Company defined</td>
<td>132</td>
<td>779</td>
</tr>
<tr>
<td>Definitions</td>
<td>132</td>
<td>778</td>
</tr>
<tr>
<td>Persons defined</td>
<td>132</td>
<td>779</td>
</tr>
<tr>
<td>Tax commissioner defined</td>
<td>132</td>
<td>779</td>
</tr>
</tbody>
</table>

### CABELL COUNTY:

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Common pleas court</td>
<td>28</td>
<td>352</td>
</tr>
<tr>
<td>Jurisdiction</td>
<td>28</td>
<td>352</td>
</tr>
<tr>
<td>Salary of judge</td>
<td>29</td>
<td>353</td>
</tr>
<tr>
<td>Domestic relations court</td>
<td>29</td>
<td>356</td>
</tr>
<tr>
<td>Jurisdiction</td>
<td>29</td>
<td>356</td>
</tr>
<tr>
<td>Salary of judge</td>
<td>29</td>
<td>356</td>
</tr>
<tr>
<td>Youth center</td>
<td>147</td>
<td>916</td>
</tr>
<tr>
<td>Foster home division</td>
<td>147</td>
<td>914</td>
</tr>
<tr>
<td>Medium security school</td>
<td>147</td>
<td>914</td>
</tr>
</tbody>
</table>

### CIGARETTE TAX:

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bond, employees of tax commissioner</td>
<td>137</td>
<td>788</td>
</tr>
<tr>
<td>Carriers</td>
<td>137</td>
<td>786</td>
</tr>
<tr>
<td>Reports required</td>
<td>137</td>
<td>786</td>
</tr>
<tr>
<td>Transportation of unstamped cigarettes</td>
<td>137</td>
<td>792</td>
</tr>
<tr>
<td>Criminal sanctions</td>
<td>137</td>
<td>793</td>
</tr>
<tr>
<td>Forfeitures and sale of cigarettes and equipment</td>
<td>137</td>
<td>793</td>
</tr>
<tr>
<td>Commissioner</td>
<td>137</td>
<td>788</td>
</tr>
<tr>
<td>Enforcement powers</td>
<td>137</td>
<td>788</td>
</tr>
<tr>
<td>Forms</td>
<td>137</td>
<td>787</td>
</tr>
<tr>
<td>Investigations</td>
<td>137</td>
<td>788</td>
</tr>
<tr>
<td>Rules and regulations</td>
<td>137</td>
<td>788</td>
</tr>
<tr>
<td>Counterfeiting</td>
<td>137</td>
<td>790</td>
</tr>
<tr>
<td>Stamps or meter impressions</td>
<td>137</td>
<td>790</td>
</tr>
<tr>
<td>Crimes and penalties</td>
<td>137</td>
<td>788</td>
</tr>
<tr>
<td>Dealer, reports required</td>
<td>137</td>
<td>786</td>
</tr>
<tr>
<td>Enforcement by tax commissioner</td>
<td>137</td>
<td>788</td>
</tr>
<tr>
<td>False pretenses and statements, penalty</td>
<td>137</td>
<td>788</td>
</tr>
<tr>
<td>Fines and penalties for violations</td>
<td>137</td>
<td>789</td>
</tr>
<tr>
<td>Forgery of stamps or meter impressions</td>
<td>137</td>
<td>790</td>
</tr>
<tr>
<td>Forms by tax commissioner</td>
<td>137</td>
<td>788</td>
</tr>
<tr>
<td>Inspections, authority of tax commissioner</td>
<td>137</td>
<td>787</td>
</tr>
<tr>
<td>Jurisdiction of misdemeanors</td>
<td>137</td>
<td>791</td>
</tr>
<tr>
<td>Records</td>
<td>137</td>
<td>787</td>
</tr>
<tr>
<td>Inspection</td>
<td>137</td>
<td>787</td>
</tr>
<tr>
<td>Required to be kept</td>
<td>137</td>
<td>787</td>
</tr>
<tr>
<td>Reports, required</td>
<td>137</td>
<td>786</td>
</tr>
<tr>
<td>Rules and regulations</td>
<td>137</td>
<td>788</td>
</tr>
<tr>
<td>Searches and seizures</td>
<td>137</td>
<td>791</td>
</tr>
<tr>
<td>Untax paid cigarettes</td>
<td>137</td>
<td>791</td>
</tr>
<tr>
<td>Sheriff, enforcement of law by</td>
<td>137</td>
<td>788</td>
</tr>
<tr>
<td>Subjobber, reports required</td>
<td>137</td>
<td>786</td>
</tr>
<tr>
<td>Summons and process</td>
<td>137</td>
<td>788</td>
</tr>
<tr>
<td>Appearance before tax commissioner</td>
<td>137</td>
<td>788</td>
</tr>
<tr>
<td>Vending machine</td>
<td>137</td>
<td>792</td>
</tr>
<tr>
<td>Forfeitures and sales of cigarettes and equipment</td>
<td>137</td>
<td>792</td>
</tr>
<tr>
<td>Reports required of operator</td>
<td>137</td>
<td>786</td>
</tr>
<tr>
<td>Unstamped cigarettes</td>
<td>137</td>
<td>792</td>
</tr>
</tbody>
</table>
**TOPICAL INDEX**

**CIGARETTE TAX—(continued):**
- Wholesaler, reports required 137 786
- Witnesses, examination 137 788

**CIRCUIT COURTS:**
- County magistrates
  - Determination of qualifications
  - Appeal to circuit court 24 343
- Judges
  - Mileage and expenses 23 339
  - Terms and sessions
    - Twenty-seventh circuit 25 349

**CIVIL SERVICE SYSTEM:**
- Examination
  - Preference points to veterans 10 56

**CLAIMS AGAINST STATE:**
- Venue 11 57

**CLERKS OF CIRCUIT COURTS:**
- Compensation 18 333
  - Classification of counties for purpose of determining 18 331

**CLERKS OF COUNTY COURTS:**
- Compensation 18 333
  - Classification of counties for purpose of determining 18 331

**CODE AMENDED:**

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2</td>
<td>2b*</td>
<td>382</td>
</tr>
<tr>
<td>2</td>
<td>3</td>
<td>1</td>
<td>499</td>
</tr>
<tr>
<td>3</td>
<td>1A*</td>
<td>1-6</td>
<td>383</td>
</tr>
<tr>
<td>3</td>
<td>5</td>
<td>4</td>
<td>387</td>
</tr>
<tr>
<td>4</td>
<td>6</td>
<td>6, 7*</td>
<td>502</td>
</tr>
<tr>
<td>5</td>
<td>1</td>
<td>26*</td>
<td>395</td>
</tr>
<tr>
<td>5</td>
<td>10</td>
<td>5</td>
<td>649</td>
</tr>
<tr>
<td>5</td>
<td>10</td>
<td>6, 7*</td>
<td>650</td>
</tr>
<tr>
<td>5</td>
<td>10</td>
<td>30</td>
<td>651</td>
</tr>
<tr>
<td>5</td>
<td>10</td>
<td>48</td>
<td>653</td>
</tr>
<tr>
<td>5A</td>
<td>8</td>
<td>3</td>
<td>771</td>
</tr>
<tr>
<td>6</td>
<td>5</td>
<td>11*</td>
<td>503</td>
</tr>
<tr>
<td>6</td>
<td>7</td>
<td>5</td>
<td>339</td>
</tr>
<tr>
<td>6</td>
<td>9</td>
<td>2</td>
<td>655</td>
</tr>
<tr>
<td>6</td>
<td>13</td>
<td>1</td>
<td>56</td>
</tr>
<tr>
<td>7</td>
<td>1</td>
<td>3f</td>
<td>326</td>
</tr>
<tr>
<td>7</td>
<td>1</td>
<td>3m</td>
<td>327</td>
</tr>
</tbody>
</table>

* Indicates new chapter, article or section.
**CODE AMENDED—(continued):**

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Grants by county courts to public service districts and municipalities for water and sewer systems</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>7</td>
<td>1</td>
<td>31*</td>
<td></td>
<td>329</td>
</tr>
<tr>
<td>7</td>
<td>1</td>
<td>5a</td>
<td>Salaries of county commissioners</td>
<td>330</td>
</tr>
<tr>
<td>7</td>
<td>1</td>
<td>11</td>
<td>Competitive bid purchases by county courts</td>
<td>334</td>
</tr>
<tr>
<td>7</td>
<td>4</td>
<td>2</td>
<td>Appointment of investigators of crime by prosecuting attorneys</td>
<td>335</td>
</tr>
<tr>
<td>7</td>
<td>7</td>
<td>3, 4</td>
<td>Salaries of county officials</td>
<td>331</td>
</tr>
<tr>
<td>7</td>
<td>7</td>
<td>16</td>
<td>Mileage allowance for county officials, deputies, etc.</td>
<td>336</td>
</tr>
<tr>
<td>8</td>
<td>5</td>
<td>15a*</td>
<td>Special municipal elections</td>
<td>591</td>
</tr>
<tr>
<td>8</td>
<td>10</td>
<td>2</td>
<td>Municipal court or judge</td>
<td>967</td>
</tr>
<tr>
<td>8</td>
<td>12</td>
<td>17</td>
<td>Sale or lease of waterworks systems or other municipal public utility</td>
<td>592</td>
</tr>
<tr>
<td>8</td>
<td>14</td>
<td>20</td>
<td>Removal, discharge, suspension or reduction in rank or pay of municipal policemen</td>
<td>595</td>
</tr>
<tr>
<td>8</td>
<td>15</td>
<td>25</td>
<td>Removal, discharge, suspension or reduction in rank or pay of municipal firemen</td>
<td>597</td>
</tr>
<tr>
<td>8</td>
<td>16</td>
<td>4b*</td>
<td>Authority of municipality to lease space in parking facilities</td>
<td>417</td>
</tr>
<tr>
<td>8</td>
<td>27</td>
<td>18</td>
<td>Jurisdiction of Public Service Commission over urban mass transportation systems</td>
<td>667</td>
</tr>
<tr>
<td>8</td>
<td>29A</td>
<td>9</td>
<td>Powers of county airport authorities</td>
<td>14</td>
</tr>
<tr>
<td>8</td>
<td>32</td>
<td>4*</td>
<td>Appropriation of municipal funds for public health and mental health institutions and facilities</td>
<td>600</td>
</tr>
<tr>
<td>11</td>
<td>3</td>
<td>10</td>
<td>Forfeiture for failure to list property for taxation</td>
<td>774</td>
</tr>
<tr>
<td>11</td>
<td>4</td>
<td>21*</td>
<td>Exemption from real property taxation of persons over 65 years of age</td>
<td>776</td>
</tr>
<tr>
<td>11</td>
<td>12</td>
<td>2</td>
<td>Definitions, business franchise registration certificate tax</td>
<td>778</td>
</tr>
<tr>
<td>11</td>
<td>12</td>
<td>77-90</td>
<td>License taxes</td>
<td>308</td>
</tr>
<tr>
<td>11</td>
<td>13</td>
<td>2b</td>
<td>Business and occupation tax on manufacturing, compounding or preparing products, etc.</td>
<td>779</td>
</tr>
<tr>
<td>11</td>
<td>13</td>
<td>3</td>
<td>Business and occupation tax exemptions</td>
<td>781</td>
</tr>
<tr>
<td>11</td>
<td>14</td>
<td>17</td>
<td>Assessment of gasoline and special fuel tax when insufficiently returned</td>
<td>782</td>
</tr>
<tr>
<td>11</td>
<td>15</td>
<td>9</td>
<td>Sales exempt from consumers sales tax</td>
<td>783</td>
</tr>
<tr>
<td>11</td>
<td>17</td>
<td>12, 17, 19, 20</td>
<td>Administration and enforcement of the cigarette tax law.</td>
<td>786</td>
</tr>
<tr>
<td>11</td>
<td>21</td>
<td>9</td>
<td>Meaning of terms in personal income tax</td>
<td>794</td>
</tr>
<tr>
<td>11</td>
<td>21</td>
<td>12</td>
<td>Adjusted gross personal income</td>
<td>795</td>
</tr>
<tr>
<td>11</td>
<td>24</td>
<td>3</td>
<td>Meaning of terms in corporation net income tax</td>
<td>798</td>
</tr>
<tr>
<td>13</td>
<td>1</td>
<td>2, 3</td>
<td>Bond issues by local units of government</td>
<td>52</td>
</tr>
<tr>
<td>13</td>
<td>2C</td>
<td>1-9, 11, 12, 13, 15, 20</td>
<td>Industrial development and industrial development bonds.</td>
<td>418</td>
</tr>
<tr>
<td>14</td>
<td>2</td>
<td>2</td>
<td>Venue for certain actions and suits against the state</td>
<td>57</td>
</tr>
<tr>
<td>15</td>
<td>1B</td>
<td>16</td>
<td>National Guard—pay and allowances</td>
<td>656</td>
</tr>
<tr>
<td>15</td>
<td>2</td>
<td>3</td>
<td>Organization of Department of Public Safety and salaries of members</td>
<td>657</td>
</tr>
<tr>
<td>15</td>
<td>2</td>
<td>11, 27</td>
<td>Arrest fees, Department of Public Safety</td>
<td>660</td>
</tr>
</tbody>
</table>

* Indicates new chapter, article or section.
<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>16</td>
<td>1</td>
<td>2</td>
<td>400</td>
</tr>
<tr>
<td>16</td>
<td>2A</td>
<td>2</td>
<td>402</td>
</tr>
<tr>
<td>16</td>
<td>4C*</td>
<td>1-11</td>
<td>404</td>
</tr>
<tr>
<td>16</td>
<td>11*</td>
<td>1, 2</td>
<td>414</td>
</tr>
<tr>
<td>17</td>
<td>2A</td>
<td>16</td>
<td>676</td>
</tr>
<tr>
<td>17A</td>
<td>9</td>
<td>2</td>
<td>580</td>
</tr>
<tr>
<td>17A</td>
<td>10</td>
<td>8</td>
<td>581</td>
</tr>
<tr>
<td>17B</td>
<td>2</td>
<td>7A*</td>
<td>583</td>
</tr>
<tr>
<td>17C</td>
<td>5B*</td>
<td>1, 2</td>
<td>584</td>
</tr>
<tr>
<td>17C</td>
<td>6</td>
<td>9*</td>
<td>587</td>
</tr>
<tr>
<td>17C</td>
<td>15</td>
<td>17</td>
<td>588</td>
</tr>
<tr>
<td>17C</td>
<td>16</td>
<td>3</td>
<td>589</td>
</tr>
<tr>
<td>18</td>
<td>2</td>
<td>13b</td>
<td>678</td>
</tr>
<tr>
<td>18</td>
<td>5</td>
<td>27*</td>
<td>681</td>
</tr>
<tr>
<td>18</td>
<td>7A</td>
<td>13, 17</td>
<td>682</td>
</tr>
<tr>
<td>18</td>
<td>7A</td>
<td>23</td>
<td>685</td>
</tr>
<tr>
<td>18</td>
<td>10A</td>
<td>1, 8</td>
<td>689</td>
</tr>
<tr>
<td>18</td>
<td>10F</td>
<td>1, 2, 3, 4, 5</td>
<td>690</td>
</tr>
<tr>
<td>18</td>
<td>12A</td>
<td>1, 2, 3</td>
<td>693</td>
</tr>
<tr>
<td>18</td>
<td>17</td>
<td>8, 9*</td>
<td>698</td>
</tr>
<tr>
<td>18</td>
<td>19</td>
<td>1, 2</td>
<td>700</td>
</tr>
<tr>
<td>18</td>
<td>20</td>
<td>1-6</td>
<td>702</td>
</tr>
<tr>
<td>18</td>
<td>22C*</td>
<td>1, 2</td>
<td>707</td>
</tr>
<tr>
<td>18</td>
<td>26</td>
<td>10a*</td>
<td>708</td>
</tr>
<tr>
<td>18</td>
<td>26</td>
<td>10b*</td>
<td>710</td>
</tr>
<tr>
<td>19</td>
<td>15</td>
<td></td>
<td></td>
</tr>
<tr>
<td>20</td>
<td>2</td>
<td>5</td>
<td>602</td>
</tr>
<tr>
<td>20</td>
<td>2</td>
<td>22a; 44b*</td>
<td>607</td>
</tr>
<tr>
<td>20</td>
<td>2</td>
<td>23, 24, 25</td>
<td>612</td>
</tr>
<tr>
<td>20</td>
<td>2</td>
<td>28</td>
<td>614, 616, 968</td>
</tr>
<tr>
<td>20</td>
<td>2</td>
<td>46b*</td>
<td>619</td>
</tr>
<tr>
<td>20</td>
<td>2</td>
<td>46c*</td>
<td>621</td>
</tr>
<tr>
<td>20</td>
<td>6</td>
<td>20a*</td>
<td>556</td>
</tr>
<tr>
<td>20</td>
<td>6B</td>
<td>1</td>
<td>570</td>
</tr>
<tr>
<td>20</td>
<td>6C</td>
<td>2, 3, 7a*</td>
<td>622</td>
</tr>
<tr>
<td>20</td>
<td>7</td>
<td>9</td>
<td>627</td>
</tr>
<tr>
<td>20</td>
<td>7</td>
<td>11, 12, 14</td>
<td>629</td>
</tr>
</tbody>
</table>

* Indicates new chapter, article or section.
## Topical Index

**CODE AMENDED—(continued):**

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>21</td>
<td>5C</td>
<td>1, 2, 3, 4</td>
<td>Minimum wage and maximum hours standards for employees</td>
</tr>
<tr>
<td>21</td>
<td>9*</td>
<td>1-9</td>
<td>Mobile Home Safety Act</td>
</tr>
<tr>
<td>21A</td>
<td>2</td>
<td>5</td>
<td>Compensation and expenses of Commissioner of Employment Security</td>
</tr>
<tr>
<td>21A</td>
<td>2</td>
<td>23*</td>
<td>Veterans training program</td>
</tr>
<tr>
<td>21A</td>
<td>4</td>
<td>5</td>
<td>Compensation and expenses, Board of Review, Department of Employment Security</td>
</tr>
<tr>
<td>21A</td>
<td>6</td>
<td>10, 11</td>
<td>Unemployment compensation, eligibility and benefits</td>
</tr>
<tr>
<td>22</td>
<td>2</td>
<td>7</td>
<td>Underground mine foreman-fire boss</td>
</tr>
<tr>
<td>22</td>
<td>2</td>
<td>63</td>
<td>Permit for opening or reopening coal mines</td>
</tr>
<tr>
<td>22</td>
<td>6</td>
<td></td>
<td>Certification of underground and surface coal miners</td>
</tr>
<tr>
<td>22</td>
<td>6A*</td>
<td></td>
<td>Board of Miner Training, education and certification</td>
</tr>
<tr>
<td>23</td>
<td>1</td>
<td>16, 17</td>
<td>Omission to subscribe to Workmen's Compensation Fund or to perform duty required by commissioner; reports by commissioner and pneumoconiosis board</td>
</tr>
<tr>
<td>23</td>
<td>2</td>
<td>1, 3-10; 5a and 13*</td>
<td>Employers and employees subject to compensation law; premiums</td>
</tr>
<tr>
<td>23</td>
<td>4</td>
<td>1, 1c, 3, 6, 6a, 8a, 9, 10, 16</td>
<td>Disability and death benefits</td>
</tr>
<tr>
<td>23</td>
<td>4</td>
<td>18</td>
<td>Payment of Workmen's Compensation benefits</td>
</tr>
<tr>
<td>23</td>
<td>4A</td>
<td>1, 2, 3</td>
<td>Disabled Workmen's Relief Fund</td>
</tr>
<tr>
<td>24</td>
<td>2</td>
<td>4</td>
<td>Procedure for changing utility rates</td>
</tr>
<tr>
<td>24</td>
<td>3</td>
<td>6</td>
<td>Special license fee payable to Public Service Commission by public utilities</td>
</tr>
<tr>
<td>24A</td>
<td>5</td>
<td>1</td>
<td>Powers of Public Service Commission as to rates, schedules, etc., of urban mass transportation systems</td>
</tr>
<tr>
<td>27</td>
<td>1</td>
<td>2, 3, 6; 9-13*</td>
<td>Definitions of words and phrases in mental health law</td>
</tr>
<tr>
<td>27</td>
<td>2</td>
<td>3</td>
<td>Rules relating to mental health patients</td>
</tr>
<tr>
<td>27</td>
<td>4</td>
<td>1, 2, 3</td>
<td>Voluntary hospitalization of mentally ill persons</td>
</tr>
<tr>
<td>27</td>
<td>5</td>
<td>1-10</td>
<td>Involuntary hospitalization of mentally ill persons</td>
</tr>
<tr>
<td>27</td>
<td>6A</td>
<td></td>
<td>Determination of mental competency of person charged or convicted of a crime</td>
</tr>
<tr>
<td>27</td>
<td>11</td>
<td></td>
<td>Committees for Incompetents</td>
</tr>
<tr>
<td>27</td>
<td>16*</td>
<td>1-5</td>
<td>Sterilization of mental defectives</td>
</tr>
<tr>
<td>28</td>
<td>3</td>
<td>1</td>
<td>Industrial home for girls</td>
</tr>
<tr>
<td>28</td>
<td>5</td>
<td>3</td>
<td>Duties, bond and residence of warden of penitentiary</td>
</tr>
<tr>
<td>28</td>
<td>5</td>
<td>5</td>
<td>Assistants and employees of warden of penitentiary and right of guards to carry weapons</td>
</tr>
<tr>
<td>29</td>
<td>4</td>
<td>12, 14, 15</td>
<td>Out of state commissioners</td>
</tr>
<tr>
<td>30</td>
<td>1</td>
<td>11</td>
<td>Compensation and expenses of members of boards of examination and registration</td>
</tr>
<tr>
<td>30</td>
<td>3</td>
<td>4, 4a, 6, 7</td>
<td>Licensing and registration of physicians and surgeons</td>
</tr>
<tr>
<td>31</td>
<td>1</td>
<td></td>
<td>Business and nonprofit corporations</td>
</tr>
</tbody>
</table>

* Indicates new chapter, article or section.
<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>31</td>
<td>2A*</td>
<td>43</td>
<td>673</td>
</tr>
<tr>
<td>31</td>
<td>6</td>
<td>677</td>
<td></td>
</tr>
<tr>
<td>31</td>
<td>7</td>
<td>7</td>
<td></td>
</tr>
<tr>
<td>31</td>
<td>14</td>
<td>23</td>
<td></td>
</tr>
<tr>
<td>31A</td>
<td>1</td>
<td>323</td>
<td></td>
</tr>
<tr>
<td>31A</td>
<td>4</td>
<td>14, 22</td>
<td></td>
</tr>
<tr>
<td>31A</td>
<td>4</td>
<td>48</td>
<td></td>
</tr>
<tr>
<td>31A</td>
<td>8</td>
<td>60</td>
<td></td>
</tr>
<tr>
<td>32A*</td>
<td>5</td>
<td>20</td>
<td></td>
</tr>
<tr>
<td>33</td>
<td>7</td>
<td>432</td>
<td></td>
</tr>
<tr>
<td>33</td>
<td>11</td>
<td>1-10</td>
<td></td>
</tr>
<tr>
<td>33</td>
<td>12</td>
<td>24</td>
<td></td>
</tr>
<tr>
<td>33</td>
<td>13</td>
<td>30</td>
<td></td>
</tr>
<tr>
<td>33</td>
<td>24</td>
<td>440</td>
<td></td>
</tr>
<tr>
<td>33</td>
<td>24</td>
<td>44</td>
<td></td>
</tr>
<tr>
<td>33</td>
<td>27*</td>
<td>468</td>
<td></td>
</tr>
<tr>
<td>33</td>
<td>28*</td>
<td>469</td>
<td></td>
</tr>
<tr>
<td>38</td>
<td>8</td>
<td>505</td>
<td></td>
</tr>
<tr>
<td>43</td>
<td>2</td>
<td>1-5</td>
<td></td>
</tr>
<tr>
<td>44</td>
<td>5</td>
<td>105, 201</td>
<td></td>
</tr>
<tr>
<td>46</td>
<td>1</td>
<td>810</td>
<td></td>
</tr>
<tr>
<td>46</td>
<td>2</td>
<td>817</td>
<td></td>
</tr>
<tr>
<td>46</td>
<td>5</td>
<td>817</td>
<td></td>
</tr>
<tr>
<td>46</td>
<td>9</td>
<td>462</td>
<td></td>
</tr>
<tr>
<td>46A*</td>
<td>11*</td>
<td>101-108</td>
<td></td>
</tr>
<tr>
<td>47</td>
<td>6</td>
<td>5, 5a</td>
<td></td>
</tr>
<tr>
<td>47</td>
<td>14</td>
<td>55</td>
<td></td>
</tr>
<tr>
<td>48</td>
<td>3</td>
<td>164</td>
<td></td>
</tr>
<tr>
<td>49</td>
<td>5</td>
<td>639</td>
<td></td>
</tr>
<tr>
<td>50</td>
<td>17</td>
<td>381</td>
<td></td>
</tr>
</tbody>
</table>

* Indicates new chapter, article or section.
### TOPICAL INDEX

**CODE AMENDED—(continued):**

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>50</td>
<td>19</td>
<td>1-10</td>
<td>342</td>
</tr>
<tr>
<td>51</td>
<td>1</td>
<td>15, 16</td>
<td>966</td>
</tr>
<tr>
<td>51</td>
<td>2</td>
<td>1aa</td>
<td>349</td>
</tr>
<tr>
<td>51</td>
<td>3</td>
<td>10</td>
<td>349</td>
</tr>
<tr>
<td>51</td>
<td>7</td>
<td>4</td>
<td>350</td>
</tr>
<tr>
<td>56</td>
<td>11</td>
<td>1</td>
<td>486</td>
</tr>
<tr>
<td>59</td>
<td>1</td>
<td>2</td>
<td>320</td>
</tr>
<tr>
<td>60</td>
<td>3</td>
<td>9d*</td>
<td>16</td>
</tr>
<tr>
<td>61</td>
<td>8A*</td>
<td>1-7</td>
<td>378</td>
</tr>
<tr>
<td>62</td>
<td>11A</td>
<td>2*</td>
<td>338</td>
</tr>
</tbody>
</table>

**CODE REPEALED:**

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Sec.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2</td>
<td>501</td>
</tr>
<tr>
<td>3</td>
<td>2</td>
<td>382</td>
</tr>
<tr>
<td>5</td>
<td>13</td>
<td>654</td>
</tr>
<tr>
<td>8</td>
<td>19</td>
<td>592</td>
</tr>
<tr>
<td>11</td>
<td>3</td>
<td>773</td>
</tr>
<tr>
<td>16</td>
<td>10</td>
<td>521</td>
</tr>
<tr>
<td>22</td>
<td>2</td>
<td>555</td>
</tr>
<tr>
<td>23</td>
<td>3</td>
<td>871</td>
</tr>
<tr>
<td>27</td>
<td>3</td>
<td>524</td>
</tr>
<tr>
<td>27</td>
<td>6</td>
<td>524</td>
</tr>
<tr>
<td>47</td>
<td>7A</td>
<td>58</td>
</tr>
<tr>
<td>61</td>
<td>8</td>
<td>377</td>
</tr>
<tr>
<td>62</td>
<td>3</td>
<td>524</td>
</tr>
</tbody>
</table>

**COMMERCIAL CODE:**

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>143</td>
<td>810</td>
</tr>
<tr>
<td>143</td>
<td>815</td>
</tr>
<tr>
<td>143</td>
<td>810</td>
</tr>
<tr>
<td>143</td>
<td>830</td>
</tr>
<tr>
<td>143</td>
<td>817</td>
</tr>
<tr>
<td>143</td>
<td>830</td>
</tr>
<tr>
<td>143</td>
<td>811</td>
</tr>
</tbody>
</table>

* Indicates new chapter, article or section.
<table>
<thead>
<tr>
<th>COMMERCIAL CODE—(continued):</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bankruptcy and insolvency</td>
<td></td>
<td></td>
</tr>
<tr>
<td>&quot;Insolvency proceedings&quot; defined</td>
<td>143</td>
<td>813</td>
</tr>
<tr>
<td>Secured transactions, priority</td>
<td>143</td>
<td>830</td>
</tr>
<tr>
<td>Banks and banking</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Secured transactions, transfer of accounts excluded from provisions</td>
<td>143</td>
<td>823</td>
</tr>
<tr>
<td>Bills of lading defined</td>
<td>143</td>
<td>811</td>
</tr>
<tr>
<td>Bona fide purchasers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Secured transactions, rights of third parties</td>
<td>143</td>
<td>837</td>
</tr>
<tr>
<td>Bond issues</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Secured transactions, financing statement effective for life of issue</td>
<td>143</td>
<td>848</td>
</tr>
<tr>
<td>Buildings</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sale, goods to be severed from realty</td>
<td>143</td>
<td>817</td>
</tr>
<tr>
<td>Burden of proof</td>
<td></td>
<td></td>
</tr>
<tr>
<td>&quot;Burden of establishing&quot; defined</td>
<td>143</td>
<td>811</td>
</tr>
<tr>
<td>Certificate of title</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Perfection of security interest in multiple state transactions</td>
<td>143</td>
<td>820</td>
</tr>
<tr>
<td>Clerk of county court</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Secured transactions, filing</td>
<td>143</td>
<td>833, 843, 848, 854</td>
</tr>
<tr>
<td>Commercial paper</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bearer defined</td>
<td>143</td>
<td>811</td>
</tr>
<tr>
<td>Delivery defined</td>
<td>143</td>
<td>812</td>
</tr>
<tr>
<td>Honor defined</td>
<td>143</td>
<td>813</td>
</tr>
<tr>
<td>Third party defined</td>
<td>143</td>
<td>814</td>
</tr>
<tr>
<td>Value defined</td>
<td>143</td>
<td>816</td>
</tr>
<tr>
<td>Conflict of laws</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Parties' power to choose applicable law</td>
<td>143</td>
<td>810</td>
</tr>
<tr>
<td>Secured transactions, removal of collateral</td>
<td>143</td>
<td>843</td>
</tr>
<tr>
<td>Security interest in multiple state transactions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Perfection</td>
<td>143</td>
<td>820</td>
</tr>
<tr>
<td>Territorial application of chapter</td>
<td>143</td>
<td>810</td>
</tr>
<tr>
<td>Consignments</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Financing statements covering consigned or leased goods</td>
<td>143</td>
<td>854</td>
</tr>
<tr>
<td>Generally</td>
<td>143</td>
<td>828</td>
</tr>
<tr>
<td>Priorities</td>
<td>143</td>
<td>828</td>
</tr>
<tr>
<td>Contracts</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Agreement defined</td>
<td>143</td>
<td>811</td>
</tr>
<tr>
<td>Construction; conspicuous</td>
<td>143</td>
<td>812</td>
</tr>
<tr>
<td>Power to choose applicable law</td>
<td>143</td>
<td>810</td>
</tr>
<tr>
<td>Term defined</td>
<td>143</td>
<td>816</td>
</tr>
<tr>
<td>Creditors defined</td>
<td>143</td>
<td>812</td>
</tr>
<tr>
<td>Crops</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Goods to be severed from realty</td>
<td>143</td>
<td>817</td>
</tr>
<tr>
<td>Secured transactions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Description of land</td>
<td>143</td>
<td>829</td>
</tr>
<tr>
<td>Place of filing</td>
<td>143</td>
<td>843</td>
</tr>
<tr>
<td>Definitions</td>
<td>143</td>
<td>810, 827, 835</td>
</tr>
<tr>
<td>Generally</td>
<td>143</td>
<td>825</td>
</tr>
<tr>
<td>Index of definitions</td>
<td>143</td>
<td>825</td>
</tr>
<tr>
<td>Documents of title</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bills of lading defined</td>
<td>143</td>
<td>811</td>
</tr>
<tr>
<td>General obligations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Delivery defined</td>
<td>143</td>
<td>812</td>
</tr>
<tr>
<td>Warehouse receipts defined</td>
<td>143</td>
<td>817</td>
</tr>
<tr>
<td>Effective date</td>
<td>143</td>
<td>860</td>
</tr>
<tr>
<td>Executions, secured transactions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Priority over unperfected security interests</td>
<td>143</td>
<td>830</td>
</tr>
<tr>
<td>Fees, secured transactions</td>
<td>143</td>
<td>848-854</td>
</tr>
<tr>
<td>Fiduciaries, &quot;representative&quot; defined</td>
<td>143</td>
<td>815</td>
</tr>
<tr>
<td>TOPICAL INDEX</td>
<td></td>
<td></td>
</tr>
<tr>
<td>----------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>COMMERCIAL CODE—(continued):</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fixtures, secured transactions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Priority of security interests in fixtures</td>
<td>143</td>
<td>840</td>
</tr>
<tr>
<td>Good faith defined</td>
<td>143</td>
<td>813</td>
</tr>
<tr>
<td>Knowledge defined</td>
<td>143</td>
<td>813</td>
</tr>
<tr>
<td>Holder defined</td>
<td>143</td>
<td>813</td>
</tr>
<tr>
<td>Insurance, transfer of interest or claim in policy excluded</td>
<td>143</td>
<td>824</td>
</tr>
<tr>
<td>Investment securities, purchase defined</td>
<td>143</td>
<td>815</td>
</tr>
<tr>
<td>Judgments, transactions excluded from article</td>
<td>143</td>
<td>823</td>
</tr>
<tr>
<td>Landlord’s lien, applicability of secured transaction provisions</td>
<td>143</td>
<td>824</td>
</tr>
<tr>
<td>Law, parties’ power to choose applicable</td>
<td>143</td>
<td>810</td>
</tr>
<tr>
<td>Leases, financing statements covering leased goods</td>
<td>143</td>
<td>854</td>
</tr>
<tr>
<td>Letters of credit</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Assignment</td>
<td>143</td>
<td>817</td>
</tr>
<tr>
<td>Transfer</td>
<td>143</td>
<td>817</td>
</tr>
<tr>
<td>Liens, transactions excluded</td>
<td>143</td>
<td>823</td>
</tr>
<tr>
<td>Limitation of actions, duration of financing statements</td>
<td>143</td>
<td>848</td>
</tr>
<tr>
<td>Mines and minerals</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sales, goods to be severed from realty</td>
<td>143</td>
<td>817</td>
</tr>
<tr>
<td>Money defined</td>
<td>143</td>
<td>813</td>
</tr>
<tr>
<td>Mortgages, effect as financing statement</td>
<td>143</td>
<td>845</td>
</tr>
<tr>
<td>Municipal corporations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Transactions excluded</td>
<td>143</td>
<td>824</td>
</tr>
<tr>
<td>Notice</td>
<td>143</td>
<td>814</td>
</tr>
<tr>
<td>Organization defined</td>
<td>143</td>
<td>814</td>
</tr>
<tr>
<td>Parties</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Defined</td>
<td>143</td>
<td>814</td>
</tr>
<tr>
<td>Power to choose applicable law</td>
<td>143</td>
<td>810</td>
</tr>
<tr>
<td>Third parties, rights generally as to secured transactions</td>
<td>143</td>
<td>830</td>
</tr>
<tr>
<td>Presumptions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Definitions</td>
<td>143</td>
<td>815</td>
</tr>
<tr>
<td>New commercial code</td>
<td>143</td>
<td>863</td>
</tr>
<tr>
<td>Purchase defined</td>
<td>143</td>
<td>815</td>
</tr>
<tr>
<td>Real property, goods to be severed from realty</td>
<td>143</td>
<td>817</td>
</tr>
<tr>
<td>Receivers, priority of secured transactions</td>
<td>143</td>
<td>831</td>
</tr>
<tr>
<td>Recordation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Financing statements and security agreements in lieu of filing</td>
<td>143</td>
<td>852</td>
</tr>
<tr>
<td>Sales, goods to be severed from realty</td>
<td>143</td>
<td>817</td>
</tr>
<tr>
<td>Release of secured transactions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Release of collateral</td>
<td>143</td>
<td>853</td>
</tr>
<tr>
<td>Termination statements</td>
<td>143</td>
<td>851</td>
</tr>
<tr>
<td>Rights defined</td>
<td>143</td>
<td>815</td>
</tr>
<tr>
<td>Sales</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Buildings, contract for sale of</td>
<td>143</td>
<td>817</td>
</tr>
<tr>
<td>Buyer defined</td>
<td>143</td>
<td>811</td>
</tr>
<tr>
<td>Contracts, recordation</td>
<td>143</td>
<td>817</td>
</tr>
<tr>
<td>Crops, contracts for sale of</td>
<td>143</td>
<td>817</td>
</tr>
<tr>
<td>Goods</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fungible defined</td>
<td>143</td>
<td>812</td>
</tr>
<tr>
<td>Severed from realty</td>
<td>143</td>
<td>817</td>
</tr>
<tr>
<td>Minerals, contract for sale of</td>
<td>143</td>
<td>817</td>
</tr>
<tr>
<td>Secured transactions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Default, disposition of collateral</td>
<td>143</td>
<td>857</td>
</tr>
<tr>
<td>Severance from realty</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Goods to be severed</td>
<td>143</td>
<td>817</td>
</tr>
<tr>
<td>Recording</td>
<td>143</td>
<td>817</td>
</tr>
<tr>
<td>Secretary of State</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Filing fees</td>
<td></td>
<td>321</td>
</tr>
</tbody>
</table>
### COMMERCIAL CODE—(continued):

#### Secretary of State—(continued):

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Secured transactions</td>
<td>143</td>
<td>854</td>
</tr>
<tr>
<td>Certificate as to securities filed</td>
<td>143</td>
<td>854</td>
</tr>
<tr>
<td>Contents</td>
<td>143</td>
<td>832</td>
</tr>
<tr>
<td>Fee</td>
<td>143</td>
<td>843</td>
</tr>
<tr>
<td>Place of filing</td>
<td>143</td>
<td>854</td>
</tr>
<tr>
<td>Filing, preserving and indexing security agreements</td>
<td>143</td>
<td>843</td>
</tr>
<tr>
<td>Information from</td>
<td>143</td>
<td>854</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Secured transactions</td>
<td>143</td>
<td>831</td>
</tr>
<tr>
<td>Accounts, general intangibles and mobile goods</td>
<td>143</td>
<td>820</td>
</tr>
<tr>
<td>Perfection of security interests</td>
<td>143</td>
<td>829</td>
</tr>
<tr>
<td>After-acquired collateral, attachment of security</td>
<td>143</td>
<td>823</td>
</tr>
<tr>
<td>Applicability of article</td>
<td>143</td>
<td>831</td>
</tr>
<tr>
<td>Security interests to which filing provisions do not apply</td>
<td>143</td>
<td>830</td>
</tr>
<tr>
<td>Assignment</td>
<td>143</td>
<td>830</td>
</tr>
<tr>
<td>Accounts or contracts</td>
<td>143</td>
<td>842</td>
</tr>
<tr>
<td>Defenses against assignee</td>
<td>143</td>
<td>842</td>
</tr>
<tr>
<td>Identification and proof of</td>
<td>143</td>
<td>842</td>
</tr>
<tr>
<td>Modification of contract after notification of assignment</td>
<td>143</td>
<td>842</td>
</tr>
<tr>
<td>Term prohibiting assignment ineffective</td>
<td>143</td>
<td>842</td>
</tr>
<tr>
<td>Assignment for benefit of creditors, priority over</td>
<td>143</td>
<td>830</td>
</tr>
<tr>
<td>unperfected security interest</td>
<td>143</td>
<td>830</td>
</tr>
<tr>
<td>Attachment and garnishment, priority over unperfected</td>
<td>143</td>
<td>830</td>
</tr>
<tr>
<td>security interests</td>
<td>143</td>
<td>830</td>
</tr>
<tr>
<td>Bankruptcy</td>
<td>143</td>
<td>843</td>
</tr>
<tr>
<td>Trustee in bankruptcy, priority over unperfected security interests</td>
<td>143</td>
<td>843</td>
</tr>
<tr>
<td>Buyers of goods</td>
<td>143</td>
<td>837</td>
</tr>
<tr>
<td>Consumer goods</td>
<td>143</td>
<td>837</td>
</tr>
<tr>
<td>Protection of</td>
<td>143</td>
<td>825</td>
</tr>
<tr>
<td>Chattel paper, defined</td>
<td>143</td>
<td>838</td>
</tr>
<tr>
<td>Purchase of</td>
<td>143</td>
<td>825</td>
</tr>
<tr>
<td>Collateral, defined</td>
<td>143</td>
<td>838</td>
</tr>
<tr>
<td>Priorities among conflicting security interests in the</td>
<td>143</td>
<td>838</td>
</tr>
<tr>
<td>same collateral</td>
<td>143</td>
<td>835</td>
</tr>
<tr>
<td>Secured party's rights on disposal of collateral</td>
<td>143</td>
<td>835</td>
</tr>
<tr>
<td>Use or disposition of without accounting permissible</td>
<td>143</td>
<td>830</td>
</tr>
<tr>
<td>Conflict of laws, removal of collateral</td>
<td>143</td>
<td>843</td>
</tr>
<tr>
<td>Conflict of security interests</td>
<td>143</td>
<td>839</td>
</tr>
<tr>
<td>Priorities among conflicting security interests in the same collateral</td>
<td>143</td>
<td>839</td>
</tr>
<tr>
<td>Consignments</td>
<td>143</td>
<td>839</td>
</tr>
<tr>
<td>Financing statements covering consigned or leased goods</td>
<td>143</td>
<td>844</td>
</tr>
<tr>
<td>Priorities</td>
<td>143</td>
<td>844</td>
</tr>
<tr>
<td>Crops, place of filing</td>
<td>143</td>
<td>844</td>
</tr>
<tr>
<td>Debtor's contract, account debtor defined</td>
<td>143</td>
<td>825</td>
</tr>
<tr>
<td>Debtor's rights, debtor defined</td>
<td>143</td>
<td>825</td>
</tr>
</tbody>
</table>

#### Default

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Collateral</td>
<td>143</td>
<td>859</td>
</tr>
<tr>
<td>Acceptance as discharge of obligation</td>
<td>143</td>
<td>859</td>
</tr>
<tr>
<td>Compulsory disposition of</td>
<td>143</td>
<td>859</td>
</tr>
<tr>
<td>Proposal to retain collateral by secured</td>
<td>143</td>
<td>857</td>
</tr>
<tr>
<td>party in transaction</td>
<td>143</td>
<td>857</td>
</tr>
<tr>
<td>Secured party's right to dispose of collateral after default</td>
<td>143</td>
<td>857</td>
</tr>
<tr>
<td>Effect of disposition</td>
<td>143</td>
<td>857</td>
</tr>
<tr>
<td>Collection rights of secured party</td>
<td>143</td>
<td>856</td>
</tr>
<tr>
<td>Generally</td>
<td>143</td>
<td>855</td>
</tr>
<tr>
<td>Procedure when agreement covers both real</td>
<td>143</td>
<td>855</td>
</tr>
<tr>
<td>and personal property</td>
<td>143</td>
<td>855</td>
</tr>
<tr>
<td>Secured rights</td>
<td>143</td>
<td>856</td>
</tr>
<tr>
<td>Collection rights of</td>
<td>143</td>
<td>856</td>
</tr>
</tbody>
</table>
### COMMERCIAL CODE—(continued):

<table>
<thead>
<tr>
<th>Secured transactions—(continued):</th>
</tr>
</thead>
<tbody>
<tr>
<td>Default—(continued):</td>
</tr>
<tr>
<td>Secured rights—(continued):</td>
</tr>
<tr>
<td>Right to dispose of collateral after default</td>
</tr>
<tr>
<td>Effect of disposition</td>
</tr>
<tr>
<td>Perishable collateral</td>
</tr>
<tr>
<td>Defenses against assignee of account</td>
</tr>
</tbody>
</table>

### Definitions

<table>
<thead>
<tr>
<th>Account</th>
<th>143</th>
<th>827</th>
</tr>
</thead>
<tbody>
<tr>
<td>General intangible</td>
<td>143</td>
<td>828</td>
</tr>
<tr>
<td>Generally</td>
<td>143</td>
<td>825</td>
</tr>
<tr>
<td>Index of definitions</td>
<td>143</td>
<td>825</td>
</tr>
<tr>
<td>Proceeds</td>
<td>143</td>
<td>835</td>
</tr>
<tr>
<td>Security interest</td>
<td>143</td>
<td>815</td>
</tr>
<tr>
<td>Delivery defined</td>
<td>143</td>
<td>812</td>
</tr>
</tbody>
</table>

### Exclusions from article

| Exclusions from article       | 143 | 823 |

### Security interests to which filing provisions do not apply

| Security interests to which filing provisions do not apply | 143 | 831 |

### Exclusions, priority over unperfected security interests

| Exclusions, priority over unperfected security interests | 143 | 830 |

### Filings

| Assignment of security interest | 143 | 852 |
| Duties of filing officer        | 143 | 853 |
| Fees                           | 143 | 853 |
| Collateral                     |     |    |
| Release of                     |     |    |
| Removal of                     |     |    |
| Conflict of laws               |     |    |
| Duration of filing             |     |    |
| Erroneous filing               |     |    |

### Fees

| Assignment of security interest | 143 | 853 |
| Financing statement             | 143 | 850 |
| Assignment                      | 143 | 853 |
| Secretary of state              | 13  | 321 |
| Information from filing officer | 143 | 854 |
| Secretary of state              | 13  | 321 |
| Statement of release of collateral | 143 | 854 |
| Termination statement          | 13,143 | 321, 852 |

### Filing officer

| Duties of filing officer        | 143 | 843 |
| Information from                | 143 | 854 |

### Financing statement

| Amendments                     | 143 | 842 |
| Duration                       | 143 | 848 |
| Formal requisites of           | 143 | 845 |
| Formal requisites of financing statement | 143 | 845 |
| Amendments                     | 143 | 845 |
| Information from filing officer | 143 | 854 |
| Lapsed filings, effect of      | 143 | 848 |
| Mortgages, effect as financing statement | 143 | 845 |

### Perfected security interests

| Perfection by permissive filing | 143 | 833 |
| Temporary perfections without filing | 143 | 833 |
| When possession by secured party perfects without filing | 143 | 834 |

### Place of filing

| Place of filing                | 143 | 843 |
| Public bond issues effective for life of issues | 143 | 851 |
| Removal of collateral          | 143 | 843 |
| Security interests to which article does not apply | 143 | 831 |
| Termination statement          | 143 | 851 |

### Transition provisions

| Transition provisions          | 143 | 860-863 |

### What constitutes filing

| What constitutes filing        | 143 | 848 |

### When required to perfect security interest

| When required to perfect security interest | 143 | 831 |
### COMMERCIAL CODE—(continued):

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Secured transactions—(continued):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fixtures, priority of security interests in</td>
<td>143</td>
<td>840</td>
</tr>
<tr>
<td>Fungible, defined</td>
<td>143</td>
<td>812</td>
</tr>
<tr>
<td>Goods</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Consumer goods, protection of buyers</td>
<td>143</td>
<td>837</td>
</tr>
<tr>
<td>Defined</td>
<td>143</td>
<td>826</td>
</tr>
<tr>
<td>Instruments, purchase of</td>
<td>143</td>
<td>838</td>
</tr>
<tr>
<td>Jurisdiction</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accounts, contract rights, general intangibles and</td>
<td>143</td>
<td>822</td>
</tr>
<tr>
<td>equipment relating to another jurisdiction</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mortgages, effect as financing statement</td>
<td>143</td>
<td>845</td>
</tr>
<tr>
<td>Motor vehicles, applicability of filing provisions</td>
<td>143</td>
<td>832</td>
</tr>
<tr>
<td>Multiple state transactions, perfection of security interest</td>
<td>143</td>
<td>820</td>
</tr>
<tr>
<td>Perfected security interests</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Effect of lapsed filing</td>
<td>143</td>
<td>848</td>
</tr>
<tr>
<td>Perfection by permissive filing</td>
<td>143</td>
<td>833</td>
</tr>
<tr>
<td>Perfection by instruments, documents and goods covered by documents</td>
<td>143</td>
<td>833</td>
</tr>
<tr>
<td>Temporary perfection without filing or transfer of possession</td>
<td>143</td>
<td>833</td>
</tr>
<tr>
<td>When filing is required to perfect</td>
<td>143</td>
<td>831</td>
</tr>
<tr>
<td>When possession by second party perfects without filing</td>
<td>143</td>
<td>834</td>
</tr>
<tr>
<td>Policy of article</td>
<td>143</td>
<td>819</td>
</tr>
<tr>
<td>Priorities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Among conflicting interests in same collateral</td>
<td>143</td>
<td>838</td>
</tr>
<tr>
<td>Of securities interests in fixtures</td>
<td>143</td>
<td>840</td>
</tr>
<tr>
<td>Purchasers of chattel paper or instruments</td>
<td>143</td>
<td>838</td>
</tr>
<tr>
<td>Unperfected security interests</td>
<td>143</td>
<td>830</td>
</tr>
<tr>
<td>Proceeds, description in security agreements</td>
<td>143</td>
<td>829</td>
</tr>
<tr>
<td>Protection of buyers of goods</td>
<td>143</td>
<td>837</td>
</tr>
<tr>
<td>Purchase money security interest</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Inventory, priorities</td>
<td>143</td>
<td>839</td>
</tr>
<tr>
<td>Priority over rights of transferees in bulk or lien creditor</td>
<td>143</td>
<td>830</td>
</tr>
<tr>
<td>Purchase of chattel paper and instruments</td>
<td>143</td>
<td>838</td>
</tr>
<tr>
<td>Real property</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Default, procedure when security agreement covers both real and personal property</td>
<td>143</td>
<td>855</td>
</tr>
<tr>
<td>Describing in security agreement</td>
<td>143</td>
<td>829</td>
</tr>
<tr>
<td>Place of filing</td>
<td>143</td>
<td>843</td>
</tr>
<tr>
<td>Priority of security interest in fixtures</td>
<td>143</td>
<td>840</td>
</tr>
<tr>
<td>Scope of article</td>
<td>143</td>
<td>819</td>
</tr>
<tr>
<td>Transactions excluded</td>
<td>143</td>
<td>823</td>
</tr>
<tr>
<td>Receivers</td>
<td>143</td>
<td>831</td>
</tr>
<tr>
<td>Sales</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Default, disposition of collateral</td>
<td>143</td>
<td>857</td>
</tr>
<tr>
<td>Scope of article</td>
<td>143</td>
<td>819</td>
</tr>
<tr>
<td>Security interest to which filing provisions not applicable</td>
<td>143</td>
<td>831</td>
</tr>
<tr>
<td>Secretary of state</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Information from</td>
<td>143</td>
<td>854</td>
</tr>
<tr>
<td>Place of filing</td>
<td>143</td>
<td>843</td>
</tr>
<tr>
<td>Secured party</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Defined</td>
<td>143</td>
<td>826</td>
</tr>
<tr>
<td>Rights on disposition of collateral</td>
<td>143</td>
<td>834</td>
</tr>
<tr>
<td>Security agreement</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Advances</td>
<td>143</td>
<td>829</td>
</tr>
<tr>
<td>After-acquired property</td>
<td>143</td>
<td>829</td>
</tr>
<tr>
<td>Attachment of security interest</td>
<td>143</td>
<td>829</td>
</tr>
<tr>
<td>When interest attaches</td>
<td>143</td>
<td>830</td>
</tr>
<tr>
<td>Collateral</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Use or disposition without accounting</td>
<td>143</td>
<td>830</td>
</tr>
<tr>
<td>Defined</td>
<td>143</td>
<td>811</td>
</tr>
<tr>
<td>Topic</td>
<td>Ch.</td>
<td>Page</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>-----</td>
<td>------</td>
</tr>
<tr>
<td>COMMERCIAL CODE—(continued):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Secured transactions—(continued):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Security agreement—(continued):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Description in security agreements</td>
<td>143</td>
<td>829</td>
</tr>
<tr>
<td>Enforceability of security interest</td>
<td>143</td>
<td>829</td>
</tr>
<tr>
<td>Proceeds</td>
<td>143</td>
<td>829</td>
</tr>
<tr>
<td>Requisites</td>
<td>143</td>
<td>829</td>
</tr>
<tr>
<td>Use or disposition of collateral without accounting</td>
<td>143</td>
<td>830</td>
</tr>
<tr>
<td>Security interest</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Attachment, when interest attaches</td>
<td>143</td>
<td>829</td>
</tr>
<tr>
<td>Definition</td>
<td>143</td>
<td>815</td>
</tr>
<tr>
<td>Enforceability</td>
<td>143</td>
<td>829</td>
</tr>
<tr>
<td>Unperfected security interests, priority over</td>
<td>143</td>
<td>830</td>
</tr>
<tr>
<td>Third parties</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rights generally</td>
<td>143</td>
<td>830</td>
</tr>
<tr>
<td>Transactions excluded from provisions of article</td>
<td>143</td>
<td>823</td>
</tr>
<tr>
<td>Unperfected security interests</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Effect of lapsed filing</td>
<td>143</td>
<td>848</td>
</tr>
<tr>
<td>Lien creditor, priority over unperfected security interests</td>
<td>143</td>
<td>830</td>
</tr>
<tr>
<td>Persons who take priority over</td>
<td>143</td>
<td>830</td>
</tr>
<tr>
<td>Set-off and counterclaim</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Secured transactions, transactions excluded</td>
<td>143</td>
<td>823</td>
</tr>
<tr>
<td>Ships and shipping</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Security transactions excluded</td>
<td>143</td>
<td>824</td>
</tr>
<tr>
<td>Signatures</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Genuine, definition</td>
<td>143</td>
<td>813</td>
</tr>
<tr>
<td>“Signed”, definition</td>
<td>143</td>
<td>816</td>
</tr>
<tr>
<td>Unauthorized, definition</td>
<td>143</td>
<td>816</td>
</tr>
<tr>
<td>Includes forgery</td>
<td>143</td>
<td>816</td>
</tr>
<tr>
<td>State</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Transactions by government, governmental subdivision</td>
<td>143</td>
<td>824</td>
</tr>
<tr>
<td>or agency excluded</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Statute of frauds</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Secured transactions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Financing statement</td>
<td>143</td>
<td>845</td>
</tr>
<tr>
<td>Requisites of security agreement</td>
<td>143</td>
<td>829</td>
</tr>
<tr>
<td>Suretyship and guaranty, surety defined</td>
<td>143</td>
<td>816</td>
</tr>
<tr>
<td>Telegram, defined</td>
<td>143</td>
<td>816</td>
</tr>
<tr>
<td>Territorial application</td>
<td>143</td>
<td>810</td>
</tr>
<tr>
<td>Timber</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Secured transactions, description of land</td>
<td>143</td>
<td>829</td>
</tr>
<tr>
<td>Time</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Secured transactions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>County, municipal and public service bond issues effective for life of issues</td>
<td>143</td>
<td>851</td>
</tr>
<tr>
<td>Duration of financing statement</td>
<td>143</td>
<td>848</td>
</tr>
<tr>
<td>Torts</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Transfer of claims excluded</td>
<td>143</td>
<td>824</td>
</tr>
<tr>
<td>Transition provisions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Filing requirements</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Change of place of filing</td>
<td>143</td>
<td>861</td>
</tr>
<tr>
<td>Preservation of old transition provisions</td>
<td>143</td>
<td>860</td>
</tr>
<tr>
<td>Presumptions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>New code to be deemed declaratory of old code</td>
<td>143</td>
<td>863</td>
</tr>
<tr>
<td>Priorities</td>
<td>143</td>
<td>863</td>
</tr>
<tr>
<td>Refilings required</td>
<td>143</td>
<td>862</td>
</tr>
<tr>
<td>Transition provision on change of requirements</td>
<td>143</td>
<td>861</td>
</tr>
<tr>
<td>Transition to new code, general rule</td>
<td>143</td>
<td>860</td>
</tr>
<tr>
<td>Trees and Timber</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Place of filing secured transactions</td>
<td>143</td>
<td>844</td>
</tr>
<tr>
<td>Wages, transactions excluded</td>
<td>143</td>
<td>824</td>
</tr>
</tbody>
</table>
## COMMERCIAL CODE—(continued):

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Warehouse receipts, defined</td>
<td>143</td>
<td>817</td>
</tr>
<tr>
<td>Writing, defined</td>
<td>143</td>
<td>817</td>
</tr>
</tbody>
</table>

## COMMERCIAL FERTILIZERS:

### Adulteration
- Determination of ____________________ 1 10
- Prohibited ____________________ 1 10

### Analysis
- Inspection, sampling and analysis .......... 1 8

### Article
- Repeal of inconsistent laws ................. 1 13
- Severability of provisions ................. 1 13

### Brand
- Defined ____________________ 1, 3 2, 6
- Misbranding ____________________ 1 9

### Bulk fertilizer defined
- Commission of Agriculture ................. 1 10
- Administration of article ................. 1 2
- Defined ____________________ 1 2
- Prohibition of rules and regulations ........ 1 10
- Required publications ____________________ 1 10

### Constitutionality
- ____________________ 1 13

### Deficiencies, plant food
- ____________________ 1 8

### Definitions
- ____________________ 1 2

### Distributor defined
- ____________________ 1 2

### Fees
- Expenditure of ____________________ 1 13
- Inspection fee ____________________ 1 6
- Penalty for late payment _____________ 1 7
- Registration ____________________ 1 5

### Fertilizer material defined
- ____________________ 1 3

### Inspection
- Fees ____________________ 1 6
- Expenditure of fees ____________________ 1 13
- Sampling, inspection and analysis .......... 1 8

### Label
- Definition ____________________ 1 4
- Misbranding ____________________ 1 9
- Requirements ____________________ 1 6

### Manufacturers, exchanges between
- ____________________ 1 13

### Misbranding
- ____________________ 1 9

### Mixed fertilizer defined
- ____________________ 1 5

### Plant food deficiency
- ____________________ 1 8

### Registration
- Application ____________________ 1 5
- Cancellation ____________________ 1 11
- Fee ____________________ 1 2
- Required before distribution of fertilizer ___________ 1 5

### Reports
- Tonnage report _____________ 1 7
- Penalty for late filing _____________ 1 7

### Rules and regulations
- By commissioner ____________________ 1 10
- Penalties for violations ____________________ 1 12

### Sale
- Exchanges between manufacturers _____________ 1 13
- Seizure, condemnation and sale _____________ 1 11
- Stop sale orders ____________________ 1 11

### Samples
- Inspection, sampling and analysis _____________ 1 8
- Official sample defined ____________________ 1 5
COMMERCIAL FERTILIZERS—(continued):

<table>
<thead>
<tr>
<th>Subject</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Short weight</td>
<td>1</td>
<td>10</td>
</tr>
<tr>
<td>Specialty fertilizer defined</td>
<td>1</td>
<td>5</td>
</tr>
<tr>
<td>Value</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Determination of</td>
<td></td>
<td>9</td>
</tr>
<tr>
<td>Violations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Penalties, condemnation and sale</td>
<td>1</td>
<td>12</td>
</tr>
<tr>
<td>Seizure, condemnation and sale</td>
<td>1</td>
<td>11</td>
</tr>
</tbody>
</table>

COMMISSIONERS:

<table>
<thead>
<tr>
<th>Subject</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commissioners out of state</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Acknowledgments</td>
<td>91</td>
<td>634</td>
</tr>
<tr>
<td>Appointment by governor</td>
<td>91</td>
<td>634</td>
</tr>
<tr>
<td>Bond</td>
<td>91</td>
<td>634</td>
</tr>
<tr>
<td>Commission fee</td>
<td>91</td>
<td>634</td>
</tr>
<tr>
<td>Continuance in office</td>
<td>91</td>
<td>634</td>
</tr>
<tr>
<td>Powers as to acknowledgments</td>
<td>91</td>
<td>634</td>
</tr>
<tr>
<td>Seal</td>
<td>91</td>
<td>635</td>
</tr>
<tr>
<td>Term of office</td>
<td>91</td>
<td>634</td>
</tr>
</tbody>
</table>

CONSTABLES:

<table>
<thead>
<tr>
<th>Subject</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fees in criminal cases</td>
<td>21</td>
<td>337</td>
</tr>
</tbody>
</table>

CONSTITUTION, STATE:

<table>
<thead>
<tr>
<th>Subject</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Resolutions proposing amendments</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Judicial Reorganization Amendment (SJR 6)</td>
<td>946</td>
<td></td>
</tr>
<tr>
<td>Modern Schools Amendment (HJR 12)</td>
<td></td>
<td>942</td>
</tr>
</tbody>
</table>

CONSUMER CREDIT AND PROTECTION ACT:

<table>
<thead>
<tr>
<th>Subject</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administration</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Administrative enforcement orders</td>
<td>12</td>
<td>155</td>
</tr>
<tr>
<td>Judicial review</td>
<td>12</td>
<td>155</td>
</tr>
<tr>
<td>Administrative procedures act, application of</td>
<td>12</td>
<td>154</td>
</tr>
<tr>
<td>Advisory council</td>
<td>12</td>
<td>161</td>
</tr>
<tr>
<td>Attorney general</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Administrative enforcement orders</td>
<td>12</td>
<td>155</td>
</tr>
<tr>
<td>Judicial review</td>
<td>12</td>
<td>155</td>
</tr>
<tr>
<td>Administrative procedures act, application of</td>
<td>12</td>
<td>154</td>
</tr>
<tr>
<td>Assurance of discontinuance</td>
<td>12</td>
<td>156</td>
</tr>
<tr>
<td>Civil actions by</td>
<td>12</td>
<td>158</td>
</tr>
<tr>
<td>Jury trial</td>
<td>12</td>
<td>160</td>
</tr>
<tr>
<td>Venue</td>
<td>12</td>
<td>160</td>
</tr>
<tr>
<td>Injunctions against unconscionable agreements</td>
<td>12</td>
<td>157</td>
</tr>
<tr>
<td>and fraudulent or unconscionable conduct</td>
<td>12</td>
<td>157</td>
</tr>
<tr>
<td>Temporary relief</td>
<td>12</td>
<td>158</td>
</tr>
<tr>
<td>Injunctions against violations of chapter</td>
<td>12</td>
<td>157</td>
</tr>
<tr>
<td>Temporary relief</td>
<td>12</td>
<td>158</td>
</tr>
<tr>
<td>Investigatory powers</td>
<td>12</td>
<td>154</td>
</tr>
<tr>
<td>Powers of _</td>
<td>12</td>
<td>151</td>
</tr>
<tr>
<td>Consumer's remedies not affected</td>
<td>12</td>
<td>160</td>
</tr>
<tr>
<td>Reports</td>
<td>12</td>
<td>152</td>
</tr>
<tr>
<td>Rules and regulations</td>
<td>12</td>
<td>152</td>
</tr>
<tr>
<td>Consumer affairs advisory council</td>
<td>12</td>
<td>161</td>
</tr>
<tr>
<td>Division of administrative powers</td>
<td>12</td>
<td>153</td>
</tr>
<tr>
<td>Division of consumer protection</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Created</td>
<td>12</td>
<td>151</td>
</tr>
<tr>
<td>Purpose</td>
<td>12</td>
<td>151</td>
</tr>
<tr>
<td>Injunctions</td>
<td>12</td>
<td>157</td>
</tr>
<tr>
<td>Temporary relief</td>
<td>12</td>
<td>158</td>
</tr>
<tr>
<td>Notification to be filed with state tax department</td>
<td>12</td>
<td>160</td>
</tr>
<tr>
<td>Operative date and provisions for transition</td>
<td>12</td>
<td>163</td>
</tr>
<tr>
<td>Reports</td>
<td>12</td>
<td>152</td>
</tr>
<tr>
<td>Rules and regulations</td>
<td>12</td>
<td>152</td>
</tr>
</tbody>
</table>
### CONSUMER CREDIT AND PROTECTION ACT—(continued):

<table>
<thead>
<tr>
<th>Description</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administrative Procedures Act</td>
<td>12</td>
<td>136</td>
</tr>
<tr>
<td>Application to article</td>
<td>12</td>
<td>154</td>
</tr>
<tr>
<td>Attorney general governed by</td>
<td>12</td>
<td>146</td>
</tr>
<tr>
<td>Advertisement defined</td>
<td>12</td>
<td>161</td>
</tr>
<tr>
<td>Advisory council</td>
<td>12</td>
<td>74</td>
</tr>
<tr>
<td>Application</td>
<td>12</td>
<td>73</td>
</tr>
<tr>
<td>Exclusion of certain persons and transactions from provisions of chapter</td>
<td>12</td>
<td>73</td>
</tr>
<tr>
<td>Loans or sales consummated in another state</td>
<td>12</td>
<td>73</td>
</tr>
<tr>
<td>Assignees</td>
<td>12</td>
<td>79</td>
</tr>
<tr>
<td>Instruments, contracts or other writings</td>
<td>12</td>
<td>96</td>
</tr>
<tr>
<td>Assignee subject to claims and defenses of buyer or lessee</td>
<td>12</td>
<td>95</td>
</tr>
<tr>
<td>Assignment of earnings</td>
<td>12</td>
<td>139</td>
</tr>
<tr>
<td>Defined</td>
<td>12</td>
<td>89</td>
</tr>
<tr>
<td>Limitation on</td>
<td>12</td>
<td>89</td>
</tr>
<tr>
<td>Supervised lender</td>
<td>12</td>
<td>89</td>
</tr>
<tr>
<td>Attorney General. See within this heading under “Administration”.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Auditor, attorney-in-fact for nonresidents</td>
<td>12</td>
<td>110</td>
</tr>
<tr>
<td>Balloon payments</td>
<td>12</td>
<td></td>
</tr>
<tr>
<td>Agreement to contain required languages</td>
<td>12</td>
<td>89</td>
</tr>
<tr>
<td>Defined</td>
<td>12</td>
<td>89</td>
</tr>
<tr>
<td>Right to refinance</td>
<td>12</td>
<td>89</td>
</tr>
<tr>
<td>Chapter</td>
<td>12</td>
<td>164</td>
</tr>
<tr>
<td>Severability</td>
<td>12</td>
<td>62</td>
</tr>
<tr>
<td>Short title</td>
<td>12</td>
<td></td>
</tr>
<tr>
<td>Civil liability and criminal penalties</td>
<td>12</td>
<td></td>
</tr>
<tr>
<td>Assertion of rights</td>
<td>12</td>
<td>145</td>
</tr>
<tr>
<td>Effect of violations on rights of parties</td>
<td>12</td>
<td>142</td>
</tr>
<tr>
<td>Limitation of actions</td>
<td>12</td>
<td>142</td>
</tr>
<tr>
<td>Willful violations</td>
<td>12</td>
<td>145</td>
</tr>
<tr>
<td>Claim defined</td>
<td>12</td>
<td>100</td>
</tr>
<tr>
<td>Commissioner of banking</td>
<td>12</td>
<td></td>
</tr>
<tr>
<td>Annual report on use of consumer credit, etc.</td>
<td>12</td>
<td>152</td>
</tr>
<tr>
<td>Applicability of administrative procedures act to action taken by</td>
<td>12</td>
<td>136</td>
</tr>
<tr>
<td>Authority not limited by chapter</td>
<td>12</td>
<td>141</td>
</tr>
<tr>
<td>Rules and regulations</td>
<td>12</td>
<td></td>
</tr>
<tr>
<td>Allocation of charges and calculation of rebates</td>
<td>12</td>
<td>126</td>
</tr>
<tr>
<td>Calculation of deferred charges</td>
<td>12</td>
<td>129</td>
</tr>
<tr>
<td>Correspondence courses</td>
<td>12</td>
<td></td>
</tr>
<tr>
<td>Buyer's right to cancel certain subscriptions and other obligations</td>
<td>12</td>
<td>111</td>
</tr>
<tr>
<td>Cosigners</td>
<td>12</td>
<td></td>
</tr>
<tr>
<td>Liability</td>
<td>12</td>
<td>88</td>
</tr>
<tr>
<td>Notice to cosigners</td>
<td>12</td>
<td>88</td>
</tr>
<tr>
<td>Debt collection</td>
<td>12</td>
<td></td>
</tr>
<tr>
<td>Defined</td>
<td>12</td>
<td>100</td>
</tr>
<tr>
<td>Fraudulent, deceptive or misleading representations prohibited</td>
<td>12</td>
<td>103</td>
</tr>
<tr>
<td>Oppression and abuse prohibited</td>
<td>12</td>
<td>101</td>
</tr>
<tr>
<td>Postal violations</td>
<td>12</td>
<td>105</td>
</tr>
<tr>
<td>Practice of law by collector</td>
<td>12</td>
<td>100</td>
</tr>
<tr>
<td>Threats or coercion prohibited</td>
<td>12</td>
<td>104</td>
</tr>
<tr>
<td>Unfair or unconscionable means prohibited</td>
<td>12</td>
<td>102</td>
</tr>
<tr>
<td>Unreasonable publication prohibited</td>
<td>12</td>
<td></td>
</tr>
<tr>
<td>Default</td>
<td>12</td>
<td></td>
</tr>
<tr>
<td>Cure</td>
<td>12</td>
<td>90</td>
</tr>
<tr>
<td>Limitation on default charges</td>
<td>12</td>
<td>95</td>
</tr>
<tr>
<td>Notice of consumer's right to cure</td>
<td>12</td>
<td>90</td>
</tr>
<tr>
<td>Repeated default</td>
<td>12</td>
<td>91</td>
</tr>
<tr>
<td>CONSUMER CREDIT AND PROTECTION ACT—(continued):</td>
<td>Ch.</td>
<td>Page</td>
</tr>
<tr>
<td>-------------------------------------------------</td>
<td>-----</td>
<td>------</td>
</tr>
<tr>
<td>Definitions</td>
<td>12</td>
<td>146</td>
</tr>
<tr>
<td>For purposes of article 6</td>
<td>12</td>
<td>99</td>
</tr>
<tr>
<td>For purposes of certain sections of chapter</td>
<td>12</td>
<td>62</td>
</tr>
<tr>
<td>General</td>
<td>12</td>
<td></td>
</tr>
<tr>
<td>Discounts</td>
<td>12</td>
<td>93</td>
</tr>
<tr>
<td>As inducement on referral sales or leases</td>
<td>12</td>
<td></td>
</tr>
<tr>
<td>Division of consumer protection</td>
<td>12</td>
<td>151</td>
</tr>
<tr>
<td>Creation and purpose</td>
<td>12</td>
<td>73</td>
</tr>
<tr>
<td>Exclusions from applicability of chapter</td>
<td>12</td>
<td>109</td>
</tr>
<tr>
<td>Exemption of personal property from execution</td>
<td>12</td>
<td>98</td>
</tr>
<tr>
<td>Extortionate extensions of credit</td>
<td>12</td>
<td></td>
</tr>
<tr>
<td>Finance charges</td>
<td>12</td>
<td>121</td>
</tr>
<tr>
<td>Additional charges</td>
<td>12</td>
<td></td>
</tr>
<tr>
<td>Advances to perform covenants of consumer</td>
<td>12</td>
<td>129</td>
</tr>
<tr>
<td>Consolidation</td>
<td>12</td>
<td>120</td>
</tr>
<tr>
<td>Deferral charges</td>
<td>12</td>
<td>128</td>
</tr>
<tr>
<td>Delinquency charges</td>
<td>12</td>
<td></td>
</tr>
<tr>
<td>Non-precomputed consumer credit sales or loans</td>
<td>12</td>
<td>128</td>
</tr>
<tr>
<td>Precomputed consumer credit sales or loans</td>
<td>12</td>
<td>126</td>
</tr>
<tr>
<td>Insurance</td>
<td>12</td>
<td>121</td>
</tr>
<tr>
<td>Loan finance charge</td>
<td>12</td>
<td></td>
</tr>
<tr>
<td>Additional</td>
<td>12</td>
<td>121</td>
</tr>
<tr>
<td>Amount</td>
<td>12</td>
<td>116</td>
</tr>
<tr>
<td>Consolidation</td>
<td>12</td>
<td>120</td>
</tr>
<tr>
<td>Insurance</td>
<td>12</td>
<td>121</td>
</tr>
<tr>
<td>Prepayment, right to prepay</td>
<td>12</td>
<td>124</td>
</tr>
<tr>
<td>Real estate, sale finance charges</td>
<td>12</td>
<td>114</td>
</tr>
<tr>
<td>Refinancing</td>
<td>12</td>
<td>119</td>
</tr>
<tr>
<td>Revolving charge accounts</td>
<td>12</td>
<td>115</td>
</tr>
<tr>
<td>Revolving loan accounts</td>
<td>12</td>
<td>118</td>
</tr>
<tr>
<td>Rules and regulations</td>
<td>12</td>
<td>126, 129</td>
</tr>
<tr>
<td>United States or agency thereof</td>
<td>12</td>
<td></td>
</tr>
<tr>
<td>Interest rate on loans guaranteed or insured by</td>
<td>12</td>
<td>117</td>
</tr>
<tr>
<td>Sales finance charges</td>
<td>12</td>
<td></td>
</tr>
<tr>
<td>Additional charges</td>
<td>12</td>
<td>121</td>
</tr>
<tr>
<td>Amount</td>
<td>12</td>
<td>112</td>
</tr>
<tr>
<td>Consolidation</td>
<td>12</td>
<td>120</td>
</tr>
<tr>
<td>Insurance</td>
<td>12</td>
<td>121</td>
</tr>
<tr>
<td>Prepayment</td>
<td>12</td>
<td>124</td>
</tr>
<tr>
<td>Rebate</td>
<td>12</td>
<td>125</td>
</tr>
<tr>
<td>Real estate</td>
<td>12</td>
<td>114</td>
</tr>
<tr>
<td>Refinancing</td>
<td>12</td>
<td>119</td>
</tr>
<tr>
<td>Revolving charge accounts</td>
<td>12</td>
<td>115</td>
</tr>
<tr>
<td>Garnishment</td>
<td>12</td>
<td>105</td>
</tr>
<tr>
<td>Defined</td>
<td>12</td>
<td>106</td>
</tr>
<tr>
<td>Employees’ discharge or reprisal because of</td>
<td>12</td>
<td>105</td>
</tr>
<tr>
<td>Limitation</td>
<td>12</td>
<td>106</td>
</tr>
<tr>
<td>No garnishment before judgment</td>
<td>12</td>
<td>101</td>
</tr>
<tr>
<td>Use of as threat or coercion</td>
<td>12</td>
<td></td>
</tr>
<tr>
<td>General consumer protection</td>
<td>12</td>
<td>149</td>
</tr>
<tr>
<td>Actions by consumer</td>
<td>12</td>
<td>146</td>
</tr>
<tr>
<td>Definitions</td>
<td>12</td>
<td>149</td>
</tr>
<tr>
<td>Exempted transactions</td>
<td>12</td>
<td>146</td>
</tr>
<tr>
<td>Legislative declaration</td>
<td>12</td>
<td></td>
</tr>
<tr>
<td>Remedies</td>
<td>12</td>
<td>150</td>
</tr>
<tr>
<td>Disclaimer of warranties and remedies prohibited</td>
<td>12</td>
<td></td>
</tr>
<tr>
<td>Rules and regulations</td>
<td>12</td>
<td>149</td>
</tr>
<tr>
<td>Statutory construction</td>
<td>12</td>
<td>146</td>
</tr>
<tr>
<td>Unfair methods of competition and unfair or</td>
<td>12</td>
<td>149</td>
</tr>
<tr>
<td>deceptive acts and practices prohibited</td>
<td>12</td>
<td></td>
</tr>
</tbody>
</table>
## TOPICAL INDEX

### CONSUMER CREDIT AND PROTECTION ACT—(continued): Ch. Page

**General consumer protection—(continued):**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Warranties</td>
<td>12</td>
<td>150</td>
</tr>
<tr>
<td>Breach of</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Disclaimer of warranties and remedies prohibited</td>
<td>12</td>
<td>150</td>
</tr>
<tr>
<td>Privity abolished</td>
<td>12</td>
<td>150</td>
</tr>
</tbody>
</table>

**General provisions**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application of law to out-of-state sales or loans</td>
<td>12</td>
<td>73</td>
</tr>
<tr>
<td>Consumer protection generally</td>
<td>12</td>
<td>72</td>
</tr>
<tr>
<td>Definitions</td>
<td>12</td>
<td>72</td>
</tr>
</tbody>
</table>

**Exclusions**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sales or loans subject to law by agreement of parties</td>
<td>12</td>
<td>74</td>
</tr>
<tr>
<td>Short title</td>
<td>12</td>
<td>62</td>
</tr>
</tbody>
</table>

**Waiver**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Holders in due course</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Holders of negotiable instruments subject to claims and defenses of buyer or lessee</td>
<td>12</td>
<td>75</td>
</tr>
</tbody>
</table>

**Home solicitation**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Buyer’s right to cancel</td>
<td>12</td>
<td>106</td>
</tr>
<tr>
<td>Buyer’s duty</td>
<td>12</td>
<td>108</td>
</tr>
<tr>
<td>Compensation for certain services</td>
<td>12</td>
<td>108</td>
</tr>
<tr>
<td>Notice to seller</td>
<td>12</td>
<td>106</td>
</tr>
<tr>
<td>Seller’s rights</td>
<td>12</td>
<td>108</td>
</tr>
<tr>
<td>Down payment, restoration of</td>
<td>12</td>
<td>108</td>
</tr>
<tr>
<td>Form of agreement or offer to purchase</td>
<td>12</td>
<td>107</td>
</tr>
<tr>
<td>Sale, defined</td>
<td>12</td>
<td>70, 71</td>
</tr>
<tr>
<td>Settlement of buyer’s rights</td>
<td>12</td>
<td>107</td>
</tr>
</tbody>
</table>

**Instruments, contracts or other writings**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assignee subject to claims and defenses</td>
<td>12</td>
<td>79</td>
</tr>
</tbody>
</table>

**Judgments**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Confession of Judgment prohibited</td>
<td>12</td>
<td>96</td>
</tr>
<tr>
<td>Deficiency, restrictions on</td>
<td>12</td>
<td>97</td>
</tr>
<tr>
<td>Garnishment, none prior to entry of judgment</td>
<td>12</td>
<td>96</td>
</tr>
<tr>
<td>Judicial review of administrative enforcement orders</td>
<td>12</td>
<td>155</td>
</tr>
</tbody>
</table>

**Leases**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Information to be furnished</td>
<td>12</td>
<td>93</td>
</tr>
<tr>
<td>Restrictions on liability</td>
<td>12</td>
<td>94</td>
</tr>
</tbody>
</table>

**Legislative declaration, purpose of article 6**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lenders</td>
<td>12</td>
<td>146</td>
</tr>
<tr>
<td>Defined</td>
<td>12</td>
<td>85</td>
</tr>
<tr>
<td>Credit card defined</td>
<td>12</td>
<td>67</td>
</tr>
<tr>
<td>Subject to claims and defenses of borrowers arising from sales</td>
<td>12</td>
<td>84</td>
</tr>
<tr>
<td>Loan defined</td>
<td>12</td>
<td>67</td>
</tr>
<tr>
<td>Loan finance charge defined</td>
<td>12</td>
<td>67</td>
</tr>
<tr>
<td>Magazine subscriptions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Buyer’s right to cancel certain subscriptions and other obligations</td>
<td>12</td>
<td>111</td>
</tr>
<tr>
<td>Merchandise certificate defined</td>
<td>12</td>
<td>68</td>
</tr>
</tbody>
</table>

**Merchantable defined**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>12</td>
<td>147</td>
<td></td>
</tr>
</tbody>
</table>

**Negotiable Instruments**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Holders of negotiable instrument subject to claims and defenses of buyer or lessee</td>
<td>12</td>
<td>75</td>
</tr>
</tbody>
</table>

**Nonresidents**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Service of process on certain</td>
<td>12</td>
<td>110</td>
</tr>
</tbody>
</table>

**Notice**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assignment of rights to payment, notice required</td>
<td>12</td>
<td>94</td>
</tr>
<tr>
<td>Consumer’s right to cure default</td>
<td>12</td>
<td>90</td>
</tr>
<tr>
<td>Home solicitation, buyer’s right to cancel</td>
<td>12</td>
<td>106</td>
</tr>
<tr>
<td>Nonresidents, service of notice on certain</td>
<td>12</td>
<td>110</td>
</tr>
</tbody>
</table>
### CONSUMER CREDIT AND PROTECTION ACT—(continued):

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Notice—(continued):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Notice to cosigners, form</td>
<td>12</td>
<td>88</td>
</tr>
<tr>
<td>Notification required to be filed with the tax department</td>
<td>12</td>
<td>160</td>
</tr>
<tr>
<td>Operation date and provisions for transition</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Enforceability of prior transactions</td>
<td>12</td>
<td>163</td>
</tr>
<tr>
<td>Severability</td>
<td>12</td>
<td>164</td>
</tr>
<tr>
<td>Payments</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Application of payments on account</td>
<td>12</td>
<td>125</td>
</tr>
<tr>
<td>Assignment of earnings</td>
<td>12</td>
<td>95</td>
</tr>
<tr>
<td>Assignment of right to payment; notice</td>
<td>12</td>
<td>94</td>
</tr>
<tr>
<td>Balloon payments</td>
<td>12</td>
<td>89</td>
</tr>
<tr>
<td>Default</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cure</td>
<td>12</td>
<td>90</td>
</tr>
<tr>
<td>Limitation on default charges</td>
<td>12</td>
<td>95</td>
</tr>
<tr>
<td>Notice of consumer’s right to cure default</td>
<td>12</td>
<td>90</td>
</tr>
<tr>
<td>Repeated default</td>
<td>12</td>
<td>90</td>
</tr>
<tr>
<td>Evidence of payment</td>
<td>12</td>
<td>94</td>
</tr>
<tr>
<td>Prepayment; rebate upon</td>
<td>12</td>
<td>125</td>
</tr>
<tr>
<td>Receipts</td>
<td>12</td>
<td>94</td>
</tr>
<tr>
<td>Statement of account</td>
<td>12</td>
<td>94</td>
</tr>
<tr>
<td>Penalties. See “Civil Liability and Criminal Penalties” under this heading.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Personal property exemptions</td>
<td>12</td>
<td>109</td>
</tr>
<tr>
<td>Precomputed loan defined</td>
<td>12</td>
<td>69</td>
</tr>
<tr>
<td>Precomputed sale defined</td>
<td>12</td>
<td>69</td>
</tr>
<tr>
<td>Rebate as inducement</td>
<td>12</td>
<td>93</td>
</tr>
<tr>
<td>Receipts of payment required</td>
<td>12</td>
<td>94</td>
</tr>
<tr>
<td>Referral sales or leases; effects of</td>
<td>12</td>
<td>93</td>
</tr>
<tr>
<td>Reports</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Annual report of supervised lenders</td>
<td>12</td>
<td>135</td>
</tr>
<tr>
<td>Annual report on use of consumer credit and on consumer protection problems</td>
<td>12</td>
<td>152</td>
</tr>
<tr>
<td>Revolving charge accounts</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Change in terms</td>
<td>12</td>
<td>130</td>
</tr>
<tr>
<td>Defined</td>
<td>12</td>
<td>70</td>
</tr>
<tr>
<td>Generally</td>
<td>12</td>
<td>115</td>
</tr>
<tr>
<td>Revolving loan accounts</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Change in terms</td>
<td>12</td>
<td>130</td>
</tr>
<tr>
<td>Defined</td>
<td>12</td>
<td>70</td>
</tr>
<tr>
<td>Generally</td>
<td>12</td>
<td>118</td>
</tr>
<tr>
<td>Rules and regulations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Administration of chapter</td>
<td>12</td>
<td>152</td>
</tr>
<tr>
<td>Allocation of charges and calculation of rebates</td>
<td>12</td>
<td>126</td>
</tr>
<tr>
<td>Deferral charges</td>
<td>12</td>
<td>129</td>
</tr>
<tr>
<td>General consumer protection</td>
<td>12</td>
<td>149</td>
</tr>
<tr>
<td>Supervised lenders, licensing</td>
<td>12</td>
<td>132</td>
</tr>
<tr>
<td>Sales finance charge defined</td>
<td>12</td>
<td>71</td>
</tr>
<tr>
<td>Security in sales or leases</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cross-collateral</td>
<td>12</td>
<td>92</td>
</tr>
<tr>
<td>Debt secured by cross-collateral</td>
<td>12</td>
<td>92</td>
</tr>
<tr>
<td>When security interest may be taken</td>
<td>12</td>
<td>91</td>
</tr>
<tr>
<td>Service of process on nonresidents</td>
<td>12</td>
<td>110</td>
</tr>
<tr>
<td>Severability</td>
<td>12</td>
<td>164</td>
</tr>
<tr>
<td>Short title</td>
<td>12</td>
<td>62</td>
</tr>
<tr>
<td>Statement of account—amounts paid and owed</td>
<td>12</td>
<td>94</td>
</tr>
<tr>
<td>State Tax Department</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Notification required to be filed with</td>
<td>12</td>
<td>160</td>
</tr>
<tr>
<td>Statutory construction</td>
<td>12</td>
<td>146</td>
</tr>
</tbody>
</table>
# Topical Index

**Consumer Credit and Protection Act**—(continued):

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supervised lenders</td>
<td>12</td>
<td>136</td>
</tr>
<tr>
<td>Administrative procedures act applicable to article</td>
<td>12</td>
<td>133</td>
</tr>
<tr>
<td>Assignment of earnings prohibited</td>
<td>12</td>
<td>139</td>
</tr>
<tr>
<td>Bankruptcy—restrictions as to renegotiation of loan discharged in bankruptcy</td>
<td>12</td>
<td>139</td>
</tr>
<tr>
<td>Business other than making loans, restrictions on</td>
<td>12</td>
<td>140</td>
</tr>
<tr>
<td>Investigations and examinations by commissioner</td>
<td>12</td>
<td>135</td>
</tr>
<tr>
<td>License</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Applications</td>
<td>12</td>
<td>132</td>
</tr>
<tr>
<td>Assignability</td>
<td>12</td>
<td>133</td>
</tr>
<tr>
<td>Continuation of licensing</td>
<td>12</td>
<td>141</td>
</tr>
<tr>
<td>Fee</td>
<td>12</td>
<td>132</td>
</tr>
<tr>
<td>Place of business</td>
<td>12</td>
<td>133</td>
</tr>
<tr>
<td>Qualifications</td>
<td>12</td>
<td>132</td>
</tr>
<tr>
<td>Reinstatement</td>
<td>12</td>
<td>135</td>
</tr>
<tr>
<td>Required</td>
<td>12</td>
<td>132</td>
</tr>
<tr>
<td>Revocation or suspension</td>
<td>12</td>
<td>133</td>
</tr>
<tr>
<td>Term</td>
<td>12</td>
<td>133</td>
</tr>
<tr>
<td>Transferability</td>
<td>12</td>
<td>133</td>
</tr>
<tr>
<td>Loan finance charge</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amount of charge</td>
<td>12</td>
<td>137</td>
</tr>
<tr>
<td>Maximum interest on certain loans</td>
<td>12</td>
<td>141</td>
</tr>
<tr>
<td>Multiple loan agreements</td>
<td>12</td>
<td>139</td>
</tr>
<tr>
<td>Maximum interest on loans in excess of $1,200</td>
<td>12</td>
<td>141</td>
</tr>
<tr>
<td>Multiple loan agreements</td>
<td>12</td>
<td>139</td>
</tr>
<tr>
<td>Records</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Examination by commissioner</td>
<td>12</td>
<td>135</td>
</tr>
<tr>
<td>Required</td>
<td>12</td>
<td>135</td>
</tr>
<tr>
<td>Reports, annual required</td>
<td>12</td>
<td>135</td>
</tr>
<tr>
<td>Security interests</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Household furniture as security</td>
<td>12</td>
<td>140</td>
</tr>
<tr>
<td>Land as security</td>
<td>12</td>
<td>139</td>
</tr>
<tr>
<td>Small loans and small loan companies</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Application of chapter to</td>
<td>12</td>
<td>141</td>
</tr>
<tr>
<td>Supervised loans defined</td>
<td>12</td>
<td>72</td>
</tr>
<tr>
<td>Sureties</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Liability of sureties</td>
<td>12</td>
<td>88</td>
</tr>
<tr>
<td>Notice to sureties</td>
<td>12</td>
<td>88</td>
</tr>
<tr>
<td>Title, short title</td>
<td>12</td>
<td>62</td>
</tr>
<tr>
<td>Transition</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Operative date and provisions for</td>
<td>12</td>
<td>163</td>
</tr>
<tr>
<td>Unconscionability</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Agreement or transaction unconscionable or induced by unconscionable conduct</td>
<td>12</td>
<td>99</td>
</tr>
<tr>
<td>Injunctions against unconscionable agreements and fraudulent or unconscionable conduct</td>
<td>12</td>
<td>157</td>
</tr>
<tr>
<td>Use of unfair or unconscionable means by debt collectors</td>
<td>12</td>
<td>104</td>
</tr>
<tr>
<td>Uniform Commercial Code</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Application to restrictions on deficiency judgments</td>
<td>12</td>
<td>97</td>
</tr>
<tr>
<td>Violations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Injunctions against violations</td>
<td>12</td>
<td>157</td>
</tr>
<tr>
<td>Liabilities and penalties</td>
<td>12</td>
<td>143, 145</td>
</tr>
<tr>
<td>Waiver</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Consumer waiver of benefits or rights</td>
<td>12</td>
<td>74</td>
</tr>
<tr>
<td>Warranties</td>
<td></td>
<td></td>
</tr>
<tr>
<td>General consumer protection</td>
<td>12</td>
<td>146, 157</td>
</tr>
</tbody>
</table>

**Corporations:**

Acknowledgment of instruments required to be acknowledged by attorney | 13 | 236 |
### CORPORATIONS—(continued):

<table>
<thead>
<tr>
<th>Description</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Actions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>By shareholders, members or directors without meeting</td>
<td>13</td>
<td>235</td>
</tr>
<tr>
<td>Determination of value of shares of dissenting shareholders</td>
<td>13</td>
<td>279</td>
</tr>
<tr>
<td>To enforce payment of tax</td>
<td>13</td>
<td>316, 319</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Description</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Advertising, false</td>
<td></td>
<td>128</td>
</tr>
<tr>
<td>Agents, identification</td>
<td></td>
<td>183</td>
</tr>
<tr>
<td>Appeal and error</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Appeal of order of revocation</td>
<td>13</td>
<td>230</td>
</tr>
<tr>
<td>Application of article</td>
<td>13</td>
<td>177</td>
</tr>
<tr>
<td>Foreign and interstate commerce</td>
<td>13</td>
<td>177</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Description</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Articles of amendment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Admission in evidence</td>
<td>13</td>
<td>200</td>
</tr>
<tr>
<td>Effect</td>
<td>13</td>
<td>201</td>
</tr>
<tr>
<td>Filing</td>
<td>13</td>
<td>200</td>
</tr>
<tr>
<td>Recordation</td>
<td>13</td>
<td>200</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Description</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Articles of incorporation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Acknowledgment</td>
<td>13</td>
<td>197</td>
</tr>
<tr>
<td>Bylaws, inconsistencies with</td>
<td>13</td>
<td>197</td>
</tr>
<tr>
<td>Certificate of incorporation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Issuance</td>
<td>13</td>
<td>199</td>
</tr>
<tr>
<td>Effect</td>
<td>13</td>
<td>199</td>
</tr>
<tr>
<td>Recordation</td>
<td>13</td>
<td>199</td>
</tr>
<tr>
<td>Consolidation</td>
<td>13</td>
<td>203</td>
</tr>
<tr>
<td>Contents</td>
<td>13</td>
<td>197</td>
</tr>
<tr>
<td>Defined</td>
<td>13</td>
<td>178</td>
</tr>
<tr>
<td>Filing</td>
<td>13</td>
<td>199</td>
</tr>
<tr>
<td>Matters not required to be set forth</td>
<td>13</td>
<td>197</td>
</tr>
<tr>
<td>Merger</td>
<td>13</td>
<td>202</td>
</tr>
<tr>
<td>Notice, waiver</td>
<td>13</td>
<td>235</td>
</tr>
<tr>
<td>Restated articles of incorporation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Admission in evidence</td>
<td>13</td>
<td>201</td>
</tr>
<tr>
<td>Filing</td>
<td>13</td>
<td>201</td>
</tr>
<tr>
<td>Recordation</td>
<td>13</td>
<td>201</td>
</tr>
<tr>
<td>Voting requirements</td>
<td>13</td>
<td>234</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Description</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attorney General</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Charter or land-holding tax</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Institution of action to enforce payment of tax</td>
<td>13</td>
<td>316</td>
</tr>
<tr>
<td>Motion for injunction</td>
<td>13</td>
<td>317</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Description</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attorney-in-fact</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fee of auditor as attorney-in-fact</td>
<td>12</td>
<td>110</td>
</tr>
<tr>
<td>Fee of secretary of state as attorney-in-fact</td>
<td>13</td>
<td>313</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Description</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business corporations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Actions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dissenting shareholders to determine value of shares</td>
<td>13</td>
<td>279</td>
</tr>
<tr>
<td>Shareholder's actions</td>
<td>13</td>
<td>258</td>
</tr>
<tr>
<td>Appeals</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Right of aggrieved shareholders in dissolution actions</td>
<td>13</td>
<td>290</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Description</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Articles of incorporation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amendments</td>
<td>13</td>
<td>261</td>
</tr>
<tr>
<td>Articles of amendment and contents</td>
<td>13</td>
<td>265</td>
</tr>
<tr>
<td>Class voting</td>
<td>13</td>
<td>304</td>
</tr>
<tr>
<td>Procedure</td>
<td>13</td>
<td>263</td>
</tr>
<tr>
<td>Preemptive rights</td>
<td>13</td>
<td>247</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Description</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reorganization proceedings</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amendment of articles</td>
<td>13</td>
<td>266</td>
</tr>
<tr>
<td>Contents</td>
<td>13</td>
<td>266</td>
</tr>
<tr>
<td>Evidence</td>
<td>13</td>
<td>266</td>
</tr>
<tr>
<td>Filing procedure</td>
<td>13</td>
<td>266</td>
</tr>
<tr>
<td>Topic</td>
<td>Ch.</td>
<td>Page</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>-----</td>
<td>------</td>
</tr>
<tr>
<td><strong>Business corporations—(continued):</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Articles of incorporation—(continued):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Issuance</td>
<td>13</td>
<td>266</td>
</tr>
<tr>
<td>Purposes</td>
<td>13</td>
<td>266</td>
</tr>
<tr>
<td>Recordation</td>
<td>13</td>
<td>266</td>
</tr>
<tr>
<td>Restated articles</td>
<td>13</td>
<td>266</td>
</tr>
<tr>
<td>Adoption procedure and contents</td>
<td>13</td>
<td>266</td>
</tr>
<tr>
<td><strong>Assets</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dissolution, collection</td>
<td>13</td>
<td>287</td>
</tr>
<tr>
<td>Liquidation, application of assets</td>
<td>13</td>
<td>291</td>
</tr>
<tr>
<td>Mortgage or pledge of assets</td>
<td>13</td>
<td>277</td>
</tr>
<tr>
<td>Sale in regular course of business</td>
<td>13</td>
<td>277</td>
</tr>
<tr>
<td>Sale other than in regular course of business</td>
<td>13</td>
<td>277</td>
</tr>
<tr>
<td><strong>Authorized shares</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Classes and voting rights</td>
<td>13</td>
<td>237</td>
</tr>
<tr>
<td>Books and records</td>
<td>13</td>
<td>260</td>
</tr>
<tr>
<td>Examination by shareholders</td>
<td>13</td>
<td>260</td>
</tr>
<tr>
<td>Financial statements</td>
<td>13</td>
<td>260</td>
</tr>
<tr>
<td><strong>Capital surplus</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Distribution by directors</td>
<td>13</td>
<td>255</td>
</tr>
<tr>
<td>When distribution prohibited</td>
<td>13</td>
<td>255</td>
</tr>
<tr>
<td>Increase by directors</td>
<td>13</td>
<td>273</td>
</tr>
<tr>
<td>Payment of dividends to holders of shares</td>
<td>13</td>
<td>256</td>
</tr>
<tr>
<td>having preferential right</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reduction of stated capital</td>
<td>13</td>
<td>273</td>
</tr>
<tr>
<td><strong>Certificates representing shares</strong></td>
<td>13</td>
<td>245</td>
</tr>
<tr>
<td><strong>Conflict of Interest of directors</strong></td>
<td>13</td>
<td>252</td>
</tr>
<tr>
<td><strong>Contract rights</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Removal of officers to be without prejudice to</td>
<td>13</td>
<td>259</td>
</tr>
<tr>
<td><strong>Contracts, conflicts of interest</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Directors</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Articles of incorporation, amendment procedure</td>
<td>13</td>
<td>263</td>
</tr>
<tr>
<td>Capital surplus</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Distribution</td>
<td>13</td>
<td>255</td>
</tr>
<tr>
<td>Increase</td>
<td>13</td>
<td>273</td>
</tr>
<tr>
<td>Committees</td>
<td>13</td>
<td>253</td>
</tr>
<tr>
<td>Conflict of Interest</td>
<td>13</td>
<td>252</td>
</tr>
<tr>
<td>Dissolution, voluntary</td>
<td>13</td>
<td>285</td>
</tr>
<tr>
<td>Revocation</td>
<td>13</td>
<td>289</td>
</tr>
<tr>
<td>Dividends, declaration and payment</td>
<td>13</td>
<td>253</td>
</tr>
<tr>
<td>Generally</td>
<td>13</td>
<td>251</td>
</tr>
<tr>
<td>Liability in certain cases</td>
<td>13</td>
<td>256</td>
</tr>
<tr>
<td>Loans to directors, authorization by shareholders</td>
<td>13</td>
<td>256</td>
</tr>
<tr>
<td>Meetings, minutes</td>
<td>13</td>
<td>260</td>
</tr>
<tr>
<td>Officers, appointment or election by directors</td>
<td>13</td>
<td>259</td>
</tr>
<tr>
<td>Powers</td>
<td>13</td>
<td>251</td>
</tr>
<tr>
<td>Qualifications</td>
<td>13</td>
<td>251</td>
</tr>
<tr>
<td>Removal</td>
<td>13</td>
<td>251</td>
</tr>
<tr>
<td>Reserves, creation by directors</td>
<td>13</td>
<td>273</td>
</tr>
<tr>
<td>Votes, when recorded</td>
<td>13</td>
<td>251</td>
</tr>
<tr>
<td><strong>Dissolution</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Actions by shareholders</td>
<td>13</td>
<td>290</td>
</tr>
<tr>
<td>Right of majority shareholders to purchase plaintiff's shares</td>
<td>13</td>
<td>290</td>
</tr>
<tr>
<td><strong>Assets</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Application</td>
<td>13</td>
<td>291</td>
</tr>
<tr>
<td>Collection</td>
<td>13</td>
<td>287</td>
</tr>
<tr>
<td>Liquidation under supervision of court</td>
<td>13</td>
<td>288</td>
</tr>
<tr>
<td>Notice to creditors</td>
<td>13</td>
<td>287</td>
</tr>
<tr>
<td>Shareholders, appeal by aggrieved</td>
<td>13</td>
<td>290</td>
</tr>
<tr>
<td>Topic</td>
<td>Ch.</td>
<td>Page</td>
</tr>
<tr>
<td>-----------------------------------------------------------</td>
<td>-----</td>
<td>------</td>
</tr>
<tr>
<td>Statement of intent to dissolve</td>
<td>13</td>
<td>287</td>
</tr>
<tr>
<td>Effect</td>
<td>13</td>
<td>287</td>
</tr>
<tr>
<td>Filing</td>
<td>13</td>
<td>287</td>
</tr>
<tr>
<td>Procedure after filing</td>
<td>13</td>
<td>287</td>
</tr>
<tr>
<td>Revocation</td>
<td>13</td>
<td>288</td>
</tr>
<tr>
<td>Effect of statement of revocation</td>
<td>13</td>
<td>289</td>
</tr>
<tr>
<td>Filing</td>
<td>13</td>
<td>289</td>
</tr>
<tr>
<td>Voluntary dissolution</td>
<td>13</td>
<td>285</td>
</tr>
<tr>
<td>Act of incorporators</td>
<td>13</td>
<td>284</td>
</tr>
<tr>
<td>Revocation</td>
<td>13</td>
<td>283</td>
</tr>
<tr>
<td>Articles of dissolution</td>
<td>13</td>
<td>288</td>
</tr>
<tr>
<td>Incorporators</td>
<td>13</td>
<td>283</td>
</tr>
<tr>
<td>Revocation proceedings by consent of shareholders</td>
<td>13</td>
<td>285</td>
</tr>
<tr>
<td>Shareholders' consent</td>
<td>13</td>
<td>253</td>
</tr>
<tr>
<td>Declaration and payment by board of directors</td>
<td>13</td>
<td>255</td>
</tr>
<tr>
<td>Dividends</td>
<td>13</td>
<td>256</td>
</tr>
<tr>
<td>Loans to employees</td>
<td>13</td>
<td>275</td>
</tr>
<tr>
<td>Expenses</td>
<td>13</td>
<td>244</td>
</tr>
<tr>
<td>Organization, reorganization and financing</td>
<td>13</td>
<td>180</td>
</tr>
<tr>
<td>Incorporation, generally</td>
<td>13</td>
<td>246</td>
</tr>
<tr>
<td>Liability</td>
<td>13</td>
<td>243</td>
</tr>
<tr>
<td>Directors</td>
<td>13</td>
<td>274</td>
</tr>
<tr>
<td>Subscribers and shareholders</td>
<td>13</td>
<td>274</td>
</tr>
<tr>
<td>Loans, authorization by shareholders</td>
<td>13</td>
<td>275</td>
</tr>
<tr>
<td>Merger or consolidation</td>
<td>13</td>
<td>243</td>
</tr>
<tr>
<td>Articles of merger, contents</td>
<td>13</td>
<td>276</td>
</tr>
<tr>
<td>Subsidiary corporations</td>
<td>13</td>
<td>276</td>
</tr>
<tr>
<td>Generally</td>
<td>13</td>
<td>274</td>
</tr>
<tr>
<td>Meeting of shareholders</td>
<td>13</td>
<td>274</td>
</tr>
<tr>
<td>Notice to shareholders</td>
<td>13</td>
<td>274</td>
</tr>
<tr>
<td>Shareholder's approval</td>
<td>13</td>
<td>275</td>
</tr>
<tr>
<td>Stated capital</td>
<td>13</td>
<td>275</td>
</tr>
<tr>
<td>Subsidiary corporations</td>
<td>13</td>
<td>277</td>
</tr>
<tr>
<td>Articles of merger</td>
<td>13</td>
<td>276</td>
</tr>
<tr>
<td>Evidence</td>
<td>13</td>
<td>276</td>
</tr>
<tr>
<td>Procedures</td>
<td>13</td>
<td>276</td>
</tr>
<tr>
<td>Recordation</td>
<td>13</td>
<td>277</td>
</tr>
<tr>
<td>Mortgages, assets</td>
<td>13</td>
<td>277</td>
</tr>
<tr>
<td>Officers</td>
<td>13</td>
<td>259</td>
</tr>
<tr>
<td>Election or appointment</td>
<td>13</td>
<td>257</td>
</tr>
<tr>
<td>Removal</td>
<td>13</td>
<td>244</td>
</tr>
<tr>
<td>Organization, expenses</td>
<td>13</td>
<td>247</td>
</tr>
<tr>
<td>Preemptive rights of shareholders</td>
<td>13</td>
<td>277</td>
</tr>
<tr>
<td>Property</td>
<td>13</td>
<td>277</td>
</tr>
<tr>
<td>Mortgage</td>
<td>13</td>
<td>277</td>
</tr>
<tr>
<td>Sale, lease or exchange</td>
<td>13</td>
<td>277</td>
</tr>
<tr>
<td>In other than regular course of business</td>
<td>13</td>
<td>277</td>
</tr>
<tr>
<td>In course of business</td>
<td>13</td>
<td>277</td>
</tr>
<tr>
<td>Recordation</td>
<td>13</td>
<td>266</td>
</tr>
<tr>
<td>Amendment of articles of incorporation</td>
<td>13</td>
<td>276</td>
</tr>
<tr>
<td>Merger of subsidiary corporations</td>
<td>13</td>
<td>247</td>
</tr>
<tr>
<td>Record date, fixing</td>
<td>13</td>
<td>269</td>
</tr>
<tr>
<td>Redemption or purchase of redeemable shares</td>
<td>13</td>
<td>266</td>
</tr>
<tr>
<td>Reorganization proceedings</td>
<td>13</td>
<td>273</td>
</tr>
<tr>
<td>Reserves, creation</td>
<td>13</td>
<td>273</td>
</tr>
</tbody>
</table>
### TOPICAL INDEX

<table>
<thead>
<tr>
<th>CORPORATIONS—(continued):</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business corporations—(continued):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Shares</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Acceptance of subscription</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Articles of incorporation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Arguments of dissenting shareholder</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Determination of value by court</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Rights and powers of court</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Shareholders and directors</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Shares authorized by law</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Transfer of dissenting shareholder’s shares to corporation</td>
<td>13</td>
<td>279</td>
</tr>
<tr>
<td>- Voting trusts</td>
<td>13</td>
<td>250</td>
</tr>
<tr>
<td>Dissenting shareholder's shares</td>
<td>13</td>
<td>279</td>
</tr>
<tr>
<td>- Civil action to determine value</td>
<td>13</td>
<td>279</td>
</tr>
<tr>
<td>- Demand for payment of</td>
<td>13</td>
<td>279</td>
</tr>
<tr>
<td>- Purchase of</td>
<td>13</td>
<td>279</td>
</tr>
<tr>
<td>- Transfer to corporation</td>
<td>13</td>
<td>279</td>
</tr>
<tr>
<td>Fractional shares</td>
<td>13</td>
<td>246</td>
</tr>
<tr>
<td>- Merger or consolidation</td>
<td>13</td>
<td>275</td>
</tr>
<tr>
<td>- Nonpar value, stated capital</td>
<td>13</td>
<td>243</td>
</tr>
<tr>
<td>- Par value</td>
<td>13</td>
<td>262</td>
</tr>
<tr>
<td>- Payment</td>
<td>13</td>
<td>241</td>
</tr>
<tr>
<td>- Preferred or special classes in series</td>
<td>13</td>
<td>238</td>
</tr>
<tr>
<td>- Purposes for which corporation may purchase or acquire its own shares</td>
<td>13</td>
<td>242</td>
</tr>
<tr>
<td>Proxy voting</td>
<td>13</td>
<td>249</td>
</tr>
<tr>
<td>Reacquired shares</td>
<td>13</td>
<td>270</td>
</tr>
<tr>
<td>Redeemable shares</td>
<td>13</td>
<td>269</td>
</tr>
<tr>
<td>Cancellation</td>
<td>13</td>
<td>240</td>
</tr>
<tr>
<td>Subscribers, liability</td>
<td>13</td>
<td>246</td>
</tr>
<tr>
<td>Subscriptions</td>
<td>13</td>
<td>240</td>
</tr>
</tbody>
</table>
## CORPORTIONS—(continued):

### Business corporations—(continued):

#### Shares—(continued):

- Treasury shares
- Voting of shares
- Voting rights
- Voting trusts

#### Stated capital

- Amendments to articles of incorporation
- Cancellation of reacquired shares
- Determination of amount
- Increase
- Reduction

#### Subscribers, liability

- Subscriptions, shares
- Transfer books, closing
- Treasury shares
- Use of term "corporation"

### Business development corporations

- Financial institutions as members of corporations
- Loans to corporations by members

### Business franchise registration tax

- Definitions
- Bylaws
- Adoption, amendment, etc.
- Voting requirements

#### Cemeteries

- Charter or landholding tax
- Exemptions

#### Charitable organizations

- Charter or landholding tax exemption

#### Charters

- Amendments
- Fees for issuance
- Issuance
- Revocation or forfeiture
- Charter or landholding tax

#### Churches

- Religious denominations or churches incorporated
- Capacity prohibited

#### Clerks of circuit court

- Charter or landholding tax
- Notice to secretary of state of forfeiture, revocation or dissolution of corporations
- Penalty for failure to make report

#### Clerks of county court

- Recodation
- Recordation of articles of incorporation

#### Consolidation

- Articles of consolidation
- Admission in evidence
- Certificate
- Filing
- Recordation
<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>CONSOLIDATION—(continued):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Certificate of consolidation</td>
<td>13</td>
<td>228</td>
</tr>
<tr>
<td><strong>Payment of taxes prerequisite for issuance</strong></td>
<td>13</td>
<td>204</td>
</tr>
<tr>
<td><strong>Conveyance of title to real estate to surviving or new corporation</strong></td>
<td>13</td>
<td>204</td>
</tr>
<tr>
<td><strong>Effect</strong></td>
<td>13</td>
<td>203</td>
</tr>
<tr>
<td><strong>Procedure</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Construction of article</strong></td>
<td>13</td>
<td>176</td>
</tr>
<tr>
<td><strong>Severability</strong></td>
<td>13</td>
<td>177</td>
</tr>
<tr>
<td>Contracts</td>
<td>13</td>
<td>185</td>
</tr>
<tr>
<td><strong>Ultra vires</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Corporate existence, perpetual</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Costs</td>
<td>13</td>
<td>181</td>
</tr>
<tr>
<td><strong>Actions to enforce payment of charter or landholding tax</strong></td>
<td>13</td>
<td>316</td>
</tr>
<tr>
<td><strong>Indemnification of directors and officers</strong></td>
<td>13</td>
<td>183</td>
</tr>
<tr>
<td>Creditor and debtor</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Business corporations</td>
<td>13</td>
<td>287</td>
</tr>
<tr>
<td><strong>Dissolution notice to creditor</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Dissolution, deposits with state treasurer</strong></td>
<td>13</td>
<td>287</td>
</tr>
<tr>
<td><strong>Liquidation actions</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Filling of claims</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Criminal procedure</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Indemnification of officers, directors, employees and agents</strong></td>
<td>13</td>
<td>183</td>
</tr>
<tr>
<td>Defenses ultra vires</td>
<td>13</td>
<td>185</td>
</tr>
<tr>
<td>Definitions</td>
<td>13</td>
<td>178</td>
</tr>
<tr>
<td>Directors</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Action without meeting</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Classes</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Consolidation</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Defined</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Elections</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Indemnification</strong></td>
<td>13</td>
<td>183</td>
</tr>
<tr>
<td><strong>Meetings, notice and place</strong></td>
<td>13</td>
<td>196</td>
</tr>
<tr>
<td><strong>Merger</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Notice, waiver</strong></td>
<td>13</td>
<td>202</td>
</tr>
<tr>
<td><strong>Number</strong></td>
<td>13</td>
<td>235</td>
</tr>
<tr>
<td><strong>Quorum</strong></td>
<td>13</td>
<td>194</td>
</tr>
<tr>
<td><strong>Vacancies, manner of filling</strong></td>
<td>13</td>
<td>195</td>
</tr>
<tr>
<td><strong>Voting requirements</strong></td>
<td>13</td>
<td>196</td>
</tr>
<tr>
<td>Dissolution</td>
<td>13</td>
<td>208</td>
</tr>
<tr>
<td><strong>Articles of dissolution</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>By suit In equity</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Charter or landholding tax</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Record of dissolution</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Certificate of dissolution</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Issuance by secretary of state</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Payment of corporation tax</strong></td>
<td>13</td>
<td>209</td>
</tr>
<tr>
<td><strong>Deposits with state treasurer of amounts due certain persons</strong></td>
<td>13</td>
<td>228</td>
</tr>
<tr>
<td><strong>Effect</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Expiration of corporate existence</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Involuntary dissolution</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Deposit of amounts due with state treasurer</strong></td>
<td>13</td>
<td>214</td>
</tr>
<tr>
<td><strong>Order</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Filing with secretary of state</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Remedies not impaired by dissolution</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dividends</td>
<td>13</td>
<td>253</td>
</tr>
<tr>
<td><strong>Business corporations</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Nonprofit corporations, prohibited</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dockets</td>
<td>13</td>
<td>294</td>
</tr>
<tr>
<td><strong>Charter of landholding tax, lien docket</strong></td>
<td>13</td>
<td>314</td>
</tr>
</tbody>
</table>
### TOPICAL INDEX

#### CORPORATIONS—(continued):

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Duration</td>
<td>13</td>
<td>181</td>
</tr>
<tr>
<td>Corporate existence</td>
<td>13</td>
<td>181</td>
</tr>
<tr>
<td>Perpetual succession</td>
<td>13</td>
<td>194</td>
</tr>
<tr>
<td>Elections, directors</td>
<td>13</td>
<td>183</td>
</tr>
<tr>
<td>Employees, indemnification</td>
<td>13</td>
<td>200</td>
</tr>
<tr>
<td>Evidence</td>
<td>13</td>
<td>201</td>
</tr>
<tr>
<td>Articles of amendment</td>
<td>13</td>
<td>203</td>
</tr>
<tr>
<td>Articles of incorporation</td>
<td>13</td>
<td>234</td>
</tr>
<tr>
<td>Articles of merger or consolidation</td>
<td>13</td>
<td>319</td>
</tr>
<tr>
<td>Certificates and certified copies</td>
<td>13</td>
<td>177</td>
</tr>
<tr>
<td>Reception in evidence</td>
<td>13</td>
<td>231</td>
</tr>
<tr>
<td>Exemptions</td>
<td>13</td>
<td>320</td>
</tr>
<tr>
<td>Charter or landholding tax</td>
<td>13</td>
<td>321</td>
</tr>
<tr>
<td>Existing corporations, application of article</td>
<td>13</td>
<td>320</td>
</tr>
<tr>
<td>Expiration, conditions</td>
<td>13</td>
<td>320</td>
</tr>
<tr>
<td>Fees</td>
<td>13</td>
<td>320</td>
</tr>
<tr>
<td>Charter</td>
<td>13</td>
<td>192</td>
</tr>
<tr>
<td>Collection by secretary of state</td>
<td>13</td>
<td>216</td>
</tr>
<tr>
<td>Name, change of</td>
<td>13</td>
<td>216</td>
</tr>
<tr>
<td>Office, change of principal office</td>
<td>13</td>
<td>216</td>
</tr>
<tr>
<td>Secretary of state, charges by</td>
<td>13</td>
<td>216</td>
</tr>
<tr>
<td>Stock and stockholders</td>
<td>13</td>
<td>219</td>
</tr>
<tr>
<td>Increase or decrease in number of shares</td>
<td>13</td>
<td>219</td>
</tr>
<tr>
<td>Fines, penalties and forfeitures</td>
<td>13</td>
<td>219</td>
</tr>
<tr>
<td>Charter or landholding tax</td>
<td>13</td>
<td>219</td>
</tr>
<tr>
<td>Foreign commerce, application of article to</td>
<td>13</td>
<td>220</td>
</tr>
<tr>
<td>Foreign corporations</td>
<td>13</td>
<td>220</td>
</tr>
<tr>
<td>Actions involving, venue</td>
<td>13</td>
<td>220</td>
</tr>
<tr>
<td>Admission</td>
<td>13</td>
<td>220</td>
</tr>
<tr>
<td>Articles of incorporation</td>
<td>13</td>
<td>220</td>
</tr>
<tr>
<td>Amendment</td>
<td>13</td>
<td>220</td>
</tr>
<tr>
<td>Filing</td>
<td>13</td>
<td>220</td>
</tr>
<tr>
<td>Recordation</td>
<td>13</td>
<td>220</td>
</tr>
<tr>
<td>Penalties for failure to record</td>
<td>13</td>
<td>220</td>
</tr>
<tr>
<td>Certificate of authority</td>
<td>13</td>
<td>222</td>
</tr>
<tr>
<td>Acts permitted without certificate</td>
<td>13</td>
<td>222</td>
</tr>
<tr>
<td>Amended certificate</td>
<td>13</td>
<td>222</td>
</tr>
<tr>
<td>Penalties, failure to record</td>
<td>13</td>
<td>222</td>
</tr>
<tr>
<td>Recordation</td>
<td>13</td>
<td>222</td>
</tr>
<tr>
<td>Requirements</td>
<td>13</td>
<td>222</td>
</tr>
<tr>
<td>Application</td>
<td>13</td>
<td>222</td>
</tr>
<tr>
<td>Contents</td>
<td>13</td>
<td>183</td>
</tr>
<tr>
<td>Filing</td>
<td>13</td>
<td>218</td>
</tr>
<tr>
<td>Forms</td>
<td>13</td>
<td>218</td>
</tr>
<tr>
<td>Issuance</td>
<td>13</td>
<td>218</td>
</tr>
<tr>
<td>Penalties, failure to record</td>
<td>13</td>
<td>218</td>
</tr>
<tr>
<td>Recodarion</td>
<td>13</td>
<td>218</td>
</tr>
<tr>
<td>Conducting affairs or doing or transacting business without</td>
<td>13</td>
<td>218</td>
</tr>
<tr>
<td>Corporations heretofore authorized to transact business</td>
<td>13</td>
<td>218</td>
</tr>
<tr>
<td>not required to reapply</td>
<td>13</td>
<td>218</td>
</tr>
<tr>
<td>Effect</td>
<td>13</td>
<td>218</td>
</tr>
<tr>
<td>Failure to obtain</td>
<td>13</td>
<td>218</td>
</tr>
<tr>
<td>Issuance</td>
<td>13</td>
<td>218</td>
</tr>
<tr>
<td>When certificate is not to be issued</td>
<td>13</td>
<td>218</td>
</tr>
<tr>
<td>Powers of foreign corporations</td>
<td>13</td>
<td>218</td>
</tr>
<tr>
<td>Revocation</td>
<td>13</td>
<td>218</td>
</tr>
<tr>
<td>Appeal</td>
<td>13</td>
<td>230</td>
</tr>
</tbody>
</table>
### CORPORATIONS—(continued):

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Foreign corporations—(continued):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Certificate of authority—(continued):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Revocation—(continued):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Conditions for revocation</td>
<td>13</td>
<td>229</td>
</tr>
<tr>
<td>Order by secretary of state</td>
<td>13</td>
<td>230</td>
</tr>
<tr>
<td>Consolidation or merger</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Articles of merger</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Filing</td>
<td>13</td>
<td>234</td>
</tr>
<tr>
<td>Recordation</td>
<td>13</td>
<td>224</td>
</tr>
<tr>
<td>Penalty for failure to record</td>
<td>13</td>
<td>224</td>
</tr>
<tr>
<td>Defined</td>
<td>13</td>
<td>179</td>
</tr>
<tr>
<td>License tax</td>
<td>13</td>
<td>311</td>
</tr>
<tr>
<td>Name</td>
<td>13</td>
<td>218</td>
</tr>
<tr>
<td>Change of name</td>
<td>13</td>
<td>219</td>
</tr>
<tr>
<td>Reserved name</td>
<td>13</td>
<td>187</td>
</tr>
<tr>
<td>Powers</td>
<td>13</td>
<td>218</td>
</tr>
<tr>
<td>Preexisting foreign corporations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reapplication not required for certificate of authority</td>
<td>13</td>
<td>231</td>
</tr>
<tr>
<td>Principal office, change</td>
<td>13</td>
<td>223</td>
</tr>
<tr>
<td>Reports</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Annual report to tax commissioner</td>
<td>13</td>
<td>311</td>
</tr>
<tr>
<td>Charter or landholding tax</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Annual report to tax commissioner</td>
<td>13</td>
<td>311</td>
</tr>
<tr>
<td>Preliminary report to secretary of state</td>
<td>13</td>
<td>312</td>
</tr>
<tr>
<td>Secretary of State</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fee as statutory attorney-in-fact</td>
<td>13</td>
<td>313</td>
</tr>
<tr>
<td>Venue, actions involving foreign corporations</td>
<td>13</td>
<td>192</td>
</tr>
<tr>
<td>Withdrawal from state</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Certificate</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Application</td>
<td>13</td>
<td>226</td>
</tr>
<tr>
<td>Contents</td>
<td>13</td>
<td>226</td>
</tr>
<tr>
<td>Filing</td>
<td>13</td>
<td>236</td>
</tr>
<tr>
<td>Issuance</td>
<td>13</td>
<td>226</td>
</tr>
<tr>
<td>Recordation</td>
<td>13</td>
<td>226</td>
</tr>
<tr>
<td>Publication required</td>
<td>13</td>
<td>226</td>
</tr>
<tr>
<td>Governor</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Charter or landholding tax</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Proclamation as to delinquent corporations</td>
<td>13</td>
<td>316</td>
</tr>
<tr>
<td>Cost of proclamation</td>
<td>13</td>
<td>316</td>
</tr>
<tr>
<td>Recordation</td>
<td>13</td>
<td>316</td>
</tr>
<tr>
<td>Incorporation</td>
<td>13</td>
<td>197</td>
</tr>
<tr>
<td>Number of incorporators required</td>
<td>13</td>
<td>197</td>
</tr>
<tr>
<td>Persons acting as incorporators</td>
<td>13</td>
<td>197</td>
</tr>
<tr>
<td>Purposes</td>
<td>13</td>
<td>180</td>
</tr>
<tr>
<td>Indemnification</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Officers, directors, employees and agents</td>
<td>13</td>
<td>183</td>
</tr>
<tr>
<td>Industrial loan companies</td>
<td></td>
<td></td>
</tr>
<tr>
<td>See Industrial Loan Companies.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Injunctions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Restraining corporations delinquent in payment of charter or landholding tax from doing business</td>
<td>13</td>
<td>316</td>
</tr>
<tr>
<td>Insurance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Holding company system act</td>
<td></td>
<td></td>
</tr>
<tr>
<td>See Insurance.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Interstate commerce</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Application of article to</td>
<td>13</td>
<td>177</td>
</tr>
<tr>
<td>Judgments</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Enforcement of payment of charter or landholding tax</td>
<td>13</td>
<td>316</td>
</tr>
<tr>
<td>Topic</td>
<td>Ch.</td>
<td>Page</td>
</tr>
<tr>
<td>------------------------------------------------------------</td>
<td>-----</td>
<td>------</td>
</tr>
<tr>
<td>Judicial sales</td>
<td>13</td>
<td>316</td>
</tr>
<tr>
<td>Action to enforce payment of charter or landholding tax</td>
<td>13</td>
<td>318</td>
</tr>
<tr>
<td>Limitation on institution of proceedings</td>
<td>13</td>
<td>318</td>
</tr>
<tr>
<td>Right of purchaser of delinquent property</td>
<td>13</td>
<td>316</td>
</tr>
<tr>
<td>Jurisdiction</td>
<td>13</td>
<td>316</td>
</tr>
<tr>
<td>Action to enforce payment of charter or landholding tax</td>
<td>13</td>
<td>192</td>
</tr>
<tr>
<td>Foreign corporations</td>
<td>13</td>
<td>313</td>
</tr>
<tr>
<td>Liens</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Charter or landholding tax</td>
<td>13</td>
<td>210</td>
</tr>
<tr>
<td>Liens</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Actions by stockholders</td>
<td>13</td>
<td>213</td>
</tr>
<tr>
<td>Claims, filing</td>
<td>13</td>
<td>210</td>
</tr>
<tr>
<td>Creditor's action</td>
<td>13</td>
<td>214</td>
</tr>
<tr>
<td>Discontinuance of proceedings</td>
<td>13</td>
<td>214</td>
</tr>
<tr>
<td>Involuntary dissolution</td>
<td>13</td>
<td>212</td>
</tr>
<tr>
<td>Procedure</td>
<td>13</td>
<td>212</td>
</tr>
<tr>
<td>Qualifications</td>
<td>13</td>
<td>213</td>
</tr>
<tr>
<td>Receivers, appointment and powers</td>
<td>13</td>
<td>212</td>
</tr>
<tr>
<td>Lodges</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Exemption from charter or landholding tax</td>
<td>13</td>
<td>319</td>
</tr>
<tr>
<td>Meetings</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Organization meeting</td>
<td>13</td>
<td>200</td>
</tr>
<tr>
<td>Notice</td>
<td>13</td>
<td>200</td>
</tr>
<tr>
<td>Waiver</td>
<td>13</td>
<td>192</td>
</tr>
<tr>
<td>Shareholders or members</td>
<td>13</td>
<td>193</td>
</tr>
<tr>
<td>Notice</td>
<td>13</td>
<td></td>
</tr>
<tr>
<td>Merger</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Articles of merger</td>
<td>13</td>
<td>203</td>
</tr>
<tr>
<td>Admission in evidence</td>
<td>13</td>
<td>203</td>
</tr>
<tr>
<td>Certificate; issuance, filing and recordation</td>
<td>13</td>
<td>228</td>
</tr>
<tr>
<td>Certificate of merger, payment of taxes prerequisite to issuance</td>
<td>13</td>
<td>204</td>
</tr>
<tr>
<td>Conveyance of title to real estate to surviving or new corporation</td>
<td>13</td>
<td></td>
</tr>
<tr>
<td>Domestic and foreign corporations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Abandonment</td>
<td>13</td>
<td>206</td>
</tr>
<tr>
<td>Effect</td>
<td>13</td>
<td>206</td>
</tr>
<tr>
<td>Real estate, confirmation of title required</td>
<td>13</td>
<td>208</td>
</tr>
<tr>
<td>Effect</td>
<td>13</td>
<td>206</td>
</tr>
<tr>
<td>Procedure</td>
<td>13</td>
<td>202</td>
</tr>
<tr>
<td>Real estate</td>
<td>13</td>
<td></td>
</tr>
<tr>
<td>Conveyance of title to surviving or new corporation</td>
<td>13</td>
<td>204</td>
</tr>
<tr>
<td>Domestic and foreign corporations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Confirmation of title required</td>
<td>13</td>
<td>206</td>
</tr>
<tr>
<td>Name</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Certain names prohibited</td>
<td>13</td>
<td>186</td>
</tr>
<tr>
<td>Change of name, fees of secretary of state</td>
<td>13</td>
<td>321</td>
</tr>
<tr>
<td>Foreign corporations</td>
<td>13</td>
<td>218</td>
</tr>
<tr>
<td>Generally</td>
<td>13</td>
<td>186</td>
</tr>
<tr>
<td>Registered name</td>
<td>13</td>
<td>188</td>
</tr>
<tr>
<td>Fee</td>
<td>13</td>
<td>189</td>
</tr>
<tr>
<td>Renewal</td>
<td>13</td>
<td>189</td>
</tr>
<tr>
<td>Requirements of registration</td>
<td>13</td>
<td>188</td>
</tr>
<tr>
<td>Requirements</td>
<td>13</td>
<td>186</td>
</tr>
<tr>
<td>Reserved name</td>
<td>13</td>
<td>187</td>
</tr>
<tr>
<td>Transfer of right to exclusive use of specified corporate name</td>
<td>13</td>
<td>188</td>
</tr>
<tr>
<td>Nonprofit corporations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Appeal</td>
<td></td>
<td>307</td>
</tr>
<tr>
<td>Failure to file annual report</td>
<td>13</td>
<td></td>
</tr>
<tr>
<td>Articles of incorporation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Topic</td>
<td>Ch.</td>
<td>Page</td>
</tr>
<tr>
<td>-------</td>
<td>-----</td>
<td>------</td>
</tr>
<tr>
<td><strong>CORPORATIONS</strong>—(continued):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Nonprofit corporations—(continued):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Articles of corporations—(continued):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amendments</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Articles of amendment</td>
<td>13</td>
<td>296</td>
</tr>
<tr>
<td>Procedure</td>
<td>13</td>
<td>295</td>
</tr>
<tr>
<td>Right to amend</td>
<td>13</td>
<td>295</td>
</tr>
<tr>
<td>Classes of members</td>
<td>13</td>
<td>291</td>
</tr>
<tr>
<td>Restated articles</td>
<td>13</td>
<td>296</td>
</tr>
<tr>
<td>Assets</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Application in liquidation of corporation by court</td>
<td>13</td>
<td>304</td>
</tr>
<tr>
<td>Distribution of assets on voluntary dissolution</td>
<td>13</td>
<td>302</td>
</tr>
<tr>
<td>Plan of distribution</td>
<td>13</td>
<td>303</td>
</tr>
<tr>
<td>Sale, lease, exchange or mortgage</td>
<td>13</td>
<td>299</td>
</tr>
<tr>
<td>Books and accounts</td>
<td>13</td>
<td>294</td>
</tr>
<tr>
<td>Inspection</td>
<td>13</td>
<td>294</td>
</tr>
<tr>
<td>Creditor and debtor</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Notice of voluntary dissolution</td>
<td>13</td>
<td>301</td>
</tr>
<tr>
<td>Directors</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amendments to articles of incorporation; procedure</td>
<td>13</td>
<td>295</td>
</tr>
<tr>
<td>Committees, authority of directors</td>
<td>13</td>
<td>293</td>
</tr>
<tr>
<td>Compensation</td>
<td>13</td>
<td>294</td>
</tr>
<tr>
<td>Generally</td>
<td>13</td>
<td>292</td>
</tr>
<tr>
<td>Liability for corporate obligations</td>
<td>13</td>
<td>292</td>
</tr>
<tr>
<td>Loans to directors prohibited</td>
<td>13</td>
<td>295</td>
</tr>
<tr>
<td>Minutes of meetings</td>
<td>13</td>
<td>294</td>
</tr>
<tr>
<td>Qualifications</td>
<td>13</td>
<td>292</td>
</tr>
<tr>
<td>Removal</td>
<td>13</td>
<td>292</td>
</tr>
<tr>
<td>Voting power</td>
<td>13</td>
<td>292</td>
</tr>
<tr>
<td>Dissolution</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Voluntary dissolution</td>
<td>13</td>
<td>301</td>
</tr>
<tr>
<td>Distribution of corporate assets</td>
<td>13</td>
<td>302</td>
</tr>
<tr>
<td>Notice to creditors</td>
<td>13</td>
<td>301</td>
</tr>
<tr>
<td>Revocation</td>
<td>13</td>
<td>303</td>
</tr>
<tr>
<td>Dividends prohibited</td>
<td>13</td>
<td>294</td>
</tr>
<tr>
<td>Employees not liable for corporate obligations</td>
<td>13</td>
<td>292</td>
</tr>
<tr>
<td>Foreign corporations, annual reports</td>
<td>13</td>
<td>305</td>
</tr>
<tr>
<td>Failure to file</td>
<td>13</td>
<td>307</td>
</tr>
<tr>
<td>Incorporation, purpose</td>
<td>13</td>
<td>180</td>
</tr>
<tr>
<td>Lease of assets</td>
<td>13</td>
<td>299</td>
</tr>
<tr>
<td>Liquidation, application of assets by court</td>
<td>13</td>
<td>304</td>
</tr>
<tr>
<td>Loans to officers and directors prohibited</td>
<td>13</td>
<td>295</td>
</tr>
<tr>
<td>Meetings</td>
<td>13</td>
<td>193</td>
</tr>
<tr>
<td>Members</td>
<td>13</td>
<td>291</td>
</tr>
<tr>
<td>Certificate of membership</td>
<td>13</td>
<td>291</td>
</tr>
<tr>
<td>Classes</td>
<td>13</td>
<td>291</td>
</tr>
<tr>
<td>Liability for corporate obligations</td>
<td>13</td>
<td>292</td>
</tr>
<tr>
<td>Right to dissent</td>
<td>13</td>
<td>300</td>
</tr>
<tr>
<td>Voting</td>
<td>13</td>
<td>292</td>
</tr>
<tr>
<td>Merger or consolidation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Abandonment</td>
<td>13</td>
<td>297</td>
</tr>
<tr>
<td>Articles, required contents</td>
<td>13</td>
<td>298</td>
</tr>
<tr>
<td>Members' right to dissent</td>
<td>13</td>
<td>300</td>
</tr>
<tr>
<td>Notice to members</td>
<td>13</td>
<td>298</td>
</tr>
<tr>
<td>Procedure</td>
<td>13</td>
<td>297</td>
</tr>
<tr>
<td>Minutes of proceedings</td>
<td>13</td>
<td>294</td>
</tr>
<tr>
<td>Mortgage of assets</td>
<td>13</td>
<td>299</td>
</tr>
<tr>
<td>Notice of dissolution</td>
<td>13</td>
<td>301</td>
</tr>
<tr>
<td>Officers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Compensation</td>
<td>13</td>
<td>294</td>
</tr>
<tr>
<td>Election by directors</td>
<td>13</td>
<td>293</td>
</tr>
<tr>
<td>Corporations—(continued): Nonprofit corporations—(continued): Officers—(continued)</td>
<td>Ch.</td>
<td>Page</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>Generally</td>
<td>13</td>
<td>293</td>
</tr>
<tr>
<td>Liability for corporate obligations</td>
<td>13</td>
<td>294</td>
</tr>
<tr>
<td>Loans to officers prohibited</td>
<td>13</td>
<td>295</td>
</tr>
<tr>
<td>Removal</td>
<td>13</td>
<td>296</td>
</tr>
<tr>
<td>Penalties</td>
<td>13</td>
<td>294</td>
</tr>
<tr>
<td>Failure to file annual report</td>
<td>13</td>
<td>297</td>
</tr>
<tr>
<td>Profits prohibited</td>
<td>13</td>
<td>294</td>
</tr>
<tr>
<td>Property, sale, lease, exchange or mortgage</td>
<td>13</td>
<td>296</td>
</tr>
<tr>
<td>Members' right to dissent</td>
<td>13</td>
<td>299</td>
</tr>
<tr>
<td>Proxies of members</td>
<td>13</td>
<td>294</td>
</tr>
<tr>
<td>Publication, dissolution</td>
<td>13</td>
<td>295</td>
</tr>
<tr>
<td>Quorum</td>
<td>13</td>
<td>296</td>
</tr>
<tr>
<td>Records, inspection</td>
<td>13</td>
<td>294</td>
</tr>
<tr>
<td>Reports</td>
<td>13</td>
<td>297</td>
</tr>
<tr>
<td>Annual report of domestic and foreign corporations</td>
<td>13</td>
<td>298</td>
</tr>
<tr>
<td>Failure to file reports</td>
<td>13</td>
<td>298</td>
</tr>
<tr>
<td>Appeal</td>
<td>13</td>
<td>298</td>
</tr>
<tr>
<td>Hearings conducted by secretary of state</td>
<td>13</td>
<td>299</td>
</tr>
<tr>
<td>Notice</td>
<td>13</td>
<td>299</td>
</tr>
<tr>
<td>Penalties</td>
<td>13</td>
<td>300</td>
</tr>
<tr>
<td>Filing</td>
<td>13</td>
<td>300</td>
</tr>
<tr>
<td>Sales, assets</td>
<td>13</td>
<td>300</td>
</tr>
<tr>
<td>Stock, dividends prohibited</td>
<td>13</td>
<td>300</td>
</tr>
<tr>
<td>Use of term &quot;corporation&quot;</td>
<td>13</td>
<td>300</td>
</tr>
<tr>
<td>Voting</td>
<td>13</td>
<td>301</td>
</tr>
<tr>
<td>Cumulative voting</td>
<td>13</td>
<td>301</td>
</tr>
<tr>
<td>Directors of corporations with no members</td>
<td>13</td>
<td>301</td>
</tr>
<tr>
<td>have sole voting power</td>
<td>13</td>
<td>301</td>
</tr>
<tr>
<td>Members</td>
<td>13</td>
<td>301</td>
</tr>
<tr>
<td>Proxies</td>
<td>13</td>
<td>301</td>
</tr>
<tr>
<td>Winding up affairs</td>
<td>13</td>
<td>301</td>
</tr>
<tr>
<td>Notice</td>
<td>13</td>
<td>301</td>
</tr>
<tr>
<td>Charter or landholding tax</td>
<td>13</td>
<td>302</td>
</tr>
<tr>
<td>Delinquent corporation not to plead lack of notice</td>
<td>13</td>
<td>302</td>
</tr>
<tr>
<td>Notice of tax</td>
<td>13</td>
<td>302</td>
</tr>
<tr>
<td>Director's meeting</td>
<td>13</td>
<td>302</td>
</tr>
<tr>
<td>Meetings</td>
<td>13</td>
<td>302</td>
</tr>
<tr>
<td>Director's meeting</td>
<td>13</td>
<td>302</td>
</tr>
<tr>
<td>Organizational meeting</td>
<td>13</td>
<td>302</td>
</tr>
<tr>
<td>Shareholders' or members' meeting</td>
<td>13</td>
<td>302</td>
</tr>
<tr>
<td>Waiver</td>
<td>13</td>
<td>302</td>
</tr>
<tr>
<td>Penalties</td>
<td>13</td>
<td>302</td>
</tr>
<tr>
<td>Failure to record</td>
<td>13</td>
<td>303</td>
</tr>
<tr>
<td>Pleading and practice</td>
<td>222, 224, 225</td>
<td></td>
</tr>
<tr>
<td>Action to enforce payment of charter tax not to be pleased by delinquent corporation</td>
<td>13</td>
<td>317</td>
</tr>
<tr>
<td>Powers generally</td>
<td>13</td>
<td>218</td>
</tr>
<tr>
<td>Preference</td>
<td>13</td>
<td>318</td>
</tr>
<tr>
<td>Right of purchaser in judicial sales for charter tax</td>
<td>13</td>
<td>177</td>
</tr>
<tr>
<td>Prior acts, effect of repeal</td>
<td>13</td>
<td>318</td>
</tr>
<tr>
<td>Process</td>
<td>13</td>
<td>318</td>
</tr>
<tr>
<td>Action to enforce payment of charter tax</td>
<td>13</td>
<td>236</td>
</tr>
<tr>
<td>Property</td>
<td>13</td>
<td>236</td>
</tr>
<tr>
<td>Exemption of intangible property of corporations not conducting affairs or doing business in state from taxes</td>
<td>13</td>
<td>236</td>
</tr>
</tbody>
</table>
**TOPICAL INDEX**

**CORPORATIONS—(continued):**

<table>
<thead>
<tr>
<th>Publication</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>List of tax delinquent corporations</td>
<td>13</td>
<td>315</td>
</tr>
<tr>
<td>Proclamation of governor</td>
<td>13</td>
<td>316</td>
</tr>
<tr>
<td>Quorum</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Directors</td>
<td>13</td>
<td>196</td>
</tr>
<tr>
<td>Shareholders or members</td>
<td>13</td>
<td>194</td>
</tr>
<tr>
<td>Real estate</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Merger or consolidation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Conveyance of real estate to surviving or new corporation</td>
<td>13</td>
<td>204</td>
</tr>
<tr>
<td>Real property</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Consolidation or merger, effect on title</td>
<td>13</td>
<td>208</td>
</tr>
<tr>
<td>Receiver</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Appointment in actions to enforce payment of charter tax</td>
<td>13</td>
<td>212</td>
</tr>
<tr>
<td>Liquidation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Appointment and powers</td>
<td>13</td>
<td>212</td>
</tr>
<tr>
<td>Return of remaining property on discontinuance of liquidation proceedings</td>
<td>13</td>
<td>214</td>
</tr>
<tr>
<td>Qualifications</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Recordation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Articles of amendment</td>
<td>13</td>
<td>200</td>
</tr>
<tr>
<td>Articles of dissolution</td>
<td>13</td>
<td>209</td>
</tr>
<tr>
<td>Articles of incorporation</td>
<td>13</td>
<td>201</td>
</tr>
<tr>
<td>Amendments</td>
<td>13</td>
<td>224</td>
</tr>
<tr>
<td>Certificate of authority, application</td>
<td>13</td>
<td>222</td>
</tr>
<tr>
<td>Merger, articles of merger</td>
<td>13</td>
<td>223</td>
</tr>
<tr>
<td>Records</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Business corporations</td>
<td>13</td>
<td>260</td>
</tr>
<tr>
<td>Nonprofit corporations</td>
<td>13</td>
<td>294</td>
</tr>
<tr>
<td>Religious organizations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Exemption from charter or landholding tax</td>
<td>13</td>
<td>319</td>
</tr>
<tr>
<td>In corporate capacity prohibited</td>
<td>13</td>
<td>219</td>
</tr>
<tr>
<td>Repeal of prior acts, effect</td>
<td>13</td>
<td>177</td>
</tr>
<tr>
<td>Reports</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Charter or landholding tax</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Report to secretary of state</td>
<td>13</td>
<td>311</td>
</tr>
<tr>
<td>Report to tax commissioner</td>
<td>13</td>
<td>311</td>
</tr>
<tr>
<td>Foreign corporations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Annual report to tax commissioner</td>
<td>13</td>
<td>311</td>
</tr>
<tr>
<td>Charter or landholding tax</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Annual report to tax commissioner</td>
<td>13</td>
<td>311</td>
</tr>
<tr>
<td>Preliminary report to secretary of state</td>
<td>13</td>
<td>312</td>
</tr>
<tr>
<td>Secretary of state</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Appeals from decisions</td>
<td>13</td>
<td>233</td>
</tr>
<tr>
<td>Attorney-in-fact for corporation</td>
<td>13</td>
<td>189</td>
</tr>
<tr>
<td>Charter or landholding tax, fee</td>
<td>13</td>
<td>190</td>
</tr>
<tr>
<td>Service of process, manner of acceptance</td>
<td>13</td>
<td>189</td>
</tr>
<tr>
<td>Statutory attorney's fee, collection</td>
<td>13</td>
<td>239</td>
</tr>
<tr>
<td>Charter or landholding tax</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Action to enforce payment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Duty of secretary of state</td>
<td>13</td>
<td>319</td>
</tr>
<tr>
<td>Collection on application for charter</td>
<td>13</td>
<td>310</td>
</tr>
<tr>
<td>Fee as attorney-in-fact</td>
<td>13</td>
<td>313</td>
</tr>
<tr>
<td>Foreign corporations, assessment of tax</td>
<td>13</td>
<td>312</td>
</tr>
<tr>
<td>Monthly report to tax commissioner</td>
<td>13</td>
<td>320</td>
</tr>
<tr>
<td>Dissolution</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Involuntary dissolution, filing order with secretary of state</td>
<td>13</td>
<td>214</td>
</tr>
<tr>
<td>Issuance of certificate of dissolution</td>
<td>13</td>
<td>209</td>
</tr>
<tr>
<td>Evidence</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reception of certificates and certified copies by secretary of state as</td>
<td>13</td>
<td>234</td>
</tr>
</tbody>
</table>
### CORPORATIONS—(continued):

**Secretary of State—(continued):**

<table>
<thead>
<tr>
<th>Fees</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Foreign corporations</td>
<td>13</td>
<td>236</td>
</tr>
<tr>
<td>Revocation of certificates of authority</td>
<td>13</td>
<td>229</td>
</tr>
<tr>
<td>Issuance of order of revocation</td>
<td>13</td>
<td>230</td>
</tr>
<tr>
<td>Forms furnished by</td>
<td>13</td>
<td>234</td>
</tr>
<tr>
<td>Hearings conducted by</td>
<td>13</td>
<td>307</td>
</tr>
<tr>
<td>Powers</td>
<td>13</td>
<td>232</td>
</tr>
<tr>
<td>Reports, monthly report to tax commissioner</td>
<td>13</td>
<td>320</td>
</tr>
<tr>
<td>Rules and regulations, promulgation by</td>
<td>13</td>
<td>232</td>
</tr>
<tr>
<td>Service of process</td>
<td>13</td>
<td></td>
</tr>
<tr>
<td>Acceptance by secretary of state</td>
<td>13</td>
<td>189</td>
</tr>
<tr>
<td>Severability</td>
<td>13</td>
<td>177</td>
</tr>
<tr>
<td>Short title</td>
<td>13</td>
<td>176</td>
</tr>
<tr>
<td>State treasurer</td>
<td>13</td>
<td>214</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Stocks and stockholders</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Charter or landholding tax</td>
<td>13</td>
<td>308</td>
</tr>
<tr>
<td>Fees based on amount of capital stock</td>
<td>13</td>
<td>321</td>
</tr>
<tr>
<td>Fees for increase or decrease in number of shares of stock</td>
<td>13</td>
<td>320</td>
</tr>
<tr>
<td>Meetings</td>
<td>13</td>
<td>235</td>
</tr>
<tr>
<td>Notice</td>
<td>13</td>
<td>193</td>
</tr>
<tr>
<td>Nonpar stock</td>
<td>13</td>
<td></td>
</tr>
<tr>
<td>Charter or landholding tax</td>
<td>13</td>
<td>310</td>
</tr>
<tr>
<td>Reports by corporation</td>
<td>13</td>
<td>235</td>
</tr>
<tr>
<td>Notice, waiver</td>
<td>13</td>
<td>194</td>
</tr>
<tr>
<td>Quorum</td>
<td>13</td>
<td>234</td>
</tr>
<tr>
<td>Voting requirements</td>
<td>13</td>
<td></td>
</tr>
</tbody>
</table>

| Subsidiary business corporations, merger                          | 13  | 276  |

| Succession, limited or perpetual                                  | 13  | 181  |

### Taxation

<table>
<thead>
<tr>
<th>Charter or landholding tax</th>
<th>13</th>
<th>313</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual fee of secretary of state as statutory attorney-in-fact</td>
<td>13</td>
<td>316</td>
</tr>
<tr>
<td>Attorney general</td>
<td>13</td>
<td>317</td>
</tr>
<tr>
<td>Institution of action to enforce payment of tax</td>
<td>13</td>
<td>316</td>
</tr>
<tr>
<td>Motion for injunction</td>
<td>13</td>
<td>317</td>
</tr>
<tr>
<td>Board of public works</td>
<td>13</td>
<td>308</td>
</tr>
<tr>
<td>Relief from assessment of corporation license tax</td>
<td>13</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Delinquent corporations</th>
<th>13</th>
<th>316</th>
</tr>
</thead>
<tbody>
<tr>
<td>Actions to enforce payment of tax</td>
<td>13</td>
<td>316</td>
</tr>
<tr>
<td>Appointment of receiver</td>
<td>13</td>
<td>317</td>
</tr>
<tr>
<td>Attorney general to institute action</td>
<td>13</td>
<td>316</td>
</tr>
<tr>
<td>Certificate to governor and secretary of state by tax commissioner</td>
<td>13</td>
<td>316</td>
</tr>
<tr>
<td>Definition of license tax</td>
<td>13</td>
<td>318</td>
</tr>
<tr>
<td>Evidence</td>
<td>13</td>
<td>316</td>
</tr>
<tr>
<td>Fines, penalties and forfeitures after governor's proclamation</td>
<td>13</td>
<td>317</td>
</tr>
<tr>
<td>Forfeiture of charter or revocation of right to do business</td>
<td>13</td>
<td>317</td>
</tr>
<tr>
<td>Governor's proclamation</td>
<td>13</td>
<td>316</td>
</tr>
<tr>
<td>Injunction restraining from doing business</td>
<td>13</td>
<td>317</td>
</tr>
<tr>
<td>Limitation on institution of proceedings</td>
<td>13</td>
<td>316</td>
</tr>
<tr>
<td>to set aside sales in prior actions</td>
<td>13</td>
<td>318</td>
</tr>
<tr>
<td>Marshalling assets among creditors</td>
<td>13</td>
<td>317</td>
</tr>
<tr>
<td>Notice of publication by attorney general</td>
<td>13</td>
<td>319</td>
</tr>
<tr>
<td>Procedure generally</td>
<td>13</td>
<td>316</td>
</tr>
</tbody>
</table>
**TOPICAL INDEX**

**CORPORATIONS—(continued):**

<table>
<thead>
<tr>
<th>Topical Index</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Taxation—(continued):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Charter or landholding tax—(continued):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Delinquent corporations—(continued):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Actions to enforce payment of tax—(continued):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Process in actions</td>
<td>13</td>
<td>319</td>
</tr>
<tr>
<td>- Publication of governor’s proclamation</td>
<td>13</td>
<td>316</td>
</tr>
<tr>
<td>- Purchaser’s preference on sale</td>
<td>13</td>
<td>318</td>
</tr>
<tr>
<td>- Record of forfeiture, revocation or dissolution</td>
<td>13</td>
<td>319</td>
</tr>
<tr>
<td>- Report of clerk filed and recorded by secretary of state</td>
<td>13</td>
<td>319</td>
</tr>
<tr>
<td>- Sale of property</td>
<td>13</td>
<td>318</td>
</tr>
<tr>
<td>- Time limit</td>
<td>13</td>
<td>316</td>
</tr>
<tr>
<td>- Investigation of corporation’s delinquencies</td>
<td>13</td>
<td>316</td>
</tr>
<tr>
<td>- Appointment and compensation of agents</td>
<td>13</td>
<td>316</td>
</tr>
</tbody>
</table>

| List of delinquent corporations                                              |     |      |
| - Certification to secretary of state and governor                           | 13  | 316  |
| - Publication                                                                 | 13  | 315  |
| - Notice mailed to corporations                                              | 13  | 315  |
| - Payment, amount                                                            | 13  | 315  |
| - Penalty                                                                    | 13  | 315  |

| Domestic corporations                                                        |     |      |
| - Amount of license tax                                                       | 13  | 310  |
| - Assessment of tax                                                           | 13  | 310  |
| - Collection of tax                                                           | 13  | 310  |
| - Report to tax commissioner                                                  | 13  | 310  |
| - Exemptions from tax                                                         | 13  | 319  |
| - Fees, annual fee of secretary of state as attorney-in-fact                  | 13  | 313  |

| Foreign corporations                                                         |     |      |
| - Amount of license tax                                                       | 13  | 312  |
| - Assessment of tax                                                           | 13  | 312  |
| - Collection of license tax                                                   | 13  | 312  |
| - Penalty, failure to pay tax                                                 | 13  | 315  |

| Reports                                                                      |     |      |
| - Annual report to tax commissioner                                          | 13  | 311  |
| - Preliminary report to secretary of state                                   | 13  | 312  |

| Holding more than ten thousand acres of land,                                 |     |      |
| - statement of corporation                                                   | 13  | 314  |
| - Lien of tax                                                                | 13  | 313  |
| - Notice to corporations taxable                                              | 13  | 314  |
| - Payment                                                                    | 13  | 315  |

| Recordation                                                                  |     |      |
| - Notice                                                                     |     |      |
|   - Corporation license tax lien docket                                       | 13  | 314  |
|   - Release of lien                                                          | 13  | 315  |

| Reports                                                                      |     |      |
| - Monthly report by secretary of state to tax commissioner                   | 13  | 320  |
| - Secretary of state                                                         | 13  | 320  |
| - Dissolution, payment of taxes prerequisite                                 | 13  | 228  |
| - Exemption of intangible property of corporations not conducting affairs or business in state | 13  | 236  |
| - Merger or consolidation, payment of tax prerequisite                       | 13  | 228  |

| Tax Commissioner                                                             |     |      |
| - Charter or landholding corporations                                        | 13  | 316  |
| - Collection of tax                                                          | 13  | 312  |
| - Foreign corporations, assessment of tax                                   | 13  | 315  |
| - Publication of list of delinquent corporations                            | 13  | 316  |

| Ultra Vires                                                                  |     |      |
| - Investigation of delinquent corporations                                   | 13  | 185  |

| Venue                                                                        |     |      |
| - Actions involving foreign corporations                                    | 13  | 192  |
| - Liquidation actions                                                        | 13  | 210  |
# TOPICAL INDEX

<table>
<thead>
<tr>
<th>CORPORATIONS—(continued):</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Voting trusts, business corporations</td>
<td>13</td>
<td>250</td>
</tr>
<tr>
<td>Waiver of notice</td>
<td>13</td>
<td>235</td>
</tr>
</tbody>
</table>

| COUNTIES: | |
|---------------------------|-----|------|
| Airports | |
| County airport authorities | 2 | 14 |
| Mileage | |
| Mileage allowance for county officers, assistants, deputies and employees | 21 | 336 |

| COUNTY COURTS: | |
|---------------------------|-----|------|
| Commissioners | |
| Compensation | 18 | 330 |
| Employees | |
| Compensation, fixing | 16 | 327 |
| Discharge, power to | 16 | 327 |
| Employment | 16 | 327 |
| Garbage and refuse | |
| Collection and disposal service | |
| Establishment and operation | 15 | 326 |
| Mileage | |
| County officials, deputies, assistants and employees | |
| Mileage allowance for personally owned vehicles | 21 | 336 |
| Personnel | |
| Compensation, fixing | 16 | 327 |
| Discharge, power to | 16 | 327 |
| Employment | 16 | 327 |
| Prisoners | |
| Employment and wages | 22 | 338 |
| Public service districts | |
| Water and sewer systems | |
| Authority of county courts to make grants from general revenue funds for water and sewer systems | 17 | 329 |
| Purchases | |
| In open market or on competitive bid | 19 | 334 |
| Rules and regulations | 19 | 334 |

<p>| COUNTY MAGISTRATES: | |
|---------------------------|-----|------|
| Administration generally | 24 | 346 |
| Advisory board | 24 | 345 |
| Appointment by county court | 24 | 343 |
| Review by circuit court | 24 | 343 |
| Article | |
| Expiration of provisions | 24 | 348 |
| Violations of article | 24 | 348 |
| Chapter relating to justices of the peace | |
| Application | 24 | 347 |
| Circuit court | |
| Supervision of magistrates | 24 | 346 |
| Commissioned by governor | 24 | 343 |
| Compensation | |
| Advisory board generally | 24 | 344 |
| Expenses, reimbursement by county court | 24 | 346 |
| Fixed by county court | 24 | 345 |
| Constables | |
| Performance of functions and duties for magistrates | 24 | 346 |
| Costs | |
| Collection of | 24 | 344 |
| Disposition of | 24 | 344 |</p>
<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>COUNTY MAGISTRATES—(continued):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>County court</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Appointment of magistrates</td>
<td>24</td>
<td>343</td>
</tr>
<tr>
<td>Reports to</td>
<td>24</td>
<td>346</td>
</tr>
<tr>
<td>Rules and regulations establishing administrative requirements</td>
<td>24</td>
<td>347</td>
</tr>
<tr>
<td>Fees</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Collection of</td>
<td>24</td>
<td>344</td>
</tr>
<tr>
<td>Disposition of</td>
<td>24</td>
<td>344</td>
</tr>
<tr>
<td>Justices of the peace</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Applicability of code provisions to magistrates</td>
<td>24</td>
<td>347</td>
</tr>
<tr>
<td>Limitation on</td>
<td>24</td>
<td>344</td>
</tr>
<tr>
<td>Magistrate courts</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Appeals</td>
<td>24</td>
<td>343</td>
</tr>
<tr>
<td>Jurisdiction</td>
<td>24</td>
<td>343</td>
</tr>
<tr>
<td>Procedure</td>
<td>24</td>
<td>343</td>
</tr>
<tr>
<td>Number</td>
<td>24</td>
<td>342</td>
</tr>
<tr>
<td>Office created</td>
<td>24</td>
<td>342</td>
</tr>
<tr>
<td>Qualifications</td>
<td>24</td>
<td>342</td>
</tr>
<tr>
<td>Records</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Audit by chief inspector of public offices</td>
<td>24</td>
<td>347</td>
</tr>
<tr>
<td>Removal from office</td>
<td>24</td>
<td>348</td>
</tr>
<tr>
<td>Reports</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Monthly report to county court</td>
<td>24</td>
<td>347</td>
</tr>
<tr>
<td>Supervision by circuit court</td>
<td>24</td>
<td>347</td>
</tr>
<tr>
<td>Violations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Penalties</td>
<td>24</td>
<td>348</td>
</tr>
<tr>
<td>Removal from office</td>
<td>24</td>
<td>348</td>
</tr>
</tbody>
</table>

COURTS:

Circuit courts
See Circuit Courts.

County magistrates
See County Magistrates.

Courts of limited jurisdiction

Common pleas court of Cabell County
Jurisdiction                                                      28  352
Salary of judge                                                  28  352

Common pleas court of Wood County
Acts of the Legislature to be supplied judge                      34  376
Appeals                                                          |     |      |
Cases in which concurrent with circuit court                      34  374
Generally                                                        34  373
Attachments                                                      |     |      |
Issueance                                                         34  377
Circuit court                                                    |     |      |
Certification of causes to                                        34  373
Certification of indictments to common pleas court                34  374
Transfer of cases to common pleas court                           34  374
Clerk of the circuit court                                        |     |      |
Clerk ex officio                                                 34  372
Duties, compensation and powers                                   34  372
Contempt, power to punish for contempt                            34  371
Costs                                                             |     |      |
Law and rules governing taxation of                               34  376
County court, duties                                              34  372
Court reporter                                                    |     |      |
Appointment and compensation                                      34  375
Created                                                           34  369
Executions, rights of judgment creditors                          34  376
Grand jury to be impaneled for each term                           34  371
Habeas corpus                                                     |     |      |
<table>
<thead>
<tr>
<th>TOPICAL INDEX</th>
</tr>
</thead>
<tbody>
<tr>
<td>COURTS—(continued):</td>
</tr>
<tr>
<td>Courts of limited jurisdiction—(continued):</td>
</tr>
<tr>
<td>Common pleas courts of Wood County—(continued):</td>
</tr>
<tr>
<td>Habeas corpus—(continued):</td>
</tr>
<tr>
<td>Jurisdiction of judge to grant</td>
</tr>
<tr>
<td>Jail and jailer</td>
</tr>
<tr>
<td>Applicability of general law with respect to jail, jailer</td>
</tr>
<tr>
<td>required to attend court and receipt of prisoners by jailer</td>
</tr>
<tr>
<td>Judge</td>
</tr>
<tr>
<td>Contest</td>
</tr>
<tr>
<td>Manner of hearing and determining</td>
</tr>
<tr>
<td>Election</td>
</tr>
<tr>
<td>Qualifications</td>
</tr>
<tr>
<td>Removal</td>
</tr>
<tr>
<td>Salary</td>
</tr>
<tr>
<td>Special judge, election</td>
</tr>
<tr>
<td>Vacancy, how filled</td>
</tr>
<tr>
<td>Judgment creditors</td>
</tr>
<tr>
<td>Jurisdiction</td>
</tr>
<tr>
<td>Presumption of jurisdiction</td>
</tr>
<tr>
<td>Liens and remedies</td>
</tr>
<tr>
<td>Rights of judgment creditors</td>
</tr>
<tr>
<td>Powers conferred upon court</td>
</tr>
<tr>
<td>Process, sheriff to execute</td>
</tr>
<tr>
<td>Prosecuting attorney</td>
</tr>
<tr>
<td>Duties to be performed</td>
</tr>
<tr>
<td>To attend terms of court</td>
</tr>
<tr>
<td>Seat of court</td>
</tr>
<tr>
<td>Severability of provisions of act</td>
</tr>
<tr>
<td>Sheriff to execute process</td>
</tr>
<tr>
<td>Terms of court</td>
</tr>
<tr>
<td>West Virginia Reports</td>
</tr>
<tr>
<td>Judge to be furnished</td>
</tr>
<tr>
<td>Domestic relations court of Cabell County</td>
</tr>
<tr>
<td>Jurisdiction</td>
</tr>
<tr>
<td>Salary of judge</td>
</tr>
<tr>
<td>Hancock County common pleas court</td>
</tr>
<tr>
<td>Jurisdiction</td>
</tr>
<tr>
<td>Salary of judge</td>
</tr>
<tr>
<td>Supplies, finance, seal, courtrooms and offices</td>
</tr>
<tr>
<td>Intermediate court of Kanawha County</td>
</tr>
<tr>
<td>Salary of judge</td>
</tr>
<tr>
<td>Intermediate court of McDowell County</td>
</tr>
<tr>
<td>Jurisdiction</td>
</tr>
<tr>
<td>Salary of judge</td>
</tr>
<tr>
<td>Intermediate court of Raleigh County</td>
</tr>
<tr>
<td>Circuit court</td>
</tr>
<tr>
<td>Transfer of pending cases to intermediate court</td>
</tr>
<tr>
<td>Clerical and secretarial assistants</td>
</tr>
<tr>
<td>Appointment</td>
</tr>
<tr>
<td>Office space</td>
</tr>
<tr>
<td>Salary</td>
</tr>
<tr>
<td>Jurisdiction</td>
</tr>
<tr>
<td>Maturity of causes</td>
</tr>
<tr>
<td>Probation staff</td>
</tr>
<tr>
<td>Appointment</td>
</tr>
<tr>
<td>Office space</td>
</tr>
<tr>
<td>Salary</td>
</tr>
<tr>
<td>Procedure</td>
</tr>
<tr>
<td>Salary of judge</td>
</tr>
<tr>
<td>Terms of court</td>
</tr>
<tr>
<td>TOPICAL INDEX</td>
</tr>
<tr>
<td>------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>COURTS—(continued):</td>
</tr>
<tr>
<td>Judges</td>
</tr>
<tr>
<td>Mileage and expenses</td>
</tr>
<tr>
<td>Reporters</td>
</tr>
<tr>
<td>See Reporters.</td>
</tr>
<tr>
<td>Supreme court of appeals</td>
</tr>
<tr>
<td>See Supreme Court of Appeals.</td>
</tr>
<tr>
<td>Terms and sessions</td>
</tr>
<tr>
<td>Failure to sit at time fixed</td>
</tr>
<tr>
<td>Opening after day fixed</td>
</tr>
<tr>
<td>COURTS OF LIMITED JURISDICTION:</td>
</tr>
<tr>
<td>See Courts.</td>
</tr>
<tr>
<td>CRIMES AND OFFENSES:</td>
</tr>
<tr>
<td>Obscenity</td>
</tr>
<tr>
<td>Preparation, distribution or exhibition of obscene matters to minors</td>
</tr>
<tr>
<td>See Obscenity.</td>
</tr>
<tr>
<td>DEAF AND BLIND:</td>
</tr>
<tr>
<td>West Virginia schools for deaf and blind</td>
</tr>
<tr>
<td>Auxiliary and service personnel</td>
</tr>
<tr>
<td>Dismissal and suspension procedures</td>
</tr>
<tr>
<td>Employment</td>
</tr>
<tr>
<td>Teachers</td>
</tr>
<tr>
<td>Contracts</td>
</tr>
<tr>
<td>Dismissal and suspension procedures</td>
</tr>
<tr>
<td>DEEDS:</td>
</tr>
<tr>
<td>Transfer of property with right of survivorship</td>
</tr>
<tr>
<td>between husband and wife</td>
</tr>
<tr>
<td>ELECTIONS:</td>
</tr>
<tr>
<td>Democratic party organization and policy conference</td>
</tr>
<tr>
<td>Delegates</td>
</tr>
<tr>
<td>Announcement of candidacy</td>
</tr>
<tr>
<td>Election</td>
</tr>
<tr>
<td>Primary election statutes applicable</td>
</tr>
<tr>
<td>Eligibility</td>
</tr>
<tr>
<td>Filing fee</td>
</tr>
<tr>
<td>Precincts</td>
</tr>
<tr>
<td>Boundaries</td>
</tr>
<tr>
<td>Change for 1974 elections</td>
</tr>
<tr>
<td>Primary elections</td>
</tr>
<tr>
<td>Candidates</td>
</tr>
<tr>
<td>Board of education</td>
</tr>
<tr>
<td>County court commissioner</td>
</tr>
<tr>
<td>Nomination of candidates</td>
</tr>
<tr>
<td>Tie vote</td>
</tr>
<tr>
<td>Determined by lot by executive committee</td>
</tr>
<tr>
<td>Secretary of State</td>
</tr>
<tr>
<td>Chief election official</td>
</tr>
<tr>
<td>Duties generally</td>
</tr>
<tr>
<td>Powers</td>
</tr>
<tr>
<td>Exercised by appointees</td>
</tr>
<tr>
<td>Generally</td>
</tr>
<tr>
<td>Rules generally</td>
</tr>
<tr>
<td>TOPICAL INDEX</td>
</tr>
<tr>
<td>---------------</td>
</tr>
<tr>
<td><strong>ELECTIONS</strong>--(continued):</td>
</tr>
<tr>
<td>State election commission</td>
</tr>
<tr>
<td>Appointment by governor</td>
</tr>
<tr>
<td>Chairman</td>
</tr>
<tr>
<td>Elected by commission</td>
</tr>
<tr>
<td>Term of office</td>
</tr>
<tr>
<td>Composition</td>
</tr>
<tr>
<td>Continuation of commission</td>
</tr>
<tr>
<td>Duties generally</td>
</tr>
<tr>
<td>Expenses, payment</td>
</tr>
<tr>
<td>Meetings</td>
</tr>
<tr>
<td>Offices</td>
</tr>
<tr>
<td>Powers generally</td>
</tr>
<tr>
<td>Qualifications</td>
</tr>
<tr>
<td>Rules and regulations</td>
</tr>
<tr>
<td>Powers of commission and secretary of state</td>
</tr>
<tr>
<td>Secretary of state</td>
</tr>
<tr>
<td>Consultation with commission</td>
</tr>
<tr>
<td>Member of commission</td>
</tr>
<tr>
<td>Terms of office</td>
</tr>
<tr>
<td>Vacancies</td>
</tr>
<tr>
<td>By receiving other political office</td>
</tr>
<tr>
<td>Filling</td>
</tr>
</tbody>
</table>

| **EMERGENCY MEDICAL SERVICES:** | | |
| See Health. | | |

| **ENERGY:** | | |
| State contract provisions for relief from energy and materials shortages (HCR 24) | | 941 |

| **EXECUTORS AND ADMINISTRATORS:** | | |
| Appointment | | |
| Nonresidents | 41 | 391 |
| Bond | 41 | 392 |
| Fees | 41 | 394 |
| Penalty | 41 | 394 |
| Service of notice and process | 41 | 393 |

| **EXEMPTIONS FROM LEVY:** | | |
| Personal property | 63 | 505 |
| Appraiser | 63 | 507 |
| Compensation of appraisers | 63 | 507 |
| Determination of liens | 63 | 508 |
| How set aside | 63 | 508 |
| Method of claiming exemption | 63 | 506 |
| Purchases | | |
| No exemption for claim for purchase money | 63 | 508 |
| Right of exemption of surviving spouse or minor children | 63 | 507 |
| Taxation | | |
| No exemption from claim for taxes | 63 | 508 |
| Value | 63 | 505 |
| Waiver of exemption void | 63 | 508 |

| **FIDUCIARIES:** | | |
| Nonresidents | | |
| Appointment | 41 | 391 |
| Bond | 41 | 392 |
| Fees | 41 | 394 |
| Penalties | 41 | 394 |
| Service of notice and process | 41 | 393 |
# Topical Index

## Finance and Administration:

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Surplus property agency</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Authority of agency</td>
<td>129</td>
<td>771</td>
</tr>
<tr>
<td>Duties generally</td>
<td>129</td>
<td>771</td>
</tr>
</tbody>
</table>

## Game and Fish:

### Bear

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Damage fund</td>
<td>82</td>
<td>611</td>
</tr>
<tr>
<td>Damage stamp</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fees</td>
<td>82</td>
<td>611</td>
</tr>
<tr>
<td>Generally</td>
<td>82</td>
<td>611</td>
</tr>
<tr>
<td>Hunting without stamps</td>
<td>82</td>
<td>611</td>
</tr>
<tr>
<td>Proceeds to be paid into bear damage fund</td>
<td>82</td>
<td>611</td>
</tr>
<tr>
<td>Purposes</td>
<td>82</td>
<td>611</td>
</tr>
<tr>
<td>Destruction of property by bear</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Remedies by property owner</td>
<td>82</td>
<td>609</td>
</tr>
<tr>
<td>Hunting, tagging and reporting bear</td>
<td>82</td>
<td>607</td>
</tr>
<tr>
<td>Hunting with bow and arrow, arrow specifications</td>
<td>81</td>
<td>606</td>
</tr>
<tr>
<td>Killing bear destroying livestock</td>
<td>82</td>
<td>610</td>
</tr>
<tr>
<td>Unlawful hunting and killing</td>
<td>82</td>
<td>608</td>
</tr>
<tr>
<td>Penalties</td>
<td>82</td>
<td>609</td>
</tr>
</tbody>
</table>

### Bow and Arrow Hunting

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hunting with, prohibitions and restrictions</td>
<td>81</td>
<td>606</td>
</tr>
</tbody>
</table>

### Dogs

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Field trials</td>
<td>81</td>
<td>606</td>
</tr>
<tr>
<td>Permitting pursuit of game animal or game bird</td>
<td>81</td>
<td>606</td>
</tr>
<tr>
<td>Training on game animals and game birds</td>
<td>81</td>
<td>606</td>
</tr>
</tbody>
</table>

### Fishing

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Carp</td>
<td>81</td>
<td>605</td>
</tr>
<tr>
<td>Creek chubs</td>
<td>81</td>
<td>605</td>
</tr>
<tr>
<td>Dynamite prohibited</td>
<td>81</td>
<td>605</td>
</tr>
<tr>
<td>Equipment for fishing</td>
<td>81</td>
<td>604</td>
</tr>
<tr>
<td>Unlawful equipment</td>
<td>81</td>
<td>604</td>
</tr>
<tr>
<td>Destruction</td>
<td>81</td>
<td>604</td>
</tr>
<tr>
<td>Possession prohibited</td>
<td>81</td>
<td>604</td>
</tr>
<tr>
<td>Explosives used in fishing prohibited</td>
<td>81</td>
<td>605</td>
</tr>
<tr>
<td>Falsifiable</td>
<td>81</td>
<td>605</td>
</tr>
<tr>
<td>Paraphernalia which is unlawful prohibited</td>
<td>81</td>
<td>604</td>
</tr>
<tr>
<td>Poisoning fish prohibited</td>
<td>81</td>
<td>605</td>
</tr>
<tr>
<td>Snaring suckers, carp, etc., at all times lawful</td>
<td>81</td>
<td>605</td>
</tr>
<tr>
<td>Unlawful methods of fishing</td>
<td>81</td>
<td>602</td>
</tr>
</tbody>
</table>

### Furs, purchase without license

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>81</td>
<td>604</td>
</tr>
</tbody>
</table>

### Hunting

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Airborne conveyance, use prohibited</td>
<td>81</td>
<td>603</td>
</tr>
<tr>
<td>Automobile, use regulated</td>
<td>81</td>
<td>603</td>
</tr>
<tr>
<td>Birds and fowl</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bobwhite, trapping, snaring, etc., prohibited</td>
<td>81</td>
<td>603</td>
</tr>
<tr>
<td>Employing persons to hunt illegally</td>
<td>81</td>
<td>605</td>
</tr>
<tr>
<td>Migratory game birds</td>
<td>81</td>
<td>605</td>
</tr>
<tr>
<td>Nongame birds</td>
<td>81</td>
<td>603</td>
</tr>
<tr>
<td>Pheasants, trapping, snaring, etc., prohibited</td>
<td>81</td>
<td>603</td>
</tr>
<tr>
<td>Quail</td>
<td>81</td>
<td>603</td>
</tr>
<tr>
<td>Ruffed grouse, trapping, snaring, etc., prohibited</td>
<td>81</td>
<td>603</td>
</tr>
<tr>
<td>Sunday</td>
<td>81</td>
<td>604</td>
</tr>
<tr>
<td>Unprotected birds</td>
<td>81</td>
<td>605</td>
</tr>
<tr>
<td>Use of artificial lights prohibited</td>
<td>81</td>
<td>602</td>
</tr>
<tr>
<td>Visibility required to shoot</td>
<td>81</td>
<td>602</td>
</tr>
<tr>
<td>Wild turkey, trapping, snaring, etc., prohibited</td>
<td>81</td>
<td>603</td>
</tr>
<tr>
<td>Closed season, bunting except during open season prohibited</td>
<td>81</td>
<td>607</td>
</tr>
<tr>
<td>Crossbow, usage prohibited</td>
<td>81</td>
<td>606</td>
</tr>
</tbody>
</table>
### GAME AND FISH—(continued):

#### Hunting—(continued):

- Drunkenness
  - Hunting while under influence of intoxicating liquor prohibited
    - 81
  - Employing person to hunt illegally
    - 81
  - Possession unlawful
    - 81
  - Gun and bow in woods or fields at same time prohibited
    - 81
  - Land conveyance, use of
    - 81
  - Motor-driven water conveyance, use of
    - 81
  - Unlawful methods of hunting
    - 81

- Intoxicating liquors, hunting while under influence of
  - 81

#### Licenses and permits

- Class N special deer hunting license
  - 86
  - Authority of director
    - 86
  - Exceptions
    - 86
  - Fee
    - 86
  - Limitations
    - 86
  - Regulations
    - 86

- Class O residential trout fishing license
  - 87
  - Fee
    - 87
  - Issuance
    - 87

When not required
  - 84, 85, 3
  - 614, 616, 968

### Outfitters and guides

- Definitions
  - 83
  - Equipment
    - 83
- Generally
  - 83
- Investigations
  - 83
- Licenses
  - Applications
    - 83
  - Contents
    - 83
  - National forest requirements
    - 83
  - Qualifications
    - 83
  - Rules and regulations promulgated by director
    - 83

### GASOLINE:

**Fuel emergency**
- Powers of governor, etc.
  - 42
  - 395

### GOVERNOR:

**Fuel emergency**
- Assistance of other state agencies and law-enforcement agencies
  - 42
  - 397
- Duties of governor with respect to
  - 42
  - 396
- Injunctive relief
  - 42
  - 397
- Penalties
  - 42
  - 398
- Power of governor to declare emergency
  - 42
  - 396
- Termination of emergency
  - 42
  - 399

### GREENBRIER COLLEGE OF OSTEOPATHIC MEDICINE:

State aid for students
- 124
  - 707

### HANCOCK COUNTY:

**Common pleas court**
- Jurisdiction
  - 30
  - 357
- Salary of judge
  - 30
  - 358
- Supplies, finances, seal, courthouses and offices
  - 30
  - 359

### HANDICAPPED PERSONS:

See Buildings.
## HEALTH:

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Board of health</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Appointment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>By governor</td>
<td>43</td>
<td>400</td>
</tr>
<tr>
<td>Eligibility for reappointment</td>
<td>43</td>
<td>401</td>
</tr>
<tr>
<td>Body corporate</td>
<td>43</td>
<td>400</td>
</tr>
<tr>
<td>Compensation</td>
<td>43</td>
<td>401</td>
</tr>
<tr>
<td>Composition</td>
<td>43</td>
<td>400</td>
</tr>
<tr>
<td>Mileage</td>
<td>43</td>
<td>401</td>
</tr>
<tr>
<td>Qualifications</td>
<td>43</td>
<td>400</td>
</tr>
<tr>
<td>Removal</td>
<td>43</td>
<td>401</td>
</tr>
<tr>
<td>Seal</td>
<td>43</td>
<td>400</td>
</tr>
<tr>
<td>Term of office</td>
<td>43</td>
<td>400</td>
</tr>
<tr>
<td>Vacancy, filling</td>
<td>43</td>
<td>401</td>
</tr>
<tr>
<td>County and municipal boards of health</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Appointment</td>
<td>44</td>
<td>402</td>
</tr>
<tr>
<td>Chairman</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Election</td>
<td>44</td>
<td>403</td>
</tr>
<tr>
<td>Power generally</td>
<td>44</td>
<td>403</td>
</tr>
<tr>
<td>Compensation</td>
<td>44</td>
<td>403</td>
</tr>
<tr>
<td>Composition</td>
<td>44</td>
<td>402</td>
</tr>
<tr>
<td>Organization</td>
<td>44</td>
<td>403</td>
</tr>
<tr>
<td>Qualifications</td>
<td>44</td>
<td>402</td>
</tr>
<tr>
<td>Removal</td>
<td>44</td>
<td>403</td>
</tr>
<tr>
<td>Terms of office</td>
<td>44</td>
<td>403</td>
</tr>
<tr>
<td>Emergency medical services</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Advisory council</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Appointment</td>
<td>45</td>
<td>412</td>
</tr>
<tr>
<td>Chairman</td>
<td>45</td>
<td>412</td>
</tr>
<tr>
<td>Composition</td>
<td>45</td>
<td>412</td>
</tr>
<tr>
<td>Created</td>
<td>45</td>
<td>412</td>
</tr>
<tr>
<td>Expenses</td>
<td>45</td>
<td>412</td>
</tr>
<tr>
<td>Meetings</td>
<td>45</td>
<td>412</td>
</tr>
<tr>
<td>Terms of office</td>
<td>45</td>
<td>412</td>
</tr>
<tr>
<td>Ambulance defined</td>
<td>45</td>
<td>405</td>
</tr>
<tr>
<td>Ambulance service</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Defined</td>
<td>45</td>
<td>405</td>
</tr>
<tr>
<td>Liability for cost of</td>
<td>45</td>
<td>412</td>
</tr>
<tr>
<td>Article</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Purposes of article</td>
<td>45</td>
<td>405</td>
</tr>
<tr>
<td>Violations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Actions to enjoin</td>
<td>45</td>
<td>413</td>
</tr>
<tr>
<td>Criminal penalties</td>
<td>45</td>
<td>413</td>
</tr>
<tr>
<td>Attendants</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Defined</td>
<td>45</td>
<td>406</td>
</tr>
<tr>
<td>Issuance, renewal, suspension and revocation of</td>
<td></td>
<td></td>
</tr>
<tr>
<td>emergency medical service attendant certificate</td>
<td>45</td>
<td>407</td>
</tr>
<tr>
<td>Liability for civil damage or injury</td>
<td>45</td>
<td>414</td>
</tr>
<tr>
<td>Private rights of action</td>
<td>45</td>
<td>414</td>
</tr>
<tr>
<td>Board of Health</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Appeals to state board from suspension or</td>
<td></td>
<td></td>
</tr>
<tr>
<td>revocation of certificate</td>
<td>45</td>
<td>410</td>
</tr>
<tr>
<td>Issuance of emergency medical service attendants certificates</td>
<td>45</td>
<td>407</td>
</tr>
<tr>
<td>Promulgation of minimum training standards for attendants</td>
<td>45</td>
<td>407</td>
</tr>
<tr>
<td>Revocation of certificates</td>
<td>45</td>
<td>409</td>
</tr>
<tr>
<td>Certificates</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Issuance, renewal, suspension and revocation</td>
<td>45</td>
<td>407</td>
</tr>
<tr>
<td>Renewal</td>
<td>45</td>
<td>410</td>
</tr>
<tr>
<td>Refusal of renewal</td>
<td>45</td>
<td>410</td>
</tr>
<tr>
<td>Revocation of emergency certificate</td>
<td>45</td>
<td>410</td>
</tr>
<tr>
<td>Topic</td>
<td>Ch.</td>
<td>Page</td>
</tr>
<tr>
<td>-------</td>
<td>-----</td>
<td>------</td>
</tr>
<tr>
<td>HEALTH—(continued): Emergency medical services—(continued): Certificates—(continued): Suspension or revocation of certificates</td>
<td>45</td>
<td>409</td>
</tr>
<tr>
<td></td>
<td>Appeals to state board</td>
<td>45</td>
</tr>
<tr>
<td></td>
<td>Judicial review</td>
<td>45</td>
</tr>
<tr>
<td></td>
<td>Notice of</td>
<td>45</td>
</tr>
<tr>
<td></td>
<td>Temporary certificates, issuance</td>
<td>45</td>
</tr>
<tr>
<td></td>
<td>Definitions</td>
<td>45</td>
</tr>
<tr>
<td></td>
<td>Exemption from article Vehicles, aircraft and persons aboard them exempt from requirements of article</td>
<td>45</td>
</tr>
<tr>
<td></td>
<td>Legislative findings</td>
<td>45</td>
</tr>
<tr>
<td></td>
<td>Liability for cost of ambulance service</td>
<td>45</td>
</tr>
<tr>
<td></td>
<td>Penalties</td>
<td>45</td>
</tr>
<tr>
<td></td>
<td>Purposes of article</td>
<td>45</td>
</tr>
<tr>
<td></td>
<td>Rules, promulgation by state board</td>
<td>45</td>
</tr>
<tr>
<td></td>
<td>Standards, promulgation of rules</td>
<td>45</td>
</tr>
<tr>
<td></td>
<td>Violations Actions to enjoin</td>
<td>45</td>
</tr>
<tr>
<td></td>
<td>Criminal penalties</td>
<td>45</td>
</tr>
<tr>
<td>Sterilization Sexual sterilization</td>
<td>46</td>
<td>415</td>
</tr>
<tr>
<td></td>
<td>Immunity of persons performing operation</td>
<td>46</td>
</tr>
<tr>
<td></td>
<td>Procedures</td>
<td>46</td>
</tr>
<tr>
<td>HOMESTEADS:</td>
<td>63</td>
<td>509</td>
</tr>
<tr>
<td>Creditor and debtor</td>
<td>63</td>
<td>509</td>
</tr>
<tr>
<td></td>
<td>Proceedings to reach excess value</td>
<td>63</td>
</tr>
<tr>
<td></td>
<td>Debts enforceable against homestead</td>
<td>63</td>
</tr>
<tr>
<td></td>
<td>Definitions</td>
<td>63</td>
</tr>
<tr>
<td></td>
<td>Descent and distribution</td>
<td>63</td>
</tr>
<tr>
<td></td>
<td>Descent of homestead to infant children</td>
<td>63</td>
</tr>
<tr>
<td></td>
<td>Persons entitled to homestead</td>
<td>63</td>
</tr>
<tr>
<td></td>
<td>Value</td>
<td>63</td>
</tr>
<tr>
<td></td>
<td>Waiver of exemption void</td>
<td>63</td>
</tr>
<tr>
<td>HOSPITAL, MEDICAL AND DENTAL SERVICE CORPORATIONS: Bond of corporate officers and employees Commissioner</td>
<td>54</td>
<td>468</td>
</tr>
<tr>
<td></td>
<td>Applicability of other laws</td>
<td>53</td>
</tr>
<tr>
<td></td>
<td>Exemptions</td>
<td>53</td>
</tr>
<tr>
<td></td>
<td>Funds, investment</td>
<td>54</td>
</tr>
<tr>
<td></td>
<td>Insurance, applicability of other laws</td>
<td>53</td>
</tr>
<tr>
<td></td>
<td>Investments</td>
<td>54</td>
</tr>
<tr>
<td></td>
<td>Rehabilitation and liquidation</td>
<td>53</td>
</tr>
<tr>
<td></td>
<td>Applicability of other laws</td>
<td>53</td>
</tr>
<tr>
<td></td>
<td>Taxation, exemption</td>
<td>53</td>
</tr>
<tr>
<td></td>
<td>Unfair practices, applicability of other laws</td>
<td>53</td>
</tr>
<tr>
<td>HUNTINGTON:</td>
<td>148</td>
<td>925</td>
</tr>
<tr>
<td>Park Commission Board of park commissioners Body corporate</td>
<td>148</td>
<td>925</td>
</tr>
<tr>
<td></td>
<td>Compensation</td>
<td>148</td>
</tr>
<tr>
<td></td>
<td>Composition</td>
<td>148</td>
</tr>
<tr>
<td></td>
<td>Election of commissioners</td>
<td>148</td>
</tr>
<tr>
<td></td>
<td>Expenses</td>
<td>148</td>
</tr>
<tr>
<td></td>
<td>Filling vacancies</td>
<td>148</td>
</tr>
</tbody>
</table>
### Park Commission (continued):

<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Board of park commissioners (continued):</td>
<td></td>
</tr>
<tr>
<td>Interest of commissioners in contracts or</td>
<td>148</td>
</tr>
<tr>
<td>property controlled by board prohibited</td>
<td>921</td>
</tr>
<tr>
<td>Meetings</td>
<td>148</td>
</tr>
<tr>
<td>Rules governing</td>
<td>925</td>
</tr>
<tr>
<td>Members not to hold other elective public</td>
<td>148</td>
</tr>
<tr>
<td>office</td>
<td>921</td>
</tr>
<tr>
<td>Oath of office</td>
<td>148</td>
</tr>
<tr>
<td>Officers</td>
<td>922</td>
</tr>
<tr>
<td>Duties</td>
<td>148</td>
</tr>
<tr>
<td>Election</td>
<td>922</td>
</tr>
<tr>
<td>Secretary, bond required</td>
<td>148</td>
</tr>
<tr>
<td>Compensation</td>
<td>924</td>
</tr>
<tr>
<td>Treasurer, bond required</td>
<td>148</td>
</tr>
<tr>
<td>Perpetual existence</td>
<td>924</td>
</tr>
<tr>
<td>Political party affiliation of commissioners</td>
<td>148</td>
</tr>
<tr>
<td>Powers</td>
<td>925</td>
</tr>
<tr>
<td>Financial</td>
<td>927</td>
</tr>
<tr>
<td>Seal</td>
<td>925</td>
</tr>
<tr>
<td>Terms of office</td>
<td>921</td>
</tr>
<tr>
<td>Definitions</td>
<td>148</td>
</tr>
<tr>
<td>Financing, powers of board</td>
<td>920</td>
</tr>
<tr>
<td>Law enforcement</td>
<td>927</td>
</tr>
<tr>
<td>Office</td>
<td>930</td>
</tr>
<tr>
<td>Open to public</td>
<td>925</td>
</tr>
<tr>
<td>Park rangers</td>
<td>925</td>
</tr>
<tr>
<td>Board authorized to employ</td>
<td>148</td>
</tr>
<tr>
<td>Title to property</td>
<td>930</td>
</tr>
<tr>
<td></td>
<td>931</td>
</tr>
</tbody>
</table>

### Husband and Wife:

Transfer of property with right of survivorship between 36 381

### Income Tax:

Adjusted gross income
- Resident individual 139 795

Corporations
- Net income tax 140 796
- Definitions of terms

Husband and wife
- Adjusted gross income 139 797
- Resident individual 139 794

Meaning of terms 139 794

Military service
- Adjusted gross income 139 797

Partnerships
- Adjusted gross income of resident individuals 139 797

Pensions
- Adjusted gross income of resident individuals 139 796

Retirement system
- Adjusted gross income 139 796

United States
- Adjusted gross income of resident individuals 139 795
- Federal adjusted gross income
- Modifications increasing or reducing

### Indebtedness:

Counties, districts and municipalities
- See Bond Issues.
### INDUSTRIAL DEVELOPMENT AND COMMERCIAL DEVELOPMENT BOND ACT:

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bond issues</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Exemption from taxation</td>
<td>47</td>
<td>429</td>
</tr>
<tr>
<td>Issuance to finance industrial or commercial project</td>
<td>47</td>
<td>422</td>
</tr>
<tr>
<td>Refunding bonds</td>
<td>47</td>
<td>427</td>
</tr>
<tr>
<td>Sale</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Use of proceeds from sale of bonds</td>
<td>47</td>
<td>427</td>
</tr>
<tr>
<td>Security for bonds</td>
<td>47</td>
<td>423</td>
</tr>
<tr>
<td>Citation of article</td>
<td>47</td>
<td>418</td>
</tr>
<tr>
<td>Commercial project</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Defined</td>
<td>47</td>
<td>419</td>
</tr>
<tr>
<td>Issuance of bonds to finance</td>
<td>47</td>
<td>421</td>
</tr>
<tr>
<td>Joint establishment by two or more governmental bodies</td>
<td>47</td>
<td>421</td>
</tr>
<tr>
<td>Lease, requirements respecting</td>
<td>47</td>
<td>426</td>
</tr>
<tr>
<td>Location of project</td>
<td>47</td>
<td>421</td>
</tr>
<tr>
<td>Counties</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Joint establishment</td>
<td>47</td>
<td>421</td>
</tr>
<tr>
<td>Powers conferred on counties</td>
<td>47</td>
<td>420</td>
</tr>
<tr>
<td>Prohibition of financial interest of public officials</td>
<td>47</td>
<td>429</td>
</tr>
<tr>
<td>County court</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Defined</td>
<td>47</td>
<td>420</td>
</tr>
<tr>
<td>Issuance of bonds</td>
<td>47</td>
<td>422</td>
</tr>
<tr>
<td>No contribution by county court</td>
<td>47</td>
<td>428</td>
</tr>
<tr>
<td>Prohibition of financial interest of members</td>
<td>47</td>
<td>429</td>
</tr>
<tr>
<td>Governmental body</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Defined</td>
<td>47</td>
<td>420</td>
</tr>
<tr>
<td>Joint establishment by two or more</td>
<td>47</td>
<td>421</td>
</tr>
<tr>
<td>Industrial pollution defined</td>
<td>47</td>
<td>420</td>
</tr>
<tr>
<td>Industrial project</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Defined</td>
<td>47</td>
<td>420</td>
</tr>
<tr>
<td>Issuance of bonds to finance</td>
<td>47</td>
<td>422</td>
</tr>
<tr>
<td>Joint establishment by two or more governmental bodies</td>
<td>47</td>
<td>421</td>
</tr>
<tr>
<td>Lease, requirements respecting</td>
<td>47</td>
<td>426</td>
</tr>
<tr>
<td>Location of project</td>
<td>47</td>
<td>421</td>
</tr>
<tr>
<td>Legislative findings</td>
<td></td>
<td>418</td>
</tr>
<tr>
<td>Municipalities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Joint establishment</td>
<td>47</td>
<td>421</td>
</tr>
<tr>
<td>No contribution by municipalities</td>
<td>47</td>
<td>428</td>
</tr>
<tr>
<td>Powers conferred on</td>
<td>47</td>
<td>420</td>
</tr>
<tr>
<td>Prohibition of financial interest of public officials</td>
<td>47</td>
<td>429</td>
</tr>
<tr>
<td>Officers, financial interest prohibited</td>
<td>47</td>
<td>429</td>
</tr>
<tr>
<td>Powers conferred on counties and municipalities</td>
<td>47</td>
<td>420</td>
</tr>
<tr>
<td>Purpose, legislative findings</td>
<td></td>
<td>418</td>
</tr>
<tr>
<td>Security for bonds</td>
<td></td>
<td>423</td>
</tr>
<tr>
<td>Short title</td>
<td>47</td>
<td>418</td>
</tr>
<tr>
<td>Taxation, exemption from</td>
<td>47</td>
<td>429</td>
</tr>
</tbody>
</table>

### INDUSTRIAL HOME FOR GIRLS:

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Continuance</td>
<td>48</td>
<td>430</td>
</tr>
<tr>
<td>Location</td>
<td>48</td>
<td>430</td>
</tr>
<tr>
<td>Management</td>
<td>48</td>
<td>430</td>
</tr>
</tbody>
</table>

### INDUSTRIAL LOAN COMPANIES:

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Advertising</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Certificates of indebtedness</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Requirements and prohibitions</td>
<td>6</td>
<td>42</td>
</tr>
<tr>
<td>Restrictions on statements or advertisements relating to guaranteeing payment to holders</td>
<td>6</td>
<td>43</td>
</tr>
<tr>
<td>Use of certain symbols or devices prohibited</td>
<td>6</td>
<td>43</td>
</tr>
</tbody>
</table>
### Topical Index

<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Industrial Loan Companies</strong> (continued):</td>
<td></td>
</tr>
<tr>
<td>Appeals, orders of commissioner of banking</td>
<td>6</td>
</tr>
<tr>
<td>Board of Banking and Financial Institutions</td>
<td></td>
</tr>
<tr>
<td>Powers</td>
<td>6</td>
</tr>
<tr>
<td>Bonds, surety</td>
<td></td>
</tr>
<tr>
<td>Chief executive and other officers</td>
<td>6</td>
</tr>
<tr>
<td>Branch companies</td>
<td></td>
</tr>
<tr>
<td>Penalties</td>
<td>6</td>
</tr>
<tr>
<td>Prohibited</td>
<td>6</td>
</tr>
<tr>
<td>Building and Loan Associations</td>
<td></td>
</tr>
<tr>
<td>Applicability of article to existing companies of like nature</td>
<td>6</td>
</tr>
<tr>
<td>Bylaws</td>
<td></td>
</tr>
<tr>
<td>Amendment by stockholders</td>
<td>6</td>
</tr>
<tr>
<td>Approval by commissioner of banking</td>
<td>6</td>
</tr>
<tr>
<td>Cash reserves</td>
<td>6</td>
</tr>
<tr>
<td>Certificate of incorporation</td>
<td>6</td>
</tr>
<tr>
<td>Certificates of indebtedness</td>
<td></td>
</tr>
<tr>
<td>Restrictions upon use of</td>
<td></td>
</tr>
<tr>
<td>Citation</td>
<td>6</td>
</tr>
<tr>
<td>Commissioner of banking</td>
<td></td>
</tr>
<tr>
<td>Appeals from orders</td>
<td>6</td>
</tr>
<tr>
<td>Approval of authority to do business</td>
<td>6</td>
</tr>
<tr>
<td>Fees</td>
<td>6</td>
</tr>
<tr>
<td>Issuance of certificate to transact business</td>
<td>6</td>
</tr>
<tr>
<td>Powers and duties, additional</td>
<td>6</td>
</tr>
<tr>
<td>Rules and regulations</td>
<td>6</td>
</tr>
<tr>
<td>Constitutionality of article</td>
<td>6</td>
</tr>
<tr>
<td>Definitions</td>
<td>6</td>
</tr>
<tr>
<td>Directors</td>
<td></td>
</tr>
<tr>
<td>Dissolution, voluntary</td>
<td>6</td>
</tr>
<tr>
<td>Liability for defalcation of manager</td>
<td>6</td>
</tr>
<tr>
<td>Loans to directors and officers</td>
<td>6</td>
</tr>
<tr>
<td>Meetings</td>
<td>6</td>
</tr>
<tr>
<td>Officers, election</td>
<td>6</td>
</tr>
<tr>
<td>Residence requirements</td>
<td>6</td>
</tr>
<tr>
<td>Stock, minimum amount to be owned by</td>
<td>6</td>
</tr>
<tr>
<td>Dissolution, voluntary</td>
<td>6</td>
</tr>
<tr>
<td>Dividends</td>
<td></td>
</tr>
<tr>
<td>Declaration by director</td>
<td>6</td>
</tr>
<tr>
<td>Limitations</td>
<td>6</td>
</tr>
<tr>
<td>Payment</td>
<td>6</td>
</tr>
<tr>
<td>Embezzlement</td>
<td></td>
</tr>
<tr>
<td>Managers</td>
<td>6</td>
</tr>
<tr>
<td>Engaging in business</td>
<td></td>
</tr>
<tr>
<td>Certificate of commissioner of banking</td>
<td>6</td>
</tr>
<tr>
<td>Generally</td>
<td>6</td>
</tr>
<tr>
<td>Limitations on powers</td>
<td>6</td>
</tr>
<tr>
<td>Existing companies</td>
<td></td>
</tr>
<tr>
<td>Applicability of article</td>
<td>6</td>
</tr>
<tr>
<td>Fines, penalties and forfeitures</td>
<td></td>
</tr>
<tr>
<td>Loans to officers, employees</td>
<td>6</td>
</tr>
<tr>
<td>General corporation laws applicable</td>
<td>6</td>
</tr>
<tr>
<td>Incorporation</td>
<td></td>
</tr>
<tr>
<td>Agreement of Incorporation</td>
<td>6</td>
</tr>
<tr>
<td>Certificate of Incorporation</td>
<td></td>
</tr>
<tr>
<td>Application</td>
<td>6</td>
</tr>
<tr>
<td>Issuance</td>
<td>6</td>
</tr>
<tr>
<td>Recordation</td>
<td>6</td>
</tr>
<tr>
<td>General provisions</td>
<td>6</td>
</tr>
</tbody>
</table>
## TOPICAL INDEX

### INDUSTRIAL LOAN COMPANIES—(continued):

<table>
<thead>
<tr>
<th>Incorporation—(continued):</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Incorporators</td>
<td>6</td>
<td>30</td>
</tr>
<tr>
<td>Generally</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number</td>
<td>6</td>
<td>25</td>
</tr>
<tr>
<td>Industrial Banks</td>
<td></td>
<td></td>
</tr>
<tr>
<td>See Banking Institutions.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Judicial review</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Orders of commissioner of banking</td>
<td>6</td>
<td>44</td>
</tr>
<tr>
<td><strong>Laws</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>General corporation laws applicable</td>
<td>6</td>
<td>24</td>
</tr>
<tr>
<td>Limitations on</td>
<td>6</td>
<td>32</td>
</tr>
<tr>
<td><strong>Managers</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Defalcation</td>
<td>6</td>
<td>40</td>
</tr>
<tr>
<td>Embezzlement</td>
<td>6</td>
<td>40</td>
</tr>
<tr>
<td><strong>Meetings</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Annual and special meeting of stockholders</td>
<td>6</td>
<td>38</td>
</tr>
<tr>
<td>Proxies</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Quorum</td>
<td>6</td>
<td>38</td>
</tr>
<tr>
<td>Voting</td>
<td>6</td>
<td>38</td>
</tr>
<tr>
<td>Mobile units</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Conducting business from prohibited</td>
<td>7</td>
<td>51</td>
</tr>
</tbody>
</table>

### INSURANCE:

<table>
<thead>
<tr>
<th>Agents, brokers and solicitors</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commissions, payment of</td>
<td>52</td>
<td>459</td>
</tr>
<tr>
<td>Countersignature</td>
<td></td>
<td>459</td>
</tr>
<tr>
<td>Exceptions</td>
<td>52</td>
<td>460</td>
</tr>
<tr>
<td><strong>Holding company systems act</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Citation of act</td>
<td>55</td>
<td>469</td>
</tr>
<tr>
<td>Confidential treatment</td>
<td>55</td>
<td>483</td>
</tr>
<tr>
<td>Conflicts of laws</td>
<td>55</td>
<td>485</td>
</tr>
<tr>
<td>Definitions</td>
<td>55</td>
<td>489</td>
</tr>
<tr>
<td>Dividends, standards</td>
<td>55</td>
<td>481</td>
</tr>
<tr>
<td>Documents, confidential treatment</td>
<td>55</td>
<td>483</td>
</tr>
<tr>
<td>Examination</td>
<td>55</td>
<td>482</td>
</tr>
<tr>
<td><strong>Hearings</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Acquisition of control or merger with domestic insurer</td>
<td>55</td>
<td>475</td>
</tr>
<tr>
<td>Injunctions</td>
<td>55</td>
<td>483</td>
</tr>
<tr>
<td>Insurance holding company system, defined</td>
<td>55</td>
<td>470</td>
</tr>
<tr>
<td>Insurers</td>
<td>55</td>
<td>470</td>
</tr>
<tr>
<td>Acquisition of control or merger with domestic insurer</td>
<td>55</td>
<td>471</td>
</tr>
<tr>
<td>Approval by insurance commissioner</td>
<td>55</td>
<td>475</td>
</tr>
<tr>
<td>Exceptions</td>
<td>55</td>
<td>476</td>
</tr>
<tr>
<td>Filing requirements</td>
<td>55</td>
<td>471</td>
</tr>
<tr>
<td>Hearings</td>
<td>55</td>
<td>475</td>
</tr>
<tr>
<td><strong>Jurisdiction</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Consent to service of process</td>
<td>55</td>
<td>477</td>
</tr>
<tr>
<td>Mailing to shareholders</td>
<td>55</td>
<td>476</td>
</tr>
<tr>
<td>Statement</td>
<td>55</td>
<td>472</td>
</tr>
<tr>
<td>Violations</td>
<td>55</td>
<td>477</td>
</tr>
<tr>
<td>Examination</td>
<td>55</td>
<td>482</td>
</tr>
<tr>
<td>License; revocation, suspension or nonrenewal</td>
<td>55</td>
<td>483</td>
</tr>
<tr>
<td>Registration</td>
<td>55</td>
<td>477</td>
</tr>
<tr>
<td>Transactions with affiliates, standards</td>
<td>55</td>
<td>480</td>
</tr>
<tr>
<td>Jurisdiction, courts vested with jurisdiction</td>
<td>55</td>
<td>477</td>
</tr>
<tr>
<td>Consent to service of process</td>
<td>55</td>
<td>477</td>
</tr>
<tr>
<td><strong>Laws, conflict of</strong></td>
<td>55</td>
<td>485</td>
</tr>
<tr>
<td>Licenses</td>
<td>55</td>
<td>485</td>
</tr>
</tbody>
</table>

**Revocation, suspension or nonrenewal of insurer's license** |  55  |  485 |
**TOPICAL INDEX**

**INSURANCE—(continued):**

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>55</td>
<td>471</td>
</tr>
<tr>
<td>55</td>
<td>475</td>
</tr>
<tr>
<td>55</td>
<td>476</td>
</tr>
<tr>
<td>55</td>
<td>471</td>
</tr>
<tr>
<td>55</td>
<td>475</td>
</tr>
<tr>
<td>55</td>
<td>477</td>
</tr>
<tr>
<td>55</td>
<td>476</td>
</tr>
<tr>
<td>55</td>
<td>472</td>
</tr>
<tr>
<td>55</td>
<td>477</td>
</tr>
<tr>
<td>55</td>
<td>484</td>
</tr>
<tr>
<td>55</td>
<td>485</td>
</tr>
<tr>
<td>55</td>
<td>477</td>
</tr>
</tbody>
</table>

**Holding company systems act—(continued):**

<table>
<thead>
<tr>
<th>Merger</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acquisition of control or merger with domestic insurer</td>
<td>55</td>
<td>471</td>
</tr>
<tr>
<td>Approval by commissioner of insurance</td>
<td>55</td>
<td>475</td>
</tr>
<tr>
<td>Exemptions</td>
<td>55</td>
<td>476</td>
</tr>
<tr>
<td>Filing requirements</td>
<td>55</td>
<td>471</td>
</tr>
<tr>
<td>Hearings, approval by commissioner</td>
<td>55</td>
<td>475</td>
</tr>
<tr>
<td>Jurisdiction</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Consent to service of process</td>
<td>55</td>
<td>477</td>
</tr>
<tr>
<td>Mailings to shareholders</td>
<td>55</td>
<td>476</td>
</tr>
<tr>
<td>Statement</td>
<td>55</td>
<td>472</td>
</tr>
<tr>
<td>Violations</td>
<td>55</td>
<td>477</td>
</tr>
<tr>
<td>Penalties</td>
<td>55</td>
<td>484</td>
</tr>
<tr>
<td>Receivership</td>
<td>55</td>
<td>485</td>
</tr>
<tr>
<td>Registration, Insurers</td>
<td>55</td>
<td>477</td>
</tr>
<tr>
<td>Service of process</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Acquisition of control or merger with domestic insurer</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Consent to service</td>
<td>55</td>
<td>477</td>
</tr>
<tr>
<td>Shareholders, mailings to shareholders</td>
<td>55</td>
<td>476</td>
</tr>
<tr>
<td>Short title</td>
<td>55</td>
<td>469</td>
</tr>
<tr>
<td>Standards</td>
<td>55</td>
<td>480</td>
</tr>
<tr>
<td>Surplus, adequacy standards</td>
<td>55</td>
<td>480</td>
</tr>
<tr>
<td>Title</td>
<td>55</td>
<td>469</td>
</tr>
<tr>
<td>Violations</td>
<td>55</td>
<td>477</td>
</tr>
<tr>
<td>Criminal proceedings</td>
<td>55</td>
<td>484</td>
</tr>
<tr>
<td>Penalties</td>
<td>55</td>
<td>484</td>
</tr>
<tr>
<td>Receivership</td>
<td>55</td>
<td>485</td>
</tr>
<tr>
<td>Voting securities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Defined</td>
<td>55</td>
<td>471</td>
</tr>
<tr>
<td>Prohibitions</td>
<td>55</td>
<td>483</td>
</tr>
<tr>
<td>Sequestration</td>
<td>55</td>
<td>484</td>
</tr>
</tbody>
</table>

**Individual accident and sickness insurance**

<table>
<thead>
<tr>
<th>Minimum standards</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application forms</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contents</td>
<td>53</td>
<td>467</td>
</tr>
<tr>
<td>Preexisting conditions</td>
<td>53</td>
<td>467</td>
</tr>
<tr>
<td>Benefits</td>
<td>53</td>
<td>465</td>
</tr>
<tr>
<td>Citation of act</td>
<td>53</td>
<td>462</td>
</tr>
<tr>
<td>Commissioner</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Promulgation of rules and regulations</td>
<td>53</td>
<td>464</td>
</tr>
<tr>
<td>Coverage</td>
<td>53</td>
<td>466</td>
</tr>
<tr>
<td>Definitions</td>
<td>53</td>
<td>463</td>
</tr>
<tr>
<td>Policies</td>
<td>53</td>
<td>464</td>
</tr>
<tr>
<td>Preexisting conditions</td>
<td>53</td>
<td>467</td>
</tr>
<tr>
<td>Purpose of article</td>
<td>53</td>
<td>462</td>
</tr>
<tr>
<td>Short title</td>
<td>53</td>
<td>462</td>
</tr>
</tbody>
</table>

**Insurers**

<table>
<thead>
<tr>
<th>Mutual insurers</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Borrowing by insurers</td>
<td>49</td>
<td>430</td>
</tr>
<tr>
<td>Loans to insurers</td>
<td>49</td>
<td>431</td>
</tr>
<tr>
<td>Surplus, borrowing</td>
<td>49</td>
<td>431</td>
</tr>
<tr>
<td>Stock insurers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Borrowing by insurers</td>
<td>49</td>
<td>430</td>
</tr>
<tr>
<td>Loans to insurers</td>
<td>49</td>
<td>431</td>
</tr>
<tr>
<td>Surplus, borrowing</td>
<td>49</td>
<td>431</td>
</tr>
</tbody>
</table>

**Life insurance**

<table>
<thead>
<tr>
<th>Standard nonforfeiture law for life policies</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standard valuation law for life policies</td>
<td>50</td>
<td>432</td>
</tr>
</tbody>
</table>

**Unfair trade practices**

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>51</td>
<td>449</td>
</tr>
</tbody>
</table>
INSURANCE—(continued):

Unfair trade practices—(continued):
    Advertising
    False advertising prohibited .................................. 51  451
    Advisory board contracts ...................................... 51  452
    Applications, misrepresentations ................................ 51  456
    Boycott .................................................................. 51  451
    Cease and desist orders ......................................... 51  457
    Penalty for violation ............................................. 51  457
    Coercion .................................................................. 51  451

    Complaint handling procedures
    Failure to maintain ................................................ 51  456
    Debtors, coercion ................................................... 51  456
    Defamation ................................................................ 51  451
    Definitions ................................................................ 51  449
    Discrimination, unfair discrimination ............................ 51  452
    Enforcement, powers additional to existing law ............... 51  458
    Favored agent or insurer ......................................... 51  456
    Financial statements, false ....................................... 51  451
    Intimidation ................................................................ 51  451
    Misrepresentation as to policies ................................ 51  450
    Penalties ................................................................... 51  457
    Policies, misrepresentation or false statements ............... 51  450
    Prohibited ................................................................ 51  450
    Purpose of law ........................................................ 51  449

Rebates
    Prohibited in life or accident and sickness insurance .......... 51  452
    Severability ............................................................ 51  459
    Stock inducements prohibited .................................... 51  452
    Undefined acts or practices ....................................... 51  458
    Violations .................................................................. 51  457
    Cease and desist orders ......................................... 51  457
    Penalty for violation of order .................................... 51  458
    Penalties .................................................................. 51  457

Valuation of securities and reserves
    Standard valuation law for life policies ........................ 50  432

JUDGES:
    Expenses ................................................................. 23  339
    Mileage .................................................................... 23  339

JUDICIAL CIRCUITS:
    Creating Commission on Establishment and Arrangement (HCR 22) .... 939

JUDICIAL COUNCIL:
    Appointment ............................................................. 56  486
    Composition ............................................................. 56  486
    Creation .................................................................... 56  486
    Duties generally ....................................................... 56  486
    Political affiliation ................................................. 56  486
    Purpose .................................................................... 56  486
    Qualifications .......................................................... 56  486

JUSTICES OF THE PEACE:
    Fees
        Fees in civil cases .................................................. 24  341
        Recovery of fees not paid by parties .......................... 107  665

JUVENILE COURTS:
    Certification from other courts .................................... 9  55
    Child defined ........................................................... 9  55
TOPICAL INDEX

JUVENILE COURTS—(continued):

Continuing jurisdiction of court ........................................... 9 55
Petition for disposition of suspected delinquent
  Praying that child be adjudged neglected or delinquent .............. 9 55

KANAWHA COUNTY:

Intermediate court
  Salary of judge ................................................................... 31 360

LABOR:

Minimum wage and maximum hours standards
  Amount of minimum wage ...................................................... 57 489
  Commissioner defined ....................................................... 57 487
  Credits, general provisions ................................................. 57 492
  Definitions ........................................................................ 57 487
  Employee, defined .............................................................. 57 488
  Employer, defined .............................................................. 57 487
  Hours worked
    Definition ................................................................... 57 489
    Maximum hours .............................................................. 57 489
  Overtime compensation ....................................................... 57 489
  Payment of minimum wages ................................................ 57 489
  Wage
    Defined ........................................................................ 57 487
    Minimum wages .............................................................. 57 489
    Credits ........................................................................ 57 492
  Wage and hour director defined ............................................. 57 487
  Work week defined ............................................................ 57 488

LAW DAY U.S.A.:

Requesting the Governor to designate May 1
  of each year as (HCR 65) ....................................................... 942

LEGAL CAPACITY:

General provisions .................................................................. 59 499

LEGISLATURE:

Apportionment
  Repeal of statute relating to legislative findings
    regarding apportionment of House of Delegates .................... 60 501
  Blennerhassett Historical Commission .................................. 61 502
  Discrimination against members
    Employer discrimination against employee who is
      a member of the Legislature ........................................... 62 500
  House of Delegates
    Precinct boundary changes for 1974 elections ..................... 37 382
    Repeal of statute relating to legislative findings
      regarding apportionment of delegates ............................... 60 501
  Joint Committee on Government and Finance
    Authorizing and continuing interim studies by ..................... 946, 970

LIENS:

Exemption from execution and other process .......................... 63 503

LIFE ESTATES:

Mortality tables ...................................................................... 64 512, 516, 518

Valuation
  American experience table of mortality
    Examples ........................................................................ 64 514
    Generally ....................................................................... 64 511
### LIFE ESTATES—(continued):

**Valuation—(continued):**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Calculation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Examples</td>
<td>64</td>
<td>514</td>
</tr>
<tr>
<td>Rules of calculation</td>
<td>64</td>
<td>514</td>
</tr>
<tr>
<td>Computation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Inchoate right of dower</td>
<td>64</td>
<td>514</td>
</tr>
<tr>
<td>Gross sum in payment of life estates</td>
<td>64</td>
<td>511</td>
</tr>
<tr>
<td>Interest, rule of calculation</td>
<td>64</td>
<td>514</td>
</tr>
</tbody>
</table>

### MARSHALL UNIVERSITY:

**Bond issues**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Authorization to issue revenue bonds for certain purposes</td>
<td>120</td>
<td>693</td>
</tr>
<tr>
<td>Board of Regents</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Authority to pledge revenues for payment of bonds</td>
<td>120</td>
<td>694</td>
</tr>
<tr>
<td>Fund created in state treasury</td>
<td>120</td>
<td>694</td>
</tr>
<tr>
<td>Collections to be paid into special fund</td>
<td>120</td>
<td>694</td>
</tr>
<tr>
<td>Termination of fund</td>
<td>120</td>
<td>695</td>
</tr>
<tr>
<td>Interest rate</td>
<td>120</td>
<td>696</td>
</tr>
<tr>
<td>Issuance</td>
<td>120</td>
<td>696</td>
</tr>
<tr>
<td>Negotiable Instruments</td>
<td>120</td>
<td>698</td>
</tr>
<tr>
<td>Sale of bonds</td>
<td>120</td>
<td>697</td>
</tr>
</tbody>
</table>

### McDOWELL COUNTY:

**Intermediate court**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jurisdiction</td>
<td>32</td>
<td>360</td>
</tr>
<tr>
<td>Salary of judge</td>
<td>32</td>
<td>361</td>
</tr>
</tbody>
</table>

### MENTALLY ILL:

**Commitments and admissions**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Delivery to responsible person</td>
<td>66</td>
<td>539</td>
</tr>
<tr>
<td>Bond</td>
<td>66</td>
<td>539</td>
</tr>
<tr>
<td>Involuntary hospitalization</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Appeal from order of commitment by circuit court</td>
<td>66</td>
<td>540</td>
</tr>
<tr>
<td>Appeal procedures for release of patients from hospitalization</td>
<td>66</td>
<td>542</td>
</tr>
<tr>
<td>Bonds, surety</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Custody by responsible persons</td>
<td>66</td>
<td>539</td>
</tr>
<tr>
<td>By order of the circuit court</td>
<td>66</td>
<td>530</td>
</tr>
<tr>
<td>Certificate by physician</td>
<td>66</td>
<td>531</td>
</tr>
<tr>
<td>Circuit court orders</td>
<td>66</td>
<td>538</td>
</tr>
<tr>
<td>Review by supreme court</td>
<td>66</td>
<td>540</td>
</tr>
<tr>
<td>Custody for mental examination</td>
<td>66</td>
<td>533</td>
</tr>
<tr>
<td>Emergency admission</td>
<td>66</td>
<td>531</td>
</tr>
<tr>
<td>Examination</td>
<td>66</td>
<td>531</td>
</tr>
<tr>
<td>Newly admitted patients</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Change of status to voluntary hospitalization</td>
<td>66</td>
<td>540</td>
</tr>
<tr>
<td>Demand for release</td>
<td>66</td>
<td>541</td>
</tr>
<tr>
<td>Periodic examination and review of patient's hospitalization</td>
<td>66</td>
<td>542</td>
</tr>
<tr>
<td>Appeal procedure</td>
<td>66</td>
<td>542</td>
</tr>
<tr>
<td>Hearing</td>
<td>66</td>
<td>531</td>
</tr>
<tr>
<td>Required</td>
<td>66</td>
<td>530</td>
</tr>
<tr>
<td>Judicial review</td>
<td>66</td>
<td>540</td>
</tr>
<tr>
<td>Legal proceedings</td>
<td>66</td>
<td>534</td>
</tr>
<tr>
<td>Medical certification admission</td>
<td>66</td>
<td>531</td>
</tr>
<tr>
<td>Compensation of mental hygiene commissioner</td>
<td>66</td>
<td>530</td>
</tr>
<tr>
<td>Custody for medical examination</td>
<td>66</td>
<td>533</td>
</tr>
<tr>
<td>Duties of commissioner</td>
<td>66</td>
<td>530</td>
</tr>
<tr>
<td>Reports</td>
<td>66</td>
<td>530</td>
</tr>
<tr>
<td>Term of office of commissioner</td>
<td>66</td>
<td>530</td>
</tr>
<tr>
<td>Release</td>
<td>66</td>
<td>531</td>
</tr>
<tr>
<td>Topic</td>
<td>Page</td>
<td></td>
</tr>
<tr>
<td>-------</td>
<td>------</td>
<td></td>
</tr>
<tr>
<td>Mentally Ill—(continued):</td>
<td>526</td>
<td></td>
</tr>
<tr>
<td>Committees</td>
<td>546</td>
<td></td>
</tr>
<tr>
<td>Criminal mentally ill persons</td>
<td>546</td>
<td></td>
</tr>
<tr>
<td>Examination, ordered by court</td>
<td>546</td>
<td></td>
</tr>
<tr>
<td>Expenses, paid by county court</td>
<td>546</td>
<td></td>
</tr>
<tr>
<td>Hospitalization</td>
<td>546</td>
<td></td>
</tr>
<tr>
<td>Definitions</td>
<td>527</td>
<td></td>
</tr>
<tr>
<td>Hospitals</td>
<td>526</td>
<td></td>
</tr>
<tr>
<td>Sterilization of mental defectives</td>
<td>523</td>
<td></td>
</tr>
</tbody>
</table>
**MENTALLY ILL—(continued):**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transportation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sheriff to provide transportation</td>
<td>66</td>
<td>545</td>
</tr>
</tbody>
</table>

**MINES AND MINERALS:**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Certification of coal miners</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Apprentices</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Competency certificate required of underground or surface miner</td>
<td>67</td>
<td>561</td>
</tr>
<tr>
<td>Generally</td>
<td>67</td>
<td>558</td>
</tr>
<tr>
<td>Permit of apprenticeship</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Surface miner</td>
<td>67</td>
<td>560</td>
</tr>
<tr>
<td>Underground miner</td>
<td>67</td>
<td>559</td>
</tr>
<tr>
<td>Supervision</td>
<td>67</td>
<td>560</td>
</tr>
<tr>
<td>Definitions</td>
<td>67</td>
<td>559</td>
</tr>
<tr>
<td>Issuance of certificates</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Refusal to issue</td>
<td>67</td>
<td>562</td>
</tr>
<tr>
<td>Appeal from order</td>
<td>67</td>
<td>562</td>
</tr>
<tr>
<td>Limitations of article</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Qualifications of persons employed</td>
<td>67</td>
<td>558</td>
</tr>
<tr>
<td>Required</td>
<td>67</td>
<td>556</td>
</tr>
<tr>
<td>Scope of article</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Surface miner defined</td>
<td>67</td>
<td>562</td>
</tr>
<tr>
<td>Underground miner defined</td>
<td>67</td>
<td>559</td>
</tr>
<tr>
<td>Violations and penalties</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Coal mines</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mine foreman-fire boss</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Assistants generally</td>
<td>67</td>
<td>556</td>
</tr>
<tr>
<td>Certification required</td>
<td>67</td>
<td>556</td>
</tr>
<tr>
<td>Employment, when to be employed</td>
<td>67</td>
<td>556</td>
</tr>
<tr>
<td>Qualifications</td>
<td>67</td>
<td>556</td>
</tr>
<tr>
<td>Opening or reopening mines</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Approval of director of department of mines required</td>
<td>69</td>
<td>579</td>
</tr>
<tr>
<td>Certificate of approval</td>
<td>69</td>
<td>579</td>
</tr>
<tr>
<td>Fee</td>
<td>69</td>
<td>579</td>
</tr>
<tr>
<td>Procedure</td>
<td>69</td>
<td>579</td>
</tr>
</tbody>
</table>

**Coal Refuse Disposal Control Act**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abandoned coal refuse disposal piles</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Defined</td>
<td>88</td>
<td>622</td>
</tr>
<tr>
<td>Reclamation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Defined</td>
<td>88</td>
<td>623</td>
</tr>
<tr>
<td>Duties of director</td>
<td>88</td>
<td>624</td>
</tr>
<tr>
<td>Generally</td>
<td>88</td>
<td>625</td>
</tr>
<tr>
<td>Inspection</td>
<td>88</td>
<td>625</td>
</tr>
<tr>
<td>Powers of director</td>
<td>88</td>
<td>624</td>
</tr>
<tr>
<td>Rules and regulations</td>
<td>88</td>
<td>625</td>
</tr>
<tr>
<td>Coal refuse defined</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Coal refuse disposal piles defined</td>
<td>88</td>
<td>622</td>
</tr>
<tr>
<td>Definitions</td>
<td>88</td>
<td>622</td>
</tr>
<tr>
<td>Legislative findings</td>
<td>88</td>
<td>623</td>
</tr>
<tr>
<td>Operate defined</td>
<td>88</td>
<td>623</td>
</tr>
<tr>
<td>Operator defined</td>
<td>88</td>
<td>683</td>
</tr>
</tbody>
</table>

**Interstate mining compact**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commission</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Committees, establishment</td>
<td>68</td>
<td>576</td>
</tr>
<tr>
<td>Construction and interpretation</td>
<td>68</td>
<td>578</td>
</tr>
<tr>
<td>Enactment</td>
<td>68</td>
<td>570</td>
</tr>
<tr>
<td>Entry into force</td>
<td>68</td>
<td>577</td>
</tr>
<tr>
<td>Finance generally</td>
<td>68</td>
<td>576</td>
</tr>
<tr>
<td>Interpretation</td>
<td>68</td>
<td>578</td>
</tr>
<tr>
<td>Laws, effect on other laws</td>
<td>68</td>
<td>578</td>
</tr>
<tr>
<td>Mining defined</td>
<td>68</td>
<td>571</td>
</tr>
<tr>
<td>Powers</td>
<td>68</td>
<td>573</td>
</tr>
</tbody>
</table>
## MINES AND MINERALS—(continued):

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interstate mining compact—(continued):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Purposes</td>
<td>68</td>
<td>570</td>
</tr>
<tr>
<td>Severability</td>
<td>68</td>
<td>578</td>
</tr>
<tr>
<td>State defined</td>
<td>68</td>
<td>572</td>
</tr>
<tr>
<td>State programs</td>
<td>68</td>
<td>572</td>
</tr>
<tr>
<td>Withdrawal</td>
<td>68</td>
<td>577</td>
</tr>
<tr>
<td>Miners</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Board of miner training, education and certification</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Appointment of members</td>
<td>67</td>
<td>565</td>
</tr>
<tr>
<td>Chairman</td>
<td>67</td>
<td>566</td>
</tr>
<tr>
<td>Compensation</td>
<td>67</td>
<td>567</td>
</tr>
<tr>
<td>Creation</td>
<td>67</td>
<td>565</td>
</tr>
<tr>
<td>Definitions</td>
<td>67</td>
<td>564</td>
</tr>
<tr>
<td>Director, duties</td>
<td>67</td>
<td>569</td>
</tr>
<tr>
<td>Expenses</td>
<td>67</td>
<td>567</td>
</tr>
<tr>
<td>Legislative findings and policy</td>
<td>67</td>
<td>563</td>
</tr>
<tr>
<td>Membership</td>
<td>67</td>
<td>565</td>
</tr>
<tr>
<td>Powers and duties</td>
<td>67</td>
<td>567</td>
</tr>
<tr>
<td>Quorum</td>
<td>67</td>
<td>567</td>
</tr>
<tr>
<td>Short title</td>
<td>67</td>
<td>563</td>
</tr>
<tr>
<td>Term of members</td>
<td>67</td>
<td>566</td>
</tr>
<tr>
<td>Vacancies, filling</td>
<td>67</td>
<td>567</td>
</tr>
</tbody>
</table>

## MOBILE HOMES:

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Safety act</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Definitions</td>
<td>58</td>
<td>494</td>
</tr>
<tr>
<td>Department of labor</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Duties</td>
<td>58</td>
<td>495</td>
</tr>
<tr>
<td>Inspections</td>
<td>58</td>
<td>497</td>
</tr>
<tr>
<td>Safety standards</td>
<td>58</td>
<td>495</td>
</tr>
<tr>
<td>Seal</td>
<td>58</td>
<td>495</td>
</tr>
<tr>
<td>Defined</td>
<td>58</td>
<td>495</td>
</tr>
<tr>
<td>Duplication prohibited</td>
<td>58</td>
<td>498</td>
</tr>
<tr>
<td>Form</td>
<td>58</td>
<td>497</td>
</tr>
<tr>
<td>Issuance to manufacturers</td>
<td>58</td>
<td>497</td>
</tr>
<tr>
<td>Repossession</td>
<td>58</td>
<td>497</td>
</tr>
<tr>
<td>Requirements</td>
<td>58</td>
<td>497</td>
</tr>
<tr>
<td>Suspension</td>
<td>58</td>
<td>497</td>
</tr>
<tr>
<td>Fees</td>
<td>58</td>
<td>496</td>
</tr>
<tr>
<td>Inspections</td>
<td>58</td>
<td>497</td>
</tr>
<tr>
<td>Penalties</td>
<td>58</td>
<td>499</td>
</tr>
<tr>
<td>Prohibited acts</td>
<td>58</td>
<td>498</td>
</tr>
<tr>
<td>Reciprocity with other states</td>
<td>58</td>
<td>498</td>
</tr>
<tr>
<td>Rentals in violation of article</td>
<td>58</td>
<td>496</td>
</tr>
<tr>
<td>Sales in violation of article</td>
<td>58</td>
<td>496</td>
</tr>
<tr>
<td>Short title</td>
<td>58</td>
<td>494</td>
</tr>
<tr>
<td>Standards, adoption</td>
<td>58</td>
<td>495</td>
</tr>
<tr>
<td>Transfer in violation of article</td>
<td>58</td>
<td>496</td>
</tr>
<tr>
<td>Violations</td>
<td>58</td>
<td>499</td>
</tr>
</tbody>
</table>

## MONEY AND INTEREST:

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agreements in writing fixing rate of interest</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Interest charges on loans repayable in installments</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Legal rate of interest</td>
<td>12</td>
<td>164</td>
</tr>
</tbody>
</table>

## MOTORBOATS:

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Definitions</td>
<td>90</td>
<td>629</td>
</tr>
<tr>
<td>Identification numbers</td>
<td>90</td>
<td>630</td>
</tr>
<tr>
<td>Motorboats exempt from numbering</td>
<td>90</td>
<td>633</td>
</tr>
</tbody>
</table>
### MOTOR CARRIERS:

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rates, fares and charges</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Public service commission</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Powers as to rates, fares and charges</td>
<td>108</td>
<td>668</td>
</tr>
<tr>
<td>Powers as to schedules</td>
<td>108</td>
<td>668</td>
</tr>
</tbody>
</table>

### MOTOR VEHICLES:

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accidents</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Post-mortem tests for alcohol in persons killed in motor vehicle accidents</td>
<td>73</td>
<td>584</td>
</tr>
<tr>
<td>Blood tests</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Post-mortem tests for alcohol in persons killed in motor vehicle accidents</td>
<td>73</td>
<td>585</td>
</tr>
<tr>
<td>Reports by county medical examiners</td>
<td>73</td>
<td>586</td>
</tr>
<tr>
<td>Not admissible as evidence</td>
<td>73</td>
<td>586</td>
</tr>
<tr>
<td>Use of reports for statistical and highway safety purposes</td>
<td>73</td>
<td>586</td>
</tr>
<tr>
<td>Equipment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lights</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Spot lamps and other auxiliary lamps</td>
<td>75</td>
<td>588</td>
</tr>
<tr>
<td>Requirements</td>
<td>75</td>
<td>588</td>
</tr>
<tr>
<td>Inspection of vehicles</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Owners and drivers to comply with inspection laws</td>
<td>76</td>
<td>589</td>
</tr>
<tr>
<td>Operators' and chauffeurs' licenses</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Drivers' licensing advisory board</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Appointment</td>
<td>72</td>
<td>583</td>
</tr>
<tr>
<td>Compensation</td>
<td>72</td>
<td>583</td>
</tr>
<tr>
<td>Created</td>
<td>72</td>
<td>584</td>
</tr>
<tr>
<td>Duties</td>
<td>72</td>
<td>583</td>
</tr>
<tr>
<td>Members</td>
<td>72</td>
<td>583</td>
</tr>
<tr>
<td>Registration</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fees, exemptions</td>
<td>71</td>
<td>581</td>
</tr>
<tr>
<td>Plates</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Operation of vehicle without evidence of registration</td>
<td>70</td>
<td>580</td>
</tr>
<tr>
<td>Use of facsimile in event of loss of plates</td>
<td>70</td>
<td>581</td>
</tr>
<tr>
<td>Speed restrictions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Slow speeds</td>
<td>74</td>
<td>587</td>
</tr>
</tbody>
</table>

### MOUNDSVILLE:

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commissioner of institutions authorized to transfer certain parcel of real estate to city of</td>
<td>94</td>
<td>638</td>
</tr>
</tbody>
</table>

### MUNICIPAL CORPORATIONS:

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Elections</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sale or lease of public utility, authorization</td>
<td>78</td>
<td>592</td>
</tr>
<tr>
<td>Special not otherwise provided for</td>
<td>77</td>
<td>591</td>
</tr>
<tr>
<td>Petition</td>
<td>77</td>
<td>591</td>
</tr>
<tr>
<td>Procedure</td>
<td>77</td>
<td>591</td>
</tr>
<tr>
<td>Firemen</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Civil service</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Appeals</td>
<td>79</td>
<td>597</td>
</tr>
<tr>
<td>Discharge</td>
<td>79</td>
<td>597</td>
</tr>
<tr>
<td>Reduction in number of members</td>
<td>79</td>
<td>597</td>
</tr>
<tr>
<td>Reduction in rank or pay</td>
<td>79</td>
<td>597</td>
</tr>
<tr>
<td>Removal</td>
<td>79</td>
<td>597</td>
</tr>
<tr>
<td>Suspension</td>
<td>79</td>
<td>597</td>
</tr>
<tr>
<td>Health institutions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Authority of municipalities to appropriate funds</td>
<td>80</td>
<td>600</td>
</tr>
<tr>
<td>Accounting of funds</td>
<td>80</td>
<td>601</td>
</tr>
<tr>
<td>Legislative findings</td>
<td>80</td>
<td>600</td>
</tr>
<tr>
<td>Limitations and restrictions</td>
<td>80</td>
<td>600</td>
</tr>
<tr>
<td>Topic</td>
<td>Ch.</td>
<td>Page</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>-----</td>
<td>------</td>
</tr>
<tr>
<td><strong>MUNICIPAL CORPORATIONS</strong> (continued):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Parking</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Additional special provisions as to use of space</td>
<td>47</td>
<td>417</td>
</tr>
<tr>
<td>in motor vehicle parking facilities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Police</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Civil service</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Appeals</td>
<td>79</td>
<td>595</td>
</tr>
<tr>
<td>Discharge</td>
<td>79</td>
<td>595</td>
</tr>
<tr>
<td>Reduction in number of members</td>
<td>79</td>
<td>595</td>
</tr>
<tr>
<td>Reduction in rank or pay</td>
<td>79</td>
<td>595</td>
</tr>
<tr>
<td>Removal</td>
<td>79</td>
<td>595</td>
</tr>
<tr>
<td>Suspension</td>
<td>79</td>
<td>595</td>
</tr>
<tr>
<td>Police court or municipal judge</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Creation and maintenance</td>
<td>2</td>
<td>967</td>
</tr>
<tr>
<td>Judge</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Appointee or election</td>
<td>2</td>
<td>967</td>
</tr>
<tr>
<td>Jurisdiction</td>
<td>2</td>
<td>967</td>
</tr>
<tr>
<td>Criminal</td>
<td>2</td>
<td>967</td>
</tr>
<tr>
<td>Public utilities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sale or lease</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Authorization by elections</td>
<td>78</td>
<td>592</td>
</tr>
<tr>
<td>Bond by person making offer</td>
<td>78</td>
<td>593</td>
</tr>
<tr>
<td>General provisions</td>
<td>78</td>
<td>592</td>
</tr>
<tr>
<td>Proceeds, distribution</td>
<td>78</td>
<td>594</td>
</tr>
<tr>
<td>Transportation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Urban mass transportation systems</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Authority and duty of public service commission</td>
<td>108</td>
<td>667</td>
</tr>
<tr>
<td><strong>NATIONAL GUARD</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pay and allowances</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Generally</td>
<td>105</td>
<td>656</td>
</tr>
<tr>
<td>Waiver</td>
<td>105</td>
<td>656</td>
</tr>
<tr>
<td><strong>NATURAL RESOURCES</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Coal Refuse Disposal Control Act</td>
<td>88</td>
<td>622</td>
</tr>
<tr>
<td>See Mines and Minerals</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fines and penalties</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Violations of chapter generally</td>
<td>89</td>
<td>627</td>
</tr>
<tr>
<td><strong>Fishing</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fishing</td>
<td></td>
<td></td>
</tr>
<tr>
<td>See Game and Fish</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Interstate Mining Compact</td>
<td>68</td>
<td>570</td>
</tr>
<tr>
<td>See Mines and Minerals</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Penalties</td>
<td>89</td>
<td>627</td>
</tr>
<tr>
<td>Surface mining and reclamation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Miners, certification required</td>
<td>67</td>
<td>556</td>
</tr>
<tr>
<td>See Mines and Minerals</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>NOTARIES PUBLIC</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Commissioners out of state</td>
<td>91</td>
<td>694</td>
</tr>
<tr>
<td>See Commissioners</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>NURSES</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Training of practical nurses (HCR 19)</td>
<td></td>
<td>938</td>
</tr>
<tr>
<td><strong>OBSCENITY</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Definitions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Preparation, distribution or exhibition of obscene matters to minors</td>
<td>35</td>
<td>378</td>
</tr>
</tbody>
</table>
# TOPICAL INDEX

**OBSCENITY**—(continued):  

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preparation, distribution or exhibition of obscene matters to minors</td>
<td>35</td>
<td>378</td>
</tr>
<tr>
<td>Definitions</td>
<td>35</td>
<td>378</td>
</tr>
<tr>
<td>Employees</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Acting within scope of employment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Not to be prosecuted</td>
<td>35</td>
<td>380</td>
</tr>
<tr>
<td>Defined</td>
<td>35</td>
<td>378</td>
</tr>
<tr>
<td>Free speech preserved</td>
<td>35</td>
<td>380</td>
</tr>
<tr>
<td>General provisions</td>
<td>35</td>
<td>379</td>
</tr>
<tr>
<td>Hiring, employing, etc., minor</td>
<td>35</td>
<td>380</td>
</tr>
<tr>
<td>Penalty</td>
<td>35</td>
<td>380</td>
</tr>
<tr>
<td>Obscene matter defined</td>
<td>35</td>
<td>378</td>
</tr>
<tr>
<td>Presumption of knowledge of content or character</td>
<td>35</td>
<td>380</td>
</tr>
<tr>
<td>Reasonable belief that minor is eighteen years of age</td>
<td>35</td>
<td>380</td>
</tr>
<tr>
<td>Sentence and punishment</td>
<td>35</td>
<td>379</td>
</tr>
</tbody>
</table>

**OFFICERS:**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accounts and accounting</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Uniform system of accounting by chief inspector for local governmental offices and agencies</td>
<td>104</td>
<td>655</td>
</tr>
<tr>
<td>Chief inspector</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accounting for local offices</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contents</td>
<td>104</td>
<td>655</td>
</tr>
<tr>
<td>How and by whom system prescribed</td>
<td>104</td>
<td>655</td>
</tr>
<tr>
<td>Uniform system of accounting required</td>
<td>104</td>
<td>655</td>
</tr>
<tr>
<td>Powers and authority</td>
<td>104</td>
<td>656</td>
</tr>
</tbody>
</table>

**OSTEOPATHIC PHYSICIANS AND SURGEONS:**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Greenbrier College of Osteopathic Medicine</td>
<td></td>
<td></td>
</tr>
<tr>
<td>State aid for students</td>
<td>124</td>
<td>707</td>
</tr>
</tbody>
</table>

**PENITENTIARY:**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Escapees</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Guards pursuing and apprehending escaped convicts</td>
<td>93</td>
<td>637</td>
</tr>
<tr>
<td>Guards</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Appointment</td>
<td>93</td>
<td>637</td>
</tr>
<tr>
<td>Certificate authorizing guard to carry weapon</td>
<td>93</td>
<td>637</td>
</tr>
<tr>
<td>Conveyance of prisoners</td>
<td>93</td>
<td>637</td>
</tr>
<tr>
<td>Duties generally</td>
<td>93</td>
<td>636</td>
</tr>
<tr>
<td>Enforcement of discipline</td>
<td>93</td>
<td>635</td>
</tr>
<tr>
<td>Weapons, right to carry</td>
<td>93</td>
<td>636</td>
</tr>
<tr>
<td>Officers and employees, appointment</td>
<td>93</td>
<td>636</td>
</tr>
<tr>
<td>Real property</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Transfer to city of Moundsville</td>
<td>94</td>
<td>638</td>
</tr>
<tr>
<td>Warden</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Appointment of assistants and employees</td>
<td>93</td>
<td>636</td>
</tr>
<tr>
<td>Bond</td>
<td>93</td>
<td>636</td>
</tr>
<tr>
<td>Chief executive officer</td>
<td>92</td>
<td>635</td>
</tr>
<tr>
<td>Duties generally</td>
<td>92</td>
<td>635</td>
</tr>
<tr>
<td>Residence</td>
<td>92</td>
<td>636</td>
</tr>
</tbody>
</table>

**PERSONAL PROPERTY:**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exemption from execution and other process</td>
<td>63</td>
<td>505</td>
</tr>
</tbody>
</table>

**PHYSICIANS AND SURGEONS:**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Drunkenness</td>
<td>97</td>
<td>643</td>
</tr>
</tbody>
</table>
### Topical Index

**Physicians and Surgeons**—(continued):

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>License to practice</td>
<td>97</td>
<td>643</td>
</tr>
<tr>
<td>Examination of applicants</td>
<td>97</td>
<td>644</td>
</tr>
<tr>
<td>Fees</td>
<td>97</td>
<td>644</td>
</tr>
<tr>
<td>Issuance by medical licensing board</td>
<td>97</td>
<td>641</td>
</tr>
<tr>
<td>Nonresident</td>
<td>97</td>
<td>641</td>
</tr>
<tr>
<td>Permits in prescribed areas</td>
<td>97</td>
<td>642</td>
</tr>
<tr>
<td>Refusal to issue, grounds</td>
<td>97</td>
<td>643</td>
</tr>
<tr>
<td>Nonresident practitioners from other states</td>
<td>97</td>
<td>641</td>
</tr>
<tr>
<td>Qualifications of applicants</td>
<td>97</td>
<td>641</td>
</tr>
<tr>
<td>Suspension or revocation</td>
<td>97</td>
<td>643</td>
</tr>
<tr>
<td>Registration</td>
<td>97</td>
<td>642</td>
</tr>
<tr>
<td>Biennial registration</td>
<td>97</td>
<td>643</td>
</tr>
<tr>
<td>Fee</td>
<td>97</td>
<td>643</td>
</tr>
<tr>
<td>Renewal</td>
<td>97</td>
<td>643</td>
</tr>
</tbody>
</table>

**Pickett’s Fort State Park**:

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Powers and duties</td>
<td>149</td>
<td>931</td>
</tr>
<tr>
<td>Location of state park</td>
<td>149</td>
<td>931</td>
</tr>
</tbody>
</table>

**Prisoners**:

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employment of prisoners in county jail by county court</td>
<td>22</td>
<td>338</td>
</tr>
</tbody>
</table>

**Professions and Occupations**:

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Boards of examination or registration</td>
<td>96</td>
<td>640</td>
</tr>
<tr>
<td>Compensation and expenses</td>
<td>96</td>
<td>640</td>
</tr>
<tr>
<td>Physicians and surgeons</td>
<td>96</td>
<td>640</td>
</tr>
<tr>
<td>See Physicians and Surgeons.</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

**Public Employees Retirement System**:

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Auditor, member of board of trustees</td>
<td>99</td>
<td>649</td>
</tr>
<tr>
<td>Board of trustees</td>
<td>99</td>
<td>649</td>
</tr>
<tr>
<td>Composition</td>
<td>99</td>
<td>649</td>
</tr>
<tr>
<td>Created</td>
<td>99</td>
<td>649</td>
</tr>
<tr>
<td>Duties generally</td>
<td>99</td>
<td>649</td>
</tr>
<tr>
<td>Rules and regulations</td>
<td>99</td>
<td>649</td>
</tr>
<tr>
<td>Terms of office</td>
<td>100</td>
<td>650</td>
</tr>
<tr>
<td>Vacancies, filling</td>
<td>100</td>
<td>650</td>
</tr>
<tr>
<td>Contributions</td>
<td>101</td>
<td>651</td>
</tr>
<tr>
<td>Refund of accumulated contributions</td>
<td>101</td>
<td>651</td>
</tr>
<tr>
<td>Reemployment after retirement</td>
<td>102</td>
<td>653</td>
</tr>
<tr>
<td>Retirement</td>
<td>102</td>
<td>653</td>
</tr>
<tr>
<td>Repeal of statute relating to payment of annuities when member with reciprocal credit retires</td>
<td>103</td>
<td>654</td>
</tr>
<tr>
<td>State treasurer, member of board of trustees</td>
<td>99</td>
<td>649</td>
</tr>
</tbody>
</table>

**Public Safety**:

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arrest</td>
<td>107</td>
<td>660</td>
</tr>
<tr>
<td>Powers of superintendent and officers</td>
<td>107</td>
<td>660</td>
</tr>
<tr>
<td>Assistance</td>
<td>107</td>
<td>662</td>
</tr>
<tr>
<td>Command of assistance by members of department</td>
<td>107</td>
<td>662</td>
</tr>
<tr>
<td>Bonds, surety</td>
<td>106</td>
<td>659</td>
</tr>
<tr>
<td>Generally</td>
<td>106</td>
<td>657</td>
</tr>
<tr>
<td>Members of department</td>
<td>106</td>
<td>657</td>
</tr>
<tr>
<td>Constables</td>
<td>107</td>
<td>662</td>
</tr>
<tr>
<td>Assistance required by members of department</td>
<td>107</td>
<td>662</td>
</tr>
<tr>
<td>Death, disability and retirement fund</td>
<td>107</td>
<td>663</td>
</tr>
<tr>
<td>Administration</td>
<td>107</td>
<td>663</td>
</tr>
<tr>
<td>Appropriations by Legislature to fund</td>
<td>107</td>
<td>662</td>
</tr>
<tr>
<td>Awards</td>
<td>107</td>
<td>663</td>
</tr>
</tbody>
</table>
### PUBLIC SAFETY—(continued):

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Death, disability and retirement fund—(continued):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Awards—(continued):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Assignment prohibited</td>
<td>107</td>
<td>663</td>
</tr>
<tr>
<td>Exceptions</td>
<td>107</td>
<td>663</td>
</tr>
<tr>
<td>Composition</td>
<td>107</td>
<td>663</td>
</tr>
<tr>
<td>Created</td>
<td>107</td>
<td>663</td>
</tr>
<tr>
<td>Exemption from taxation and process</td>
<td>107</td>
<td>663</td>
</tr>
<tr>
<td>Investments</td>
<td>107</td>
<td>665</td>
</tr>
<tr>
<td>Payments into</td>
<td>107</td>
<td>663</td>
</tr>
<tr>
<td>Retirement board</td>
<td>107</td>
<td>663</td>
</tr>
<tr>
<td>Administration of fund</td>
<td>107</td>
<td>663</td>
</tr>
<tr>
<td>Awards, power as to</td>
<td>107</td>
<td>664</td>
</tr>
<tr>
<td>Chairman</td>
<td>107</td>
<td>664</td>
</tr>
<tr>
<td>Composition</td>
<td>107</td>
<td>663</td>
</tr>
<tr>
<td>Duties as to awards</td>
<td>107</td>
<td>664</td>
</tr>
<tr>
<td>Expenses</td>
<td>107</td>
<td>663</td>
</tr>
<tr>
<td>Rules and regulations</td>
<td>107</td>
<td>664</td>
</tr>
<tr>
<td>Secretary</td>
<td>107</td>
<td>664</td>
</tr>
<tr>
<td>Term of office</td>
<td>107</td>
<td>664</td>
</tr>
<tr>
<td>Department</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Companies</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Composition</td>
<td>106</td>
<td>657</td>
</tr>
<tr>
<td>Designation</td>
<td>106</td>
<td>657</td>
</tr>
<tr>
<td>Generally</td>
<td>106</td>
<td>657</td>
</tr>
<tr>
<td>Composition</td>
<td>106</td>
<td>657</td>
</tr>
<tr>
<td>Creation of department and equipment</td>
<td>106</td>
<td>657</td>
</tr>
<tr>
<td>Platoons, composition</td>
<td>106</td>
<td>657</td>
</tr>
<tr>
<td>Salaries</td>
<td>106</td>
<td>658</td>
</tr>
<tr>
<td>Fees, members entitled to certain</td>
<td>107</td>
<td>662</td>
</tr>
<tr>
<td>Intoxicating liquors</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Assistance to alcohol beverage control commissioner</td>
<td>107</td>
<td>661</td>
</tr>
<tr>
<td>Investments; death, disability and retirement fund</td>
<td>107</td>
<td>665</td>
</tr>
<tr>
<td>National Guard</td>
<td></td>
<td></td>
</tr>
<tr>
<td>See National Guard</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Officers and employees</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Powers</td>
<td>107</td>
<td>660</td>
</tr>
<tr>
<td>Salaries</td>
<td>106</td>
<td>658</td>
</tr>
<tr>
<td>Training</td>
<td>106</td>
<td>658</td>
</tr>
<tr>
<td>Police, assistance required by members of department</td>
<td>107</td>
<td>662</td>
</tr>
<tr>
<td>Salaries, schedule of salaries</td>
<td>106</td>
<td>658</td>
</tr>
<tr>
<td>Superintendent, duties generally</td>
<td>106</td>
<td>657</td>
</tr>
</tbody>
</table>

### PUBLIC SERVICE COMMISSION:

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Funds</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Payment of fees into</td>
<td>110</td>
<td>672</td>
</tr>
<tr>
<td>Use of fund</td>
<td>110</td>
<td>672</td>
</tr>
<tr>
<td>Motor vehicle carriers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Powers as to rates, charges, schedules, etc.</td>
<td>108</td>
<td>668</td>
</tr>
<tr>
<td>Rates and charges</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Public utilities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Change of rates</td>
<td>109</td>
<td>671</td>
</tr>
<tr>
<td>Evidence, burden of proof</td>
<td>109</td>
<td>671</td>
</tr>
<tr>
<td>Notice</td>
<td>109</td>
<td>669</td>
</tr>
<tr>
<td>Procedure</td>
<td>109</td>
<td>669</td>
</tr>
<tr>
<td>License fees</td>
<td>110</td>
<td>672</td>
</tr>
<tr>
<td>Special fees</td>
<td>110</td>
<td>672</td>
</tr>
<tr>
<td>Time for payment</td>
<td>110</td>
<td>673</td>
</tr>
<tr>
<td>Procedure, change of rates</td>
<td>109</td>
<td>669</td>
</tr>
<tr>
<td>Refund, security for</td>
<td>109</td>
<td>670</td>
</tr>
<tr>
<td>Schedules, changing rates</td>
<td>109</td>
<td>669</td>
</tr>
<tr>
<td>TOPICAL INDEX</td>
<td></td>
<td></td>
</tr>
<tr>
<td>---------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>PUBLIC SERVICE COMMISSION—(continued):</strong></td>
<td>Ch.</td>
<td>Page</td>
</tr>
<tr>
<td>Urban mass transportation systems</td>
<td>108</td>
<td>667</td>
</tr>
<tr>
<td>Authority and duty of commission as to</td>
<td>17</td>
<td>329</td>
</tr>
<tr>
<td><strong>PUBLIC SERVICE DISTRICTS:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Water and sewer services</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Authority of county courts to make grants for</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>PUTNAM COUNTY:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Emergency clinic and hospital</td>
<td>150</td>
<td>933</td>
</tr>
<tr>
<td>Admissions</td>
<td>111</td>
<td>674</td>
</tr>
<tr>
<td>Discrimination prohibited</td>
<td>111</td>
<td>674</td>
</tr>
<tr>
<td>County court</td>
<td>111</td>
<td>674</td>
</tr>
<tr>
<td>Authorized to establish, maintain and operate</td>
<td>111</td>
<td>674</td>
</tr>
<tr>
<td>Financing</td>
<td>111</td>
<td>674</td>
</tr>
<tr>
<td>From county funds</td>
<td>111</td>
<td>674</td>
</tr>
<tr>
<td>Special levy</td>
<td>111</td>
<td>674</td>
</tr>
<tr>
<td><strong>RAILROADS:</strong></td>
<td>111</td>
<td>674</td>
</tr>
<tr>
<td>Crossings</td>
<td>111</td>
<td>674</td>
</tr>
<tr>
<td>Blocking</td>
<td>111</td>
<td>674</td>
</tr>
<tr>
<td>Prohibited</td>
<td>111</td>
<td>674</td>
</tr>
<tr>
<td>Time limit</td>
<td>111</td>
<td>674</td>
</tr>
<tr>
<td>Companies</td>
<td>111</td>
<td>674</td>
</tr>
<tr>
<td>Identification symbols</td>
<td>111</td>
<td>674</td>
</tr>
<tr>
<td>Presumption</td>
<td>111</td>
<td>674</td>
</tr>
<tr>
<td>Responsibility</td>
<td>111</td>
<td>674</td>
</tr>
<tr>
<td>Service of process</td>
<td>111</td>
<td>674</td>
</tr>
<tr>
<td>Conductors, service of process</td>
<td>111</td>
<td>674</td>
</tr>
<tr>
<td>Definitions</td>
<td>111</td>
<td>674</td>
</tr>
<tr>
<td>Engineers, service of process</td>
<td>111</td>
<td>674</td>
</tr>
<tr>
<td>Fines and penalties</td>
<td>111</td>
<td>674</td>
</tr>
<tr>
<td>Responsibility of railroad company</td>
<td>111</td>
<td>674</td>
</tr>
<tr>
<td>Service of process</td>
<td>111</td>
<td>674</td>
</tr>
<tr>
<td>Severability</td>
<td>111</td>
<td>674</td>
</tr>
<tr>
<td>Violations</td>
<td>111</td>
<td>674</td>
</tr>
<tr>
<td>Fines and penalties</td>
<td>111</td>
<td>674</td>
</tr>
<tr>
<td>Service of process</td>
<td>111</td>
<td>674</td>
</tr>
<tr>
<td>National Railroad Passenger Corporation</td>
<td>33</td>
<td>366</td>
</tr>
<tr>
<td>Requesting passenger service between Cumberland, Md., and St. Louis, Mo. (HCR 37)</td>
<td>942</td>
<td></td>
</tr>
<tr>
<td><strong>RALEIGH COUNTY:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Intermediate court</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Circuit court</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Transfer of pending cases to intermediate court</td>
<td>33</td>
<td>366</td>
</tr>
<tr>
<td>Clerical and secretarial assistants</td>
<td>33</td>
<td>367</td>
</tr>
<tr>
<td>Appointment</td>
<td>33</td>
<td>367</td>
</tr>
<tr>
<td>Office space</td>
<td>33</td>
<td>367</td>
</tr>
<tr>
<td>Salary</td>
<td>33</td>
<td>367</td>
</tr>
<tr>
<td>Jurisdiction</td>
<td>33</td>
<td>367</td>
</tr>
<tr>
<td>Maturity of causes</td>
<td>33</td>
<td>367</td>
</tr>
<tr>
<td>Probation staff</td>
<td>33</td>
<td>367</td>
</tr>
<tr>
<td>Appointment</td>
<td>33</td>
<td>367</td>
</tr>
<tr>
<td>Office space</td>
<td>33</td>
<td>367</td>
</tr>
<tr>
<td>Salary</td>
<td>33</td>
<td>367</td>
</tr>
<tr>
<td>Procedure</td>
<td>33</td>
<td>367</td>
</tr>
<tr>
<td>Salary of Judge</td>
<td>33</td>
<td>365</td>
</tr>
<tr>
<td>Terms of court</td>
<td>33</td>
<td>367</td>
</tr>
</tbody>
</table>
### REGULATION OF TRADE:

Consumer credit and protection
See Consumer Credit and Protection Act.

### REPORTERS:

<table>
<thead>
<tr>
<th>Transcript of notes</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Certification</td>
<td>27</td>
<td>350</td>
</tr>
<tr>
<td>Effect</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Copies</td>
<td>27</td>
<td>351</td>
</tr>
<tr>
<td>Criminal procedure</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Transcript for judges</td>
<td></td>
<td>351</td>
</tr>
<tr>
<td>Fees</td>
<td>27</td>
<td>350</td>
</tr>
</tbody>
</table>

### ROADS AND HIGHWAYS:

Vendor and purchaser
<table>
<thead>
<tr>
<th>Purchase of materials, supplies and equipment</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Register of vendor</td>
<td>112</td>
<td>676</td>
</tr>
</tbody>
</table>

### ROANE COUNTY:

County court authorized to sell certain parcels of land

### SALES TAX:

Exemptions
- Advertising
  - Newspaper advertising                              | 136 |
  - Bank safety deposit box                            | 136 |
- Broadcasting time
  - Radio and television                                | 136 |
  - Charitable organizations                           | 136 |
- Day care centers                                     | 136  |
- Exemptions, general provisions                       | 136  |
- Fire department                                      | 136  |
| Gas and gasoline                                      | 136  |
| Motor vehicles                                        | 136  |
| Newspapers                                           | 136  |
| Occasional and casual sales of property or services   | 136  |
| Public institutions                                   | 136  |
| Religious organizations                              | 136  |
| School textbooks                                      | 136  |
| Water companies                                       | 136  |

### SCHOOLS:

Appropriations
- To provide educational opportunities for children
  - of deceased soldiers, sailors and marines          | 122 |
  - of deceased soldiers                               | 122 |
  - of deceased sailors and marines                    | 122 |

Boards of education
See Boards of Education.

Bonds
- Issuance and sale of school building bonds          | 127 |
- Buildings                                           | 127  |

Deaf and blind
See Deaf and Blind.

Exceptional children
- Advisory council                                    | 123 |
- Examination and report by medical or other specialist| 123 |
- Facilities, equipment and services                  | 123  |
- Special programs and teaching services              | 123  |
- State superintendent of schools                     | 123  |
- Powers and duties                                   | 123  |
- Reports to, by counties                             | 123  |

### COUNTY COURT AUTHORIZED TO SELL CERTAIN PARCELS OF LAND:

<table>
<thead>
<tr>
<th>County court authorized to sell certain parcels of land</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>151</td>
<td>933</td>
</tr>
</tbody>
</table>
### Topical Index

<table>
<thead>
<tr>
<th>SCHOLS—(continued):</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parking facilities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Acquisition, operation and regulation by board of regents</td>
<td>114</td>
<td>678</td>
</tr>
<tr>
<td>Retirement system</td>
<td></td>
<td></td>
</tr>
<tr>
<td>See Teachers Retirement System.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>State Board of Education</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Authority to contract for programs, services and facilities</td>
<td>115</td>
<td>681</td>
</tr>
<tr>
<td>Veterans</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Educational opportunities for children of deceased soldiers, sailors and marines</td>
<td>122</td>
<td>701</td>
</tr>
<tr>
<td>Application, for benefits</td>
<td></td>
<td>701</td>
</tr>
<tr>
<td>Forms</td>
<td></td>
<td>701</td>
</tr>
<tr>
<td>Appropriations</td>
<td></td>
<td>700</td>
</tr>
<tr>
<td>Eligibility of applicant</td>
<td></td>
<td>701</td>
</tr>
<tr>
<td>Preferences</td>
<td></td>
<td>701</td>
</tr>
<tr>
<td>Vocational rehabilitation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Defined</td>
<td>119</td>
<td>691</td>
</tr>
<tr>
<td>Director defined</td>
<td>119</td>
<td>690</td>
</tr>
<tr>
<td>Disabled individual defined</td>
<td>119</td>
<td>690</td>
</tr>
<tr>
<td>Division defined</td>
<td>119</td>
<td>690</td>
</tr>
<tr>
<td>Eligibility for</td>
<td>119</td>
<td>692</td>
</tr>
<tr>
<td>Employment handicap defined</td>
<td>119</td>
<td>690</td>
</tr>
<tr>
<td>Facilities</td>
<td>119</td>
<td>691</td>
</tr>
<tr>
<td>Prosthetic appliance defined</td>
<td>119</td>
<td>691</td>
</tr>
<tr>
<td>Maintenance defined</td>
<td>119</td>
<td>691</td>
</tr>
<tr>
<td>Occupational licenses</td>
<td>119</td>
<td>691</td>
</tr>
<tr>
<td>Physical restoration</td>
<td>119</td>
<td>691</td>
</tr>
<tr>
<td>Regulations defined</td>
<td>119</td>
<td>691</td>
</tr>
<tr>
<td>State board of vocational rehabilitation defined</td>
<td>119</td>
<td>690</td>
</tr>
<tr>
<td>Training, rehabilitation training</td>
<td>119</td>
<td>691</td>
</tr>
</tbody>
</table>

### Secretary of State:

<table>
<thead>
<tr>
<th>Commercial code</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Filing fees</td>
<td>13</td>
<td>321</td>
</tr>
<tr>
<td>Secured transactions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Certificate as to securities filed</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contents</td>
<td>143</td>
<td>854</td>
</tr>
<tr>
<td>Fee</td>
<td>143</td>
<td>854</td>
</tr>
<tr>
<td>Place of filing</td>
<td>143</td>
<td>843</td>
</tr>
<tr>
<td>Filing, preserving and indexing security agreements</td>
<td>13</td>
<td>321</td>
</tr>
<tr>
<td>Information from</td>
<td>143</td>
<td>854</td>
</tr>
<tr>
<td>Corporations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Appeals from decisions</td>
<td>13</td>
<td>233</td>
</tr>
<tr>
<td>Attorney-in-fact for corporations</td>
<td>13</td>
<td>189</td>
</tr>
<tr>
<td>Charter or landholding tax; annual fee</td>
<td>13</td>
<td>313</td>
</tr>
<tr>
<td>Foreign corporations</td>
<td>13</td>
<td>312</td>
</tr>
<tr>
<td>Service of process, manner of acceptance</td>
<td>13</td>
<td>189</td>
</tr>
<tr>
<td>Statutory attorney's fee, collection</td>
<td>13</td>
<td>310</td>
</tr>
<tr>
<td>Charter or landholding tax</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Action to enforce payment of tax</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Record of forfeiture, revocation or dissolution</td>
<td>13</td>
<td>319</td>
</tr>
<tr>
<td>Duty of secretary of state</td>
<td>13</td>
<td>313</td>
</tr>
<tr>
<td>Annual fee of secretary of state as attorney-in-fact</td>
<td>13</td>
<td>313</td>
</tr>
<tr>
<td>Collection on application for charter</td>
<td>13</td>
<td>310</td>
</tr>
<tr>
<td>Foreign corporations, assessment of tax</td>
<td>13</td>
<td>312</td>
</tr>
<tr>
<td>Monthly report to tax commissioner</td>
<td>13</td>
<td>320</td>
</tr>
<tr>
<td>Dissolution</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Involuntary dissolution, filing of order</td>
<td>13</td>
<td>214</td>
</tr>
<tr>
<td>Issuance of certificate</td>
<td>13</td>
<td>209</td>
</tr>
</tbody>
</table>
**SECRETARY OF STATE—(continued):**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Corporations—(continued):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fees</td>
<td>13</td>
<td>320</td>
</tr>
<tr>
<td>Charges to be collected by secretary of state</td>
<td>13</td>
<td>236</td>
</tr>
<tr>
<td>Foreign corporations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Certificate of authority</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Revocation</td>
<td>13</td>
<td>229</td>
</tr>
<tr>
<td>Order of revocation</td>
<td>13</td>
<td>230</td>
</tr>
<tr>
<td>Forms furnished by secretary of state</td>
<td>13</td>
<td>234</td>
</tr>
<tr>
<td>Powers</td>
<td>13</td>
<td>232</td>
</tr>
<tr>
<td>Reports to tax commissioner</td>
<td>13</td>
<td>320</td>
</tr>
<tr>
<td>Rules and regulations, promulgation</td>
<td>13</td>
<td>232</td>
</tr>
</tbody>
</table>

| Elections |    |      |
| Chief election official |    |      |
| Duties generally | 38 | 385  |
| Powers generally | 38 | 385  |
| Exercise by appointee | 38 | 386  |
| Recommendations to commission | 38 | 385  |
| Rules generally | 38 | 385  |
| Fees | 13 | 320  |

| SECURITIES: |    |      |
| Administrative files | 128 | 759  |
| Advertising |    |      |
| False advertising prohibited | 128 | 765  |
| Sales and advertising literature, filing | 128 | 752  |
| Advisory activities, unlawful activities | 128 | 720  |
| Agents |    |      |
| Registration | 128 | 722  |
| Bonds | 128 | 724  |
| Consent to service of process | 128 | 722  |
| Denial, revocation, suspension, cancellation and withdrawal |    |      |
| Grounds | 128 | 725  |
| Fee | 128 | 723  |
| Procedure | 128 | 722  |
| Auditor |    |      |
| Administrative | 128 | 739  |
| Orders | 128 | 759  |
| Judicial review | 128 | 757  |
| Rules and regulations | 128 | 758  |
| Bonds, security |    |      |
| Registration of dealers, agents or investment advisers | 128 | 724  |
| Capital |    |      |
| Maximum capital required for registered dealers, agents and investment advisers | 128 | 724  |
| Dealers |    |      |
| Agents, registration | 128 | 722  |
| Consent to service of process | 128 | 722  |
| Minimum capital | 128 | 724  |
| Records | 128 | 724  |
| Registration | 128 | 722  |
| Bonds | 128 | 724  |
| Consent to service of process | 128 | 722  |
| Denial, revocation, suspension, cancellation and withdrawal |    |      |
| Grounds | 128 | 725  |
| Fee | 128 | 723  |
| Procedure | 128 | 722  |
| Documents |    |      |
| False or misleading information | 128 | 752  |
TOPICAL INDEX

SECURITIES—(continued):

Exemptions

Uniform Securities Act ........................................ 128 747
Unlawful representations ........................................ 128 753

Fees, registration of agents, dealers, etc. ..................... 128 723
Fraud, sales and purchases ...................................... 128 720

Hearings ................................................................ 128 758
Injunctions, power of commissioner to bring action for ...... 128 755
Investigations .......................................................... 128 754

Investment advisers

Records .................................................................... 128 724
Registration ................................................................ 128 722
Bonds ...................................................................... 128 722
Consent to service of process ..................................... 128 722
Denial, revocation, suspension, cancellation and withdrawal

Grounds ................................................................ 128 725
Fee .......................................................................... 128 723
Minimum capital required ......................................... 128 724
Procedure ................................................................ 128 722

Unlawful activities ....................................................... 128 720

Penalties

Civil liabilities ............................................................ 128 756
Criminal penalties ....................................................... 128 755

Records

Dealers and investment advisers ...................................... 128 724
Registration

Agents ..................................................................... 128 722
Bonds ...................................................................... 128 722
Consent to service of process ..................................... 128 722
Denial, revocation, suspension, cancellation and withdrawal

Grounds ................................................................ 128 725
Fee .......................................................................... 128 723
Minimum capital ....................................................... 128 724
Procedure ................................................................ 128 722

Coordination

Registration by coordination .......................................... 128 731
Documents to accompany registration .......................... 128 731

Dealers .................................................................... 128 722
Bonds ...................................................................... 128 724
Consent to service of process ..................................... 128 722
Denial, revocation, suspension, cancellation and withdrawal

Grounds ................................................................ 128 725
Fee .......................................................................... 128 723
Minimum capital ....................................................... 128 724
Procedure ................................................................ 128 722

Denial, suspension and revocation .................................. 128 740
Fees .......................................................................... 128 723

Generally .................................................................. 128 738

Investment advisers ...................................................... 128 722
Bonds ...................................................................... 128 724
Consent to service of process ..................................... 128 722
Denial, revocation, suspension, cancellation and

withdrawal of registration ........................................... 128 725
Fee .......................................................................... 128 723
Minimum capital ....................................................... 128 724
Procedure ................................................................ 128 722
Notification, registration by ........................................ 128 729
List of securities ........................................................ 128 729
Qualification, registration by qualification ...................... 128 733
Statement .................................................................. 128 733
Required ................................................................... 128 729
Selling securities ......................................................... 128 729
<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>SECURITIES</strong>-(continued): Registration-(continued):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Statements</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Effective date</td>
<td>128</td>
<td>740</td>
</tr>
<tr>
<td>Generally</td>
<td>128</td>
<td>738</td>
</tr>
<tr>
<td>Information required</td>
<td>128</td>
<td>738</td>
</tr>
<tr>
<td>Unlawful representations</td>
<td>128</td>
<td>753</td>
</tr>
<tr>
<td><strong>Reports</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Financial reports of dealers and investment advisers</td>
<td>128</td>
<td>724</td>
</tr>
<tr>
<td><strong>Sales</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fraudulent sales generally</td>
<td>128</td>
<td>720</td>
</tr>
<tr>
<td>Uniform securities act</td>
<td>128</td>
<td>720</td>
</tr>
<tr>
<td>Fraudulent practices</td>
<td>128</td>
<td>720</td>
</tr>
<tr>
<td><strong>Service of process</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dealers, agents or investment advisers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Consent to service of process</td>
<td>128</td>
<td>722</td>
</tr>
<tr>
<td><strong>Speculative securities and fraudulent sales</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>See Speculative Securities and Fraudulent Sales.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Subpoenas</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Investigations by commissioner</td>
<td>128</td>
<td>754</td>
</tr>
<tr>
<td><strong>Uniform securities act</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Administration</td>
<td>128</td>
<td>753</td>
</tr>
<tr>
<td>Advertising</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sales and advertising, filing of literature</td>
<td>128</td>
<td>752</td>
</tr>
<tr>
<td>Citation of act</td>
<td>128</td>
<td>763</td>
</tr>
<tr>
<td>Civil liabilities</td>
<td>128</td>
<td>756</td>
</tr>
<tr>
<td>Construction of act</td>
<td>128</td>
<td>762</td>
</tr>
<tr>
<td>Dealers, agents and investment advisers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Registration</td>
<td>128</td>
<td>722</td>
</tr>
<tr>
<td>Definitions</td>
<td>128</td>
<td>742</td>
</tr>
<tr>
<td>Documents</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Administration files</td>
<td>128</td>
<td>759</td>
</tr>
<tr>
<td>False or misleading material</td>
<td>128</td>
<td>752</td>
</tr>
<tr>
<td>Effective date, saving provisions</td>
<td>128</td>
<td>763</td>
</tr>
<tr>
<td>Exemptions</td>
<td>128</td>
<td>747</td>
</tr>
<tr>
<td><strong>Unlawful representations</strong></td>
<td>128</td>
<td>753</td>
</tr>
<tr>
<td><strong>Forms</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fraudulent practices, sales and purchases</td>
<td>128</td>
<td>720</td>
</tr>
<tr>
<td>Hearings</td>
<td>128</td>
<td>758</td>
</tr>
<tr>
<td>Injunctions</td>
<td>128</td>
<td>755</td>
</tr>
<tr>
<td>Investigations</td>
<td>128</td>
<td>754</td>
</tr>
<tr>
<td><strong>Judicial review orders</strong></td>
<td>128</td>
<td>757</td>
</tr>
<tr>
<td>Orders of commissioner</td>
<td>128</td>
<td>758</td>
</tr>
<tr>
<td>Judicial review</td>
<td>128</td>
<td>757</td>
</tr>
<tr>
<td><strong>Penalties, criminal</strong></td>
<td>128</td>
<td>755</td>
</tr>
<tr>
<td>Rules and regulations</td>
<td>128</td>
<td>758</td>
</tr>
<tr>
<td>Saving provisions</td>
<td>128</td>
<td>763</td>
</tr>
<tr>
<td>Scope of chapter</td>
<td>128</td>
<td>760</td>
</tr>
<tr>
<td><strong>Service of process</strong></td>
<td>128</td>
<td>760</td>
</tr>
<tr>
<td>Severability</td>
<td>128</td>
<td>763</td>
</tr>
<tr>
<td>Short title</td>
<td>128</td>
<td>763</td>
</tr>
<tr>
<td><strong>Statutory policy</strong></td>
<td>128</td>
<td>762</td>
</tr>
<tr>
<td><strong>Subpoenas</strong></td>
<td>128</td>
<td>754</td>
</tr>
<tr>
<td>Violations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Civil liabilities</td>
<td>128</td>
<td>756</td>
</tr>
<tr>
<td>Criminal penalties</td>
<td>128</td>
<td>755</td>
</tr>
</tbody>
</table>

| **SHERIFF:**                                                       |     |      |
| Compensation                                                        | 18  | 333  |
| Classification of counties for purpose of determining               | 18  | 331  |
SMALL LOAN COMPANIES:

Consumer credit and protection ........................................... 12 62
See Consumer Credit and Protection Act.

SPECULATIVE SECURITIES AND FRAUDULENT SALES:

Issuance and sale of checks, drafts, money orders, etc. ............... 128 766
Declaration of public policy ........................................... 128 767
Definitions ....................................................................... 128 766
Exemptions ........................................................................ 128 769
Financial responsibility
  Agency fee not required .................................................. 128 769
  Fee required .................................................................... 128 768
  Financial responsibility must be established and security given ... 128 768
  Persons who establish financial responsibility and
give security may engage in business .................................. 128 769
Injunctive relief ................................................................... 128 770
Judicial review .................................................................... 128 769
Penalties ............................................................................. 128 771
Severability .......................................................................... 128 771
Land sales
  False advertising prohibited .............................................. 128 765
  Penalty ............................................................................. 128 765
Filing and registration prerequisite to sale ................................ 128 764
Indictment need not negative exceptions ................................ 128 766
Uniform Securities Act ....................................................... 128 720

STATE:

Claims against the state
  Venue for certain suits limited to Kanawha County ................. 11 57
  Venue for taking, damage or title to real property ............... 11 57

STERILIZATION:

Mental defectives .................................................................. 65 321
Sexual sterilization
  Immunity of persons performing operation ............................. 46 415
  Male or female sterilization procedures ................................. 46 414

SUPREME COURT OF APPEALS:

Administrative officer of court
  Continued ........................................................................... 1 966
  Director
    Appointment ...................................................................... 1 966
    Assistants ....................................................................... 1 966
    Practice in state courts prohibited ..................................... 1 966
  Duties .............................................................................. 1 966
  Employees and compensation .............................................. 1 966
  Practice in state courts prohibited ..................................... 1 966
  Seal ................................................................................. 1 966
  Mileage of Judges ................................................................ 23 339

SURPLUS PROPERTY:

Agency
  Authority of agency .......................................................... 129 771
  Duties generally .................................................................. 129 771

TAXATION:

Assessment and valuation of property
  Corporations
    Return, failure to make .................................................. 130 774
    Penalty .......................................................................... 130 774
### TOPICAL INDEX

#### TAXATION—(continued):

<table>
<thead>
<tr>
<th>Assessment and valuation of property—(continued):</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fines, penalties and forfeitures</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Collection of penalties and forfeitures</td>
<td>130</td>
<td>774</td>
</tr>
<tr>
<td>Failure to list property, etc.</td>
<td>130</td>
<td>774</td>
</tr>
<tr>
<td>Lists and returns of property</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Failure to make</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Collection of penalties</td>
<td>130</td>
<td>774</td>
</tr>
<tr>
<td>Fines, penalties and forfeitures</td>
<td>130</td>
<td>774</td>
</tr>
<tr>
<td>Public utility</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Failure to make return, penalty</td>
<td>130</td>
<td>774</td>
</tr>
<tr>
<td>Real property</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Five thousand dollars assessed value exemption</td>
<td></td>
<td></td>
</tr>
<tr>
<td>for persons over sixty-five</td>
<td>131</td>
<td>776</td>
</tr>
<tr>
<td>Ascertainment of eligibility</td>
<td>131</td>
<td>777</td>
</tr>
<tr>
<td>Instructions and forms</td>
<td>131</td>
<td>777</td>
</tr>
<tr>
<td>Regulations</td>
<td>131</td>
<td>777</td>
</tr>
</tbody>
</table>

#### Business and occupation tax
- See Business and Occupation Tax.

#### Business franchise registration tax
- See Business Franchise Registration Tax.

#### Cigarettes
- See Cigarette Tax.

#### Consumers sales tax
- See Sales Tax.

#### Corporations
- Income tax
  - Meaning of terms                                        140 | 798 |

#### Gasoline and special fuels excise tax
- Assessment
  - When tax insufficiently returned                        135 | 783 |

#### Income tax
- See Income Tax.

#### TAX COMMISSIONER:
- Chief Inspector
  - Powers and authority as to local governmental offices and agencies ... 104 | 635 |

#### TEACHERS RETIREMENT SYSTEM:
- Benefits
  - Death                                                118 | 689 |
  - Withdrawal                                           118 | 689 |
  - Death, benefits                                      118 | 689 |
- Legislature
  - Credit for service in Legislature                    117 | 687 |
- Membership in system
  - Composition                                           117 | 685 |
  - Credit for service in public employees retirement system 117 | 688 |
  - General provisions                                    117 | 685 |
  - Payments for membership rights                        117 | 686 |
  - Persons excluded from membership                      117 | 686 |
  - Reentry                                               117 | 686 |
  - Reinstatement after withdrawal                        117 | 688 |
- Military service
  - Definition of armed forces                            117 | 687 |
  - Prior service credit                                  117 | 687 |
- Retirement
  - Repeal of statute relating to payment of annuities
    when member with reciprocal credit retires             103 | 654 |
<table>
<thead>
<tr>
<th>TOPICAL INDEX</th>
<th>1043</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>TEACHERS RETIREMENT SYSTEM</strong>—(continued):</td>
<td>Ch.</td>
</tr>
<tr>
<td>Service of teachers</td>
<td>117</td>
</tr>
<tr>
<td>Computation</td>
<td>117</td>
</tr>
<tr>
<td>Prior service</td>
<td>117</td>
</tr>
<tr>
<td>Certificates</td>
<td>117</td>
</tr>
<tr>
<td>Credit</td>
<td>117</td>
</tr>
<tr>
<td>Statement of veterans and members of armed services</td>
<td>117</td>
</tr>
<tr>
<td>Teachers</td>
<td>117</td>
</tr>
<tr>
<td>Service in employment of federal government</td>
<td>117</td>
</tr>
<tr>
<td>Veterans, prior service credit</td>
<td>117</td>
</tr>
<tr>
<td>Withdrawal, benefits</td>
<td>118</td>
</tr>
</tbody>
</table>

**TYGART DAM:**
Memorializing the Federal Energy Administration to consider implementation of hydroelectric facility at (HCR 5) 937

**UNEMPLOYMENT COMPENSATION:**
Benefits
Rate
Partial unemployment 141 805
Total unemployment 141 801
Board of review
Compensation 141 801
Expenses, travel expenses 141 801
Annual computation and publication of rates 141 804
Table 141 802
Commissioner of employment security
Compensation 141 801
Expenses, traveling expenses 141 801
Veterans training program
Advisory committee
Appointment by commissioner 142 807
Establishment 142 807
Finance
Reception of funds from United States government 142 806
Trainees
Work under supervision of licensed physician 142 807

**UNIFORM COMMERCIAL CODE:**
See Commercial Code.

**UNIFORM SECURITIES ACT:**
See Securities.

**UNITED MINE WORKERS OF AMERICA:**
Commending and urging, to locate national headquarters in West Virginia (SCR 33) 945

**UNIVERSITIES AND COLLEGES:**
Board of Regents
Contracts
Authority to contract for programs, services and facilities 125 708
Parking facilities
Acquisition, operation and regulation 114 678
Powers and duties
Authority to contract for programs, services and facilities 125 708
Authority to participate in regional and interstate higher educational agreements 126 710
Research on native ornamental plants (SCR 19) 943
Marshall University
See Marshall University.
### TOPICAL INDEX

**URBAN MASS TRANSPORTATION AUTHORITY:**

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Authority and duty</td>
<td>108</td>
</tr>
</tbody>
</table>

**VENUE:**

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Claims against the state</td>
<td>11</td>
</tr>
</tbody>
</table>

**VIETNAM VETERANS BONUS:**

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Board of review</td>
<td>144</td>
</tr>
<tr>
<td>Hearings</td>
<td>144</td>
</tr>
<tr>
<td>Orders</td>
<td>144</td>
</tr>
<tr>
<td>Court review</td>
<td>144</td>
</tr>
<tr>
<td>Bonus Amount</td>
<td>144</td>
</tr>
<tr>
<td>Application Limitation on time for filing</td>
<td>144</td>
</tr>
<tr>
<td>Claims Determination of validity of claim</td>
<td>144</td>
</tr>
<tr>
<td>Payment to relatives of deceased veterans</td>
<td>144</td>
</tr>
<tr>
<td>Veterans entitled to bonus</td>
<td>144</td>
</tr>
<tr>
<td>Department of Veterans Affairs to administer act</td>
<td>144</td>
</tr>
<tr>
<td>Advisory committee</td>
<td>144</td>
</tr>
<tr>
<td>Fund Payments from fund Transfer of balance</td>
<td>144</td>
</tr>
<tr>
<td>Legal process Payment not subject to legal process</td>
<td>144</td>
</tr>
<tr>
<td>Penalties Collection of fees or charges for services Filing more than one application Making false statements</td>
<td>144</td>
</tr>
<tr>
<td>Taxation Payments exempt from taxation</td>
<td>144</td>
</tr>
</tbody>
</table>

**VOCATIONAL REHABILITATION:**

See Schools.

**WATER FESTIVAL:**

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medal or artifact for West Virginia Water Festival (SCR 27)</td>
<td></td>
</tr>
</tbody>
</table>

**WELCH:**

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Authority to lease certain real estate</td>
<td>152</td>
</tr>
</tbody>
</table>

**WEST VIRGINIA BUSINESS DEVELOPMENT CORPORATION:**

See Business Development Corporations.

**WOOD COUNTY:**

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Common Pleas Court of Wood County Acts of the Legislature to be supplied judge</td>
<td>34</td>
</tr>
<tr>
<td>Appeals Cases in which concurrent with circuit court Generally</td>
<td>34</td>
</tr>
<tr>
<td>Attachments Issuance</td>
<td>34</td>
</tr>
<tr>
<td>Circuit court Certification of causes to Certification of indictments to common pleas court Transfer of cases to common pleas court</td>
<td>34</td>
</tr>
<tr>
<td>Clerk of the circuit court Clerk ex officio Duties, compensation and powers Contempt, power to punish for contempt</td>
<td>34</td>
</tr>
</tbody>
</table>
**TOPICAL INDEX**

**WOOD COUNTY**—(continued):

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Common pleas court of Wood County—(continued):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Costs</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Law and rules governing taxation of</td>
<td>34</td>
<td>376</td>
</tr>
<tr>
<td>County court, duties</td>
<td>34</td>
<td>372</td>
</tr>
<tr>
<td>Court reporter</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Appointment and compensation</td>
<td>34</td>
<td>375</td>
</tr>
<tr>
<td>Created</td>
<td>34</td>
<td>369</td>
</tr>
<tr>
<td>Executions, rights of judgment creditors</td>
<td>34</td>
<td>376</td>
</tr>
<tr>
<td>Grand jury to be impaneled for each term</td>
<td>34</td>
<td>371</td>
</tr>
<tr>
<td>Habeas corpus</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jurisdiction of judge to grant</td>
<td>34</td>
<td>376</td>
</tr>
<tr>
<td>Jail and jailer</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Applicability of general law with respect to jail, jailer required to attend court and receipt of prisoners by jailer</td>
<td>34</td>
<td>375</td>
</tr>
<tr>
<td>Judge</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contest</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Manner of hearing and determining</td>
<td>34</td>
<td>375</td>
</tr>
<tr>
<td>Election</td>
<td>34</td>
<td>370</td>
</tr>
<tr>
<td>Qualifications</td>
<td>34</td>
<td>370</td>
</tr>
<tr>
<td>Removal</td>
<td>34</td>
<td>376</td>
</tr>
<tr>
<td>Salary</td>
<td>34</td>
<td>372</td>
</tr>
<tr>
<td>Special judge, election</td>
<td>34</td>
<td>373</td>
</tr>
<tr>
<td>Vacancy, how filled</td>
<td>34</td>
<td>376</td>
</tr>
<tr>
<td>Judgment creditors</td>
<td>34</td>
<td>376</td>
</tr>
<tr>
<td>Jurisdiction</td>
<td>34</td>
<td>370</td>
</tr>
<tr>
<td>Presumption of jurisdiction</td>
<td>34</td>
<td>371</td>
</tr>
<tr>
<td>Liens and remedies</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rights of judgment creditors</td>
<td>34</td>
<td>376</td>
</tr>
<tr>
<td>Powers conferred upon court</td>
<td>34</td>
<td>370</td>
</tr>
<tr>
<td>Process, sheriff to execute</td>
<td>34</td>
<td>373</td>
</tr>
<tr>
<td>Prosecuting attorney</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Duties to be performed</td>
<td>34</td>
<td>375</td>
</tr>
<tr>
<td>To attend terms of court</td>
<td>34</td>
<td>375</td>
</tr>
<tr>
<td>Seat of court</td>
<td>34</td>
<td>373</td>
</tr>
<tr>
<td>Severability of provisions of act</td>
<td>34</td>
<td>377</td>
</tr>
<tr>
<td>Sheriff to execute process</td>
<td>34</td>
<td>373</td>
</tr>
<tr>
<td>Terms of court</td>
<td>34</td>
<td>372</td>
</tr>
<tr>
<td>West Virginia Reports</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Judge to be furnished</td>
<td>34</td>
<td>376</td>
</tr>
</tbody>
</table>

**WORKMEN'S COMPENSATION:**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administrative expenses</td>
<td>145</td>
<td>878</td>
</tr>
<tr>
<td>Classification of industries</td>
<td>145</td>
<td>875</td>
</tr>
<tr>
<td>Agriculture, when employers subject to law</td>
<td>145</td>
<td>899</td>
</tr>
<tr>
<td>Artificial limbs and other appliances</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Disbursements for</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Assumption of risk</td>
<td></td>
<td></td>
</tr>
<tr>
<td>When defense prohibited</td>
<td>145</td>
<td>888</td>
</tr>
<tr>
<td>Awards</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jurisdiction of commissioner over continuous</td>
<td>145</td>
<td>910</td>
</tr>
<tr>
<td>Limitations on</td>
<td>145</td>
<td>895</td>
</tr>
<tr>
<td>Making of by commissioner</td>
<td>145</td>
<td>906</td>
</tr>
<tr>
<td>Finality of act</td>
<td>145</td>
<td>911</td>
</tr>
<tr>
<td>Modification of by commissioner</td>
<td>145</td>
<td>911</td>
</tr>
<tr>
<td>Reimbursement of claimant for expenses</td>
<td>145</td>
<td>901</td>
</tr>
<tr>
<td>Table of awards</td>
<td>145</td>
<td>911</td>
</tr>
<tr>
<td>Time limitation on awards</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Benefits</td>
<td></td>
<td></td>
</tr>
<tr>
<td>See within this title &quot;Disability and Death Benefits&quot;.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Black lung disease</td>
<td></td>
<td></td>
</tr>
<tr>
<td>See within this heading &quot;Occupational Pneumoconiosis&quot;.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>TOPICAL INDEX</td>
<td></td>
<td></td>
</tr>
<tr>
<td>----------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>WORKMEN'S COMPENSATION—(continued):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Boards</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Payment of premiums by boards of education 145 875</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bonds, surety</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Election of employers to provide own system of compensation 145 889</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Commissioner</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accounts and accounting</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Workmen's compensation fund 145 878</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Forms furnished by 145 878</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jurisdiction continuous 145 910</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Notice to employees, withdrawal of employer 145 881</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Premiums, duties 145 878</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reimbursement of claimant for expenses 145 910</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Report, annual report to governor 145 874</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rules and regulations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Election of employer to provide own system of compensation 145 889</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Employers subject to chapter 145 876</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Common law</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Certain common law defenses prohibited 145 888</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Exceptions 145 888</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contracts</td>
<td></td>
<td></td>
</tr>
<tr>
<td>By employer with hospital prohibited 145 899</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hospitals, contracts with employers prohibited 145 899</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Corporations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Certificates of dissolution</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Withholding certificates of defaulting employers by secretary of state 145 885</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Foreign corporations, election to comply 145 877</td>
<td></td>
<td></td>
</tr>
<tr>
<td>County courts, payment of premiums 145 875</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Damages</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Action against sheriff or deputy for failure to post notice 145 885</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Death</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Benefits</td>
<td></td>
<td></td>
</tr>
<tr>
<td>See within this heading “Disability and Death Benefits”.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Definitions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dependents 145 909</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Occupational disease 145 896</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pneumoconiosis 145 896</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Silicosis 145 896</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Disability and death benefits</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Appliances, disbursements for 145 899</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Artificial limbs 145 899</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Death benefits</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amount 145 909</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Classification 145 909</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dependent defined 145 910</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Disbursement 145 909</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Widowers 145 909</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Widows 145 909</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dependents</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Children, age limit 145 909</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Permanent partial award, payment of unpaid balance to dependents 145 909</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Who are dependents 145 909</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Widower, invalid 145 909</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Disability benefits</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Artificial limbs 145 899</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Classification of benefits 145 901</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Occupational disease defined 145 896</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
**WORKMEN'S COMPENSATION**—(continued):

**Disability and death benefits**—(continued):

**Disability benefits**—(continued):

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Permanent disability</td>
<td>145</td>
<td>902</td>
</tr>
<tr>
<td>Determination by commissioner</td>
<td>145</td>
<td>902</td>
</tr>
<tr>
<td>Less than permanent total disability</td>
<td>145</td>
<td>902</td>
</tr>
<tr>
<td>Physical and vocational rehabilitation</td>
<td>145</td>
<td>908</td>
</tr>
<tr>
<td>Single injury</td>
<td>145</td>
<td>902</td>
</tr>
<tr>
<td>Table of awards</td>
<td>145</td>
<td>903</td>
</tr>
<tr>
<td>Temporary total disability</td>
<td>145</td>
<td>901</td>
</tr>
</tbody>
</table>

**Disbursements**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Schedule of maximum disbursements</td>
<td>145</td>
<td>899</td>
</tr>
<tr>
<td>Charges in excess of scheduled amounts not to be made</td>
<td>145</td>
<td>900</td>
</tr>
<tr>
<td>Employees entitled to</td>
<td>145</td>
<td>895</td>
</tr>
<tr>
<td>Expenses, reimbursement of claimant for</td>
<td>145</td>
<td>911</td>
</tr>
</tbody>
</table>

**Medical, surgical, dental and hospital treatment**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Charges in excess of scheduled amounts not to be made</td>
<td>145</td>
<td>900</td>
</tr>
<tr>
<td>Contracts by employer with hospital prohibited</td>
<td>145</td>
<td>900</td>
</tr>
<tr>
<td>Disbursements, schedule of maximum</td>
<td>145</td>
<td>899</td>
</tr>
<tr>
<td>Payment, to whom payable</td>
<td>145</td>
<td>899</td>
</tr>
<tr>
<td>Rehabilitation</td>
<td>145</td>
<td>908</td>
</tr>
</tbody>
</table>

**Medicine, disbursements**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Occupational pneumoconiosis</td>
<td>145</td>
<td>899</td>
</tr>
</tbody>
</table>

**Benefits and mode of payment to employees and dependents**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Payment during protest</td>
<td>145</td>
<td>897</td>
</tr>
<tr>
<td>Improperly made payments, right of commissioner to collect</td>
<td>145</td>
<td>897</td>
</tr>
<tr>
<td>Mode of paying benefits</td>
<td>146</td>
<td>913</td>
</tr>
</tbody>
</table>

**Rehabilitation**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Physical and vocational rehabilitation</td>
<td>145</td>
<td>908</td>
</tr>
<tr>
<td>Schedule of maximum disbursements</td>
<td>145</td>
<td>899</td>
</tr>
<tr>
<td>Statement furnished to employers</td>
<td>145</td>
<td>880</td>
</tr>
<tr>
<td>Temporary total disability</td>
<td>145</td>
<td>897</td>
</tr>
<tr>
<td>Payment of benefits directly to claimants</td>
<td>145</td>
<td>907</td>
</tr>
<tr>
<td>Vocational rehabilitation</td>
<td>145</td>
<td>908</td>
</tr>
<tr>
<td>Widow, remarriage</td>
<td>145</td>
<td>909</td>
</tr>
</tbody>
</table>

**Disabled workmen's relief fund**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Composition of fund</td>
<td>145</td>
<td>912</td>
</tr>
<tr>
<td>Computation of benefits</td>
<td>145</td>
<td>912</td>
</tr>
<tr>
<td>Created</td>
<td>145</td>
<td>911</td>
</tr>
<tr>
<td>Custodian</td>
<td>145</td>
<td>912</td>
</tr>
<tr>
<td>How designated</td>
<td>145</td>
<td>912</td>
</tr>
<tr>
<td>To whom benefits paid</td>
<td>145</td>
<td>912</td>
</tr>
</tbody>
</table>

**Domestic workers, chapter inapplicable**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Elections under law</td>
<td>145</td>
<td>875</td>
</tr>
<tr>
<td>Provide own system by employer</td>
<td>145</td>
<td>889</td>
</tr>
<tr>
<td>To pay premiums</td>
<td>145</td>
<td>887</td>
</tr>
<tr>
<td>Withdrawals</td>
<td>145</td>
<td>881</td>
</tr>
</tbody>
</table>

**Employees**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Absence, effect of temporary absence on rights</td>
<td>145</td>
<td>878</td>
</tr>
</tbody>
</table>

**Compensation**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amounts</td>
<td>145</td>
<td>895-910</td>
</tr>
<tr>
<td>Who entitled to compensation</td>
<td>145</td>
<td>895</td>
</tr>
<tr>
<td>Defined</td>
<td>145</td>
<td>875</td>
</tr>
<tr>
<td>Domestic workers, inapplicability of law</td>
<td>145</td>
<td>875</td>
</tr>
</tbody>
</table>

**Exempted from law**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Waiver under contract prohibited</td>
<td>145</td>
<td>887</td>
</tr>
</tbody>
</table>

**Notice**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Failure of employer to pay premiums</td>
<td>145</td>
<td>881</td>
</tr>
<tr>
<td>Rehabilitation, physical and vocational</td>
<td>145</td>
<td>908</td>
</tr>
<tr>
<td>Subject to law</td>
<td>145</td>
<td>875</td>
</tr>
</tbody>
</table>
WORKMEN'S COMPENSATION—(continued):

Employees—(continued):
  Waiver by employee
    Continuation in service of insured employer ........................................ 145 887
    Rights under law .................................................................................. 145 887

Employers
  Agriculture, when employer subject to law ........................................... 145 875
  Casual employers defined ........................................................................ 145 875
  Contracts, hospital contracts by employees with hospital prohibited .... 145 899

Defaulting employers
  Certificates of dissolution, withholding by secretary of state ............... 145 885
  Collection of premiums ........................................................................ 145 885
  Injunctive relief .................................................................................... 145 885
  Liability, exemption from ..................................................................... 145 889
  Remedies ............................................................................................... 145 885

Defenses prohibited
  When electing not to pay or defaulting in payment of premiums ............. 145 888
    Exceptions ......................................................................................... 145 888

Defined

Delinquent employer, reinstatement ......................................................... 145 881

Election to provide own system
  Bond or security required ....................................................................... 145 889
  Compensation fund, payments into ....................................................... 145 889
  Liability, exemption from ..................................................................... 145 889
  Lump-sum settlement ............................................................................ 145 889
  Regulations by commissioner .................................................................. 145 889
  Reports to commissioner, earnings of employees .................................. 145 889
  Who entitled to make ............................................................................ 145 889

Exemption of employers from liability ................................................... 145 887
Fellow-servants, when defense prohibited ................................................. 145 888

Fines, penalties and forfeitures
  Failure to make report or perform duty required by commissioner .......... 145 873

Foreign corporations
  Election to comply .................................................................................. 145 877
  General provisions .................................................................................. 145 877
  Hospital treatment, contracts with hospitals prohibited ......................... 145 899
  Industries, classification ......................................................................... 145 878
  Interstate commerce, application of law .................................................. 145 892
    Exception as to railroads and express companies .................................. 145 892

Liability for damages
  Election not to pay premiums or defaulting in payment ........................ 145 888
  Exemption of contributing employers from ............................................ 145 887
  Providing own system of compensation ................................................... 145 889

Negligence, defense of contributory negligence prohibited ...................... 145 888

Payroll reports
  Effect of failure to make ........................................................................ 145 881
  Forms .................................................................................................... 145 881
  Quarterly report to commissioner .......................................................... 145 881

Premiums
  Interest on unpaid payments .................................................................. 145 894
  Required to pay .................................................................................... 145 883
  Withdrawal from election to pay ............................................................ 145 882

Reinstatement of delinquent employer .................................................... 145 875

Reports
  Filling out and returning ........................................................................ 145 878
  Forms furnished by commissioner .......................................................... 145 878
  Information to be returned to commissioner ........................................... 145 878
  Penalties, failure to make report or false report .................................... 145 873

Statement of amount paid for injuries furnished by commissioner ............. 145 880
## TOPICAL INDEX

### WORKMEN'S COMPENSATION—(continued):

<table>
<thead>
<tr>
<th>Subject</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employers—(continued):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Subject to law</td>
<td>145</td>
<td>875</td>
</tr>
<tr>
<td>Temporary total disability benefits, payment</td>
<td>145</td>
<td>897</td>
</tr>
<tr>
<td>Termination of business, notice to commissioner</td>
<td>145</td>
<td>878</td>
</tr>
<tr>
<td>Expenses, reimbursement of claimant for</td>
<td>145</td>
<td>911</td>
</tr>
<tr>
<td>Express companies, exempt from law</td>
<td>145</td>
<td>893</td>
</tr>
<tr>
<td>Fines, penalties and forfeitures</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contracts with hospitals</td>
<td>145</td>
<td>899</td>
</tr>
<tr>
<td>Notice to employees, removal or defacing</td>
<td>145</td>
<td>881</td>
</tr>
<tr>
<td>Reports, failure to make</td>
<td>145</td>
<td>873</td>
</tr>
<tr>
<td>Fund</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accounts and accounting</td>
<td>145</td>
<td>878</td>
</tr>
<tr>
<td>Catastrophe and second injury security</td>
<td>145</td>
<td>890</td>
</tr>
<tr>
<td>Creation of fund</td>
<td>145</td>
<td>881</td>
</tr>
<tr>
<td>Disbursements</td>
<td>145</td>
<td>895</td>
</tr>
<tr>
<td>Election to provide own system, payments into surplus fund</td>
<td>145</td>
<td>889</td>
</tr>
<tr>
<td>Receipts, accounts</td>
<td>145</td>
<td>881</td>
</tr>
<tr>
<td>Refunds, upon withdrawal or termination of election</td>
<td>145</td>
<td>881</td>
</tr>
<tr>
<td>Reserves</td>
<td>145</td>
<td>880</td>
</tr>
<tr>
<td>Second injury reserve</td>
<td>145</td>
<td>890</td>
</tr>
<tr>
<td>Surplus, providing own system, payments</td>
<td>145</td>
<td>889</td>
</tr>
<tr>
<td>Withdrawal from fund</td>
<td>145</td>
<td>881</td>
</tr>
<tr>
<td>Hospitals, contract with by employer prohibited</td>
<td>145</td>
<td>900</td>
</tr>
<tr>
<td>Failure to submit bills for services, effect</td>
<td>145</td>
<td>900</td>
</tr>
<tr>
<td>Industries, classification of</td>
<td>145</td>
<td>878</td>
</tr>
<tr>
<td>Injunctions, defaulting employers</td>
<td>145</td>
<td>885</td>
</tr>
<tr>
<td>Interest on unpaid premiums</td>
<td>145</td>
<td>894</td>
</tr>
<tr>
<td>Interstate commerce</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Application of law to employers engaged in</td>
<td>145</td>
<td>892</td>
</tr>
<tr>
<td>Jurisdiction, commissioners' jurisdiction over cases continuous</td>
<td>145</td>
<td>911</td>
</tr>
<tr>
<td>Law, application to interstate commerce</td>
<td>145</td>
<td>892</td>
</tr>
<tr>
<td>Limitation of article as to awards</td>
<td>145</td>
<td>910</td>
</tr>
<tr>
<td>Medicine, disbursements for</td>
<td>145</td>
<td>899</td>
</tr>
<tr>
<td>Mines and minerals</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mine adjudged to be within state</td>
<td>145</td>
<td>878</td>
</tr>
<tr>
<td>Municipal corporations, payment of premiums</td>
<td>145</td>
<td>875</td>
</tr>
<tr>
<td>Negligence, when defense of contributory prohibited</td>
<td>145</td>
<td>888</td>
</tr>
<tr>
<td>Notice</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Change of rates</td>
<td>145</td>
<td>880</td>
</tr>
<tr>
<td>Election of employer to provide own system</td>
<td>145</td>
<td>889</td>
</tr>
<tr>
<td>Employer's delinquency and termination of election</td>
<td>145</td>
<td>882</td>
</tr>
<tr>
<td>Withdrawal of termination of election</td>
<td>145</td>
<td>881</td>
</tr>
<tr>
<td>Occupational disease</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Definitions</td>
<td>145</td>
<td>896</td>
</tr>
<tr>
<td>Disability benefits</td>
<td>145</td>
<td>895</td>
</tr>
<tr>
<td>Disbursement of benefits</td>
<td>145</td>
<td>909</td>
</tr>
<tr>
<td>Occupational pneumoconiosis</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Benefits and mode of payment to employees and dependents</td>
<td>145</td>
<td>907</td>
</tr>
<tr>
<td>Defined</td>
<td>145</td>
<td>896</td>
</tr>
<tr>
<td>Further adjustment of claim for</td>
<td>145</td>
<td>907</td>
</tr>
<tr>
<td>Occupational pneumoconiosis board</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Annual report to governor</td>
<td>145</td>
<td>874</td>
</tr>
<tr>
<td>Composition</td>
<td>145</td>
<td>907</td>
</tr>
<tr>
<td>Created</td>
<td>145</td>
<td>907</td>
</tr>
<tr>
<td>Duties</td>
<td>145</td>
<td>908</td>
</tr>
<tr>
<td>Remuneration of members</td>
<td>145</td>
<td>908</td>
</tr>
<tr>
<td>Terms of office</td>
<td>145</td>
<td>909</td>
</tr>
<tr>
<td>Schedule of maximum disbursements</td>
<td>145</td>
<td>899</td>
</tr>
<tr>
<td>Perjury, false reports or statements</td>
<td>145</td>
<td>873</td>
</tr>
</tbody>
</table>
WORKMEN'S COMPENSATION-(continued):

Physicians and surgeons
  Failure to submit bills for services, effect

Pneumoconiosis
  Defined

Premiums
  Collection from defaulting employers
  Minimum

Payments
  Deposit to insure payment
  Failure to pay, effect
  Notice to employees

Rates
  Basis for
  Duties of commissioner
  Notice of changes
  Readjustment, annual
  State premiums paid by state treasurer
  Unpaid payments, interest
  Refund of deposit
  Unpaid premiums, interest

Railroads, exempted from act

Reports
  Annual report by commissioner
  Occupational pneumoconiosis board
  Failure to make report or perform duty required
  by commissioner, penalty
  False report, perjury
  Payroll report by employer

Sheriff
  Action against sheriff by employee for failure to perform duties
  Posting of notices of employer's withdrawal or termination of election

Silicosis
  Benefits
  Definition
  Stages of

State treasurer
  Payment of premiums

Statistics, classification of industries

Waiver
  Benefits of chapter may not be waived by contract or regulation
  Withdrawals
  Perjury